

CONTRACT FOR PUBLIC SPACE RECYCLING AND ADVERTISING

THIS CONTRACT is made and entered into this _____ day of _____, 2011 by and between the City of Las Vegas (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and Greener Corners (hereinafter the "Company") a corporation having its principal office at 301 Route 17 North, Suite 800, Rutherford, New Jersey 07070.

SECTION A – Contract Form

The subject matter of this Contract is the provision of public space recycling facilities and services within the City of Las Vegas.

SECTION B – Basic Terms

B-1 Definitions

The following definitions apply to this Contract:

- (a) "Award Date" means the date that a Contract becomes effective. It is the date that is entered into the first paragraph of a Contract upon execution by an authorized representative of the City.
- (b) "City" means the City of Las Vegas.
- (c) "City Council" means the governing body of the City of Las Vegas.
- (d) "Company" means the individual, partnership, or corporation responsible for the performance of services under this Contract.
- (e) "Company Representative" means the individual authorized to act on behalf of the Company regarding routine matters arising under or relating to this Contract.
- (f) "Contract" means this document, consisting of Sections A through F, which is binding and effective only upon execution by the City and the Company.
- (g) "Deliverable" means any report, software, data, documentation, or other tangible item that the Company is required to provide to the City under the terms of this Contract, excluding recycling receptacles and advertising content.
- (h) "Exclusive Contract" means that during the term of this Contract and any renewal terms the Company shall be the exclusive vendor to the City for the provision of waste and/or recycling bins displaying advertising, unless additional vendors are approved by the Company. The City may obtain waste or recycling bins without advertising as deemed necessary by the City, except that the City shall not place such bins to interfere with or obstruct the visibility of the Company's bins.
- (i) "Gross Revenue" means the total income from advertising sold on recycling bins in the City of Las Vegas, counted as of the date the advertising is sold.
- (j) "Project Manager" means the City representative who is responsible for the coordination of Contract performance between the City and the Company.

B-2 Contract Type

The Contract type is revenue generation. This is an Exclusive Contract.

B-3 Prices/Costs

- (a) City's Share. The Company will pay the City 15% of Gross Revenue, if such payment is greater than the GMP set forth in subparagraph (b) below.
- (b) Guaranteed Minimum Payment (GMP). The Company guarantees a minimum payment to the City of \$350 per installed bin, per year. This amount may be pro-rated, at the Company's request, for any bins installed less than a full Contract Year.

Contract No. 100184-PH
Public Space Recycling and Advertising

B-4 Payment Procedures

A minimum payment of \$70,000 shall be due to the City on Award Date. This amount represents the GMP for Contract Year 1. During Contract Year 1, the Company shall monitor the City's Share as described in B-3(a) above. If the City's Share exceeds the GMP for Contract Year 1, the Company shall begin making semi-annual payments to the City for the excess. This minimum payment for Contract Year 1 shall not be readjusted during Contract Year 1.

For subsequent Contract Years, the Company shall submit semi-annual payments to the City in accordance with the City's Share. The Company shall monitor the City's Share as described in B-3(a) above. If the City's Share does not reach the GMP, the Company shall make one additional payment to the City no later than the 10th business day following the end of that Contract Year.

The City's Share shall be calculated as a percentage of gross advertising sales on the day those sales are made.

B-5 Contract Term

The Contract is effective as of the Award Date.

Subject to Section C-2, Contract Year 1 shall commence six calendar months after Award Date. Subsequent Contract Years shall commence on the anniversary date of the commencement of Contract Year 1. This initial 6 month delay is intended to give the Company time to formulate a Location Plan and Installation Timeline and gain City approval thereof, order bins, complete installation, and begin selling advertising space.

This Contract shall be valid for five Contract Years, unless terminated in accordance with Section E-3 or E-4. The Contract shall automatically renew for one additional five-year period unless legal notice declining renewal is given by either party a minimum of 120 days prior to the expiration of the then-current term.

SECTION C – Statement of Work

C-1 General

The Company shall provide, install, service and maintain publicly accessible recycling/trash bins on City property and within the public right of way. Commercial advertisement panels will be affixed to the bins at designated locations as shown in Exhibit 1, Bin Design, and advertising space sold for profit.

The City shall not be responsible for any costs involved in installation, service, recyclable and trash collection and disposal, bin service and maintenance, bin relocation or bin removal. Ownership of bins and advertising content will not transfer to the City.

C-2 Program Implementation and Timeline

The Company shall conduct a physical audit of potential locations in order to propose precise locations for the recycling/trash bins. Any bin placed on or near a sidewalk must not restrict the passage space on the sidewalk to less than four feet of width to curb back (not including the top of the curb).

The Company shall submit a location plan and installation timeline to the City for review, and shall allow four weeks for City review. If the City requires additional time for review, the commencement date of Contract Year 1 shall be extended accordingly. The Company shall incorporate any revisions requested by the City and shall submit a final Location Plan and Installation Timeline to the City for acceptance. The Company and City shall jointly agree on bin design and finish for each location. The Company and City shall jointly agree on all locations for placement of recycling stations.

Once accepted, any deviations from the Location Plan and Installation Timeline must be approved in advance, in writing, by the Project Manager.

The City-approved Location Plan and Installation Timeline shall provide for the completed installation of a minimum of 200 bins before the commencement of Contract Year 1.

C-3 Recycling Bin Design

Recycling bins shall be constructed as shown in Exhibit 1, Bin Design.

Contract No. 100184-PH
Public Space Recycling and Advertising

C-4 Recycling Bin Placement and Installation

The Company shall install bins in accordance with the accepted Location Plan and Installation Timeline. If requested, the City may provide outdoor space for the Company's use as a staging area during the installation operation. The Company shall be responsible to secure the staging area; the City shall not be responsible for loss of or damage to the Company's materials or equipment. Use of the space would be scheduled with the Project Manager. The City will not assist with installation in any other capacity. The Company agrees to release the City from all liability for any damage or injury arising from the Company's use of the City's property as a staging area.

The Company shall comply with all applicable laws and regulations in the installation of the bins, including but not limited to:

- the attainment of encroachment agreements for each bin installed in the public right of way (see sample encroachment agreement attached as Exhibit 2)
- compliance with all ADA accessibility requirements
- determination of boundaries of public right of way
- the attainment of property owners' permission for any bins installed on private property
- the attainment of permits for any construction accomplished
- pedestrian and vehicle traffic control plans for any installation process that blocks access
- performance of any construction by a licensed contractor

The Company shall not place any bin within 50 feet of any Regional Transportation Commission bus stop unless with the express written agreement of the City.

The Company and City shall jointly agree on all locations for placement of recycling stations.

The Company shall be responsible for all labor, materials and costs associated with installation of the bins.

Bins shall be bolted to the ground in a manner to prevent tipping. If placed on a non-cement surface, the Company shall install a concrete pad, or similar, to which the bin shall be bolted. Bins may be secured to unpaved surfaces using alternate methods if approved in advance by the Project Manager on a case-by-case basis.

If a sidewalk panel is damaged during installation, the Company shall replace the damaged panel.

All bins provided shall be new or in like-new condition. Bins presented in "like-new condition" must be approved by the Project Manager, and may be rejected at the Project Manager's sole discretion.

C-5 Recyclables and Trash Collection

At the time of signing, Republic Services is the franchised trash removal provider in City limits. The Company shall abide by all requirements of the franchise agreement for trash collection services and shall, on request, provide the City a copy of any agreement with Republic Services. Collection of recyclables and trash shall be performed on a regularly scheduled basis, with pick-ups occurring frequently enough that odor and litter do not become nuisance issues. The Company shall regularly evaluate collection schedules and shall adjust schedules to service bins more or less frequently, as necessary, in order that bins do not overflow or emit odors. Current and past collection schedules shall be available for the Project Manager's review at any time.

The City shall continue to be responsible for collection, removal and disposal from receptacles not provided by the Company.

C-6 Public Education and Outreach

The Company shall work with the City to draft and publish press releases promoting the program to Las Vegas citizens and visitors. The Company shall reasonably coordinate with the City in kick-off events to promote the recycling program and educate the public. The City will provide reasonable space at community centers, on the City website, and other appropriate locations free of charge should the Company wish to post advertisements for the program. Such space will be made available at the Project Manager's discretion.

The Company shall provide a reasonable amount of children's educational materials that the City may distribute to local schools or community programs to educate the public about the recycling program and the benefits of recycling in general.

Contract No. 100184-PH
Public Space Recycling and Advertising

The Company shall provide, as part of its quarterly Progress Report described in Section C-9 below, a Community Impact Report detailing, at minimum the amount of recyclables recorded by the recycling processor at the time of delivery and an estimate of environmental impacts of the program, such as equivalency in trees saved, water conserved, landfill space preserved, or similar measures.

C-7 Recycling Bin Service and Maintenance

The Company shall service bins according to a regular schedule to ensure that bins are at all times clean and presentable. Each bin shall be serviced at minimum weekly, unless otherwise approved explicitly in writing by the Project Manager on a case-by-case basis. Each service shall include, at minimum:

- Clean the outside surface of the bin
- Remove any litter or weeds from a five foot radius around the bin
- Inspect bin for structural damage, graffiti or other problems and perform or schedule repairs

In addition, bins shall be pressure washed at minimum twice per year, and the insides of bins shall be cleaned as needed to eliminate odors.

The Company shall maintain clear and detailed records of dates, times and types of service performed by individual bin location. The Company shall regularly evaluate service and maintenance schedules to service bins more frequently as needed for any location regularly requiring additional service, especially in the case of graffiti removal.

The Company shall maintain and make publicly available a toll free 24-hour hotline to be used for reporting graffiti, overflows, odors and other blemishes at any bin location. The Company shall monitor and evaluate complaints received for each location, and shall evaluate and adjust regular maintenance visit scheduling as necessary for locations receiving a high number of complaints.

The Company shall remove graffiti from bins within 24 hours of receipt of a complaint. The Company shall remedy any complaint of overflowing bins or odor issues within 24 hours of receipt of a complaint. The Company shall respond to all other complaints within 48 hours of receipt of the complaint. The Company shall place emergency contact information on each bin.

The City may request emergency service when, in the sole opinion of the City, any bin's condition is such that it constitutes a serious danger to the public. The Company shall remedy such emergency service issues within 4 hours of receipt of the request.

In the event the Company is unable to respond to an emergency situation within 4 hours, and if the City determines public safety may be at risk, the City may remove the bin and invoice the Company for costs directly related to the bin's removal.

If damage to a bin was caused wholly by the City or its employees, the cost to repair or replace the bin shall be deducted from any revenue share due or to become due to the City.

Maintenance schedules, maintenance records and complaint and response records shall be maintained in detail by the Company and available for the Project Manager's review at any time.

The Company shall replace any bin that shows wear beyond what is reasonable, or that prevents the bin from performing its advertising or recycling functions.

The Project Manager may require the Company to adjust the service schedule for any bin location(s) should the City, in its sole discretion, feel that any bin location(s) have become a nuisance with regards to graffiti, odor, overflows, or citizen complaints. Should a bin suffer a degree of vandalism or graffiti that requires greater than twice a week service, the Company may, at its sole option, relocate the bin to a location agreed to jointly by the City and the Company.

C-8 Advertising

The Company shall not allow advertisement of tobacco, firearms or adult entertainment. Advertising media affixed to the bins shall be for the purposes of generating revenue or publicity, and is not a public forum. Noncommercial, political or artistic displays are not allowed without the prior written approval of both the Project Manager and the City's Office of Cultural Affairs.

Contract No. 100184-PH
Public Space Recycling and Advertising

The City may adopt an Advertising Policy governing the content of advertisements placed on City property. If adopted by the City, the Advertising Policy will supersede the requirements of the above paragraph, and the Company shall comply with all provisions of the Advertising Policy. If the Advertising Policy proves to be restrictive to the point where it interferes with the Company's ability to generate revenue, then the Company has the right to terminate this Contract without prejudice, subject to the requirements of Section C-12, End of Contract.

The Project Manager shall have the right to require removal of any advertisement that, in the Project Manager's opinion, does not comply with the terms of this Contract, does not comply with the Advertising Policy, or is overtly vulgar or offensive. The Company shall remove such advertisements within 24 hours of written request from the Project Manager.

The Company shall sell advertising space on the recycling bins at rates appropriate to maximize revenue from the target market. The City will have no ownership of advertising content and associated intellectual property. The Company shall be solely responsible for obtaining all necessary permissions, consents, copyrights or licenses to any work to be used in connection with the performance of the Contract.

C-9 Reporting

The Company shall electronically submit Progress Reports to the Project Manager no later than the tenth business day of each calendar quarter, for activity occurring the prior quarter. Progress Reports shall include at minimum: advertising sales by Bin ID number (including bins with zero revenue for that quarter), explanation of any bins added, removed or relocated that quarter, the results of any audit completed that quarter, the City's Share year to date, and a Community Impact Report as described in Section C-6 above.

C-10 Recycling Bin Relocation and Removal

If the Company and the Project Manager jointly agree that a specific bin location lacks sufficient marketability to reasonably justify the recycling service, or agree that the location is subjected to repeated vandalism or other excessive expense or damage, the Company may remove the bin or relocate the bin to a location mutually agreed upon by the Company and the Project Manager.

The Company may temporarily remove bins for the purpose of maintenance and repair.

If a bin is permanently relocated or removed during any Contract Year or at the expiration or termination of this Contract, the Company shall restore each location to its original condition following removal of the bin. The restoration shall include filling any bolt holes in the concrete with concrete filler, and smoothing the surface to be even with the existing concrete. If a sidewalk panel is damaged during bin removal, the Company shall replace the damaged panel. If the Company installed a pad for a bin installation on an unpaved surface, the Company shall remove said pad and restore the surface to match surrounding conditions.

C-11 Access and Use of City Property

The City shall provide the Company with reasonable access to and use of City-owned property at or in the immediate proximity of bin locations in order to perform services hereunder, including but not limited to installation of bins and advertising, maintenance, repair, replacement and removal of bins. The Company shall indemnify the City from any damages arising in whole or in part from the Company's use of City property.

C-12 End of Contract

At the expiration or termination of this Contract, the Company shall, at its own expense, accomplish removal of all bins installed as part of the Contract program, and shall restore all surfaces as detailed in Section C-10 above. The Company Representative and the Project Manager shall work together to ensure an orderly removal of all bins and close of the program. The City and the Company shall cooperate in the production and release of announcements and press releases as necessary.

The Company shall be responsible for all costs associated with the end of this Contract. In the event of early termination by the Company as a result of a breach by the City, such costs shall be deducted from the City Share or GMP due or to become due to the City.

Contract No. 100184-PH
Public Space Recycling and Advertising

SECTION D – Special Clauses

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

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

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

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

FOR THE COMPANY: Greener Corners
Aaron Klein
301 Route 17 North, Suite 800
Rutherford, NJ 07070
866-991-3648

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

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

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

D-3 Warranty – Services [CAO-7/24/08]

The Company warrants that the services shall be performed in full conformity with this Contract, with the professional skill and care that would be exercised by those who perform similar services in the commercial marketplace, and in accordance with accepted industry practice. In the event of a breach of this warranty and/or in the event of non-performance or failure of the Company to perform the services in accordance with this

Contract No. 100184-PH
Public Space Recycling and Advertising

Contract, the Company shall, at no cost to the City, re-perform or perform the services so that the services conform to the warranty.

D-4 Intellectual Property Rights [R]

All reports delivered to the City under this Contract, as well as all data, notes, and documentation collected on behalf of the City are exclusively the property of the City. No rights to any recycling bins, advertising materials or concepts will transfer to the City.

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

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

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

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

SECTION E – General Clauses

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

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

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

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

E-3 Termination for Convenience [R]

The City shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason whatsoever (including no reason). Such termination shall be effected by a minimum of 90 days prior written notice from the City to the Company specifying the extent and effective date of the termination. On the effective date of the termination, the Company shall terminate the program in accordance with Section C-12 End

Contract No. 100184-PH
Public Space Recycling and Advertising

of Contract. In the event of termination for convenience by the City, the Company may withhold from future payments due the City the amount of any of the Company's program investments that are at that time not yet fully recouped or depreciated.

The Company may terminate this Contract on 30 days notice to the City if, in the Company's opinion, advertising sales are insufficient to warrant continuation of the program, or the recycling bins are subject to consistent and repeated vandalism, damage or misuse. On the effective date of the termination, the Company shall terminate the program in accordance with Section C-12 End of Contract.

E-4 Termination for Default [R]

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

E-5 Insurance and Bonding: [R]

- (a) The Company shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverage(s):
 - (i) Industrial/Workers' Compensation Insurance protecting the Company and the City from potential Company employee claims based upon job-related sickness, injury, or accident, during performance of this Contract, and must submit proof of such insurance on a certificate of insurance issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with NRS 616A-616D, inclusive.
 - (ii) Commercial General Liability Insurance (bodily injury, property damage, media liability) with respect to the Company's agents assigned to the activities performed under this Contract in a policy limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, for bodily injury (including

Contract No. 100184-PH
Public Space Recycling and Advertising

- death), personal injury and property damages. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis, and be provided on either a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad form CGL endorsement) insurance form. The form must be written on an ISO Form CG 00 01 10 01, or an equivalent form.
- (iii) Commercial Automobile Liability Insurance of limits not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by Company and any auto used in the performance of services under this Contract. The policy must insure all vehicles **owned** by the Company and include coverage for **hired** and **non-owned** vehicles.
- (b) Company must provide required insurance documentation to Insurance Tracking Services (ITS) immediately upon notification of selection. Award is conditional upon verification by ITS that all insurance requirements have been met. All policy certificates and endorsements are required to be issued by an agent authorized by that insurer and licensed by the State of Nevada. All required aggregate limits must be disclosed and amounts entered on the certificate(s) of insurance. The certificates must identify the Contract number and the Contract description. The Company shall maintain coverage for the duration of this Contract, and any renewal periods if applicable. The Company shall annually provide ITS with a certificate of insurance as evidence that all insurance requirements have been met. The Company or insurance carrier shall provide the City with 30 day advance notice of policy modification, cancellation or erosion of insurance limits, sent by certified mail "return receipt requested".
- Submit certificates of insurance to:
- | | |
|---|---|
| City of Las Vegas | Account Manager: Michael Palacios |
| C/O Insurance Tracking Services, Inc. (ITS) | Phone: (888) 435-2955 ext. 503 |
| P.O. Box 21919 | Fax: 562-435-2999 |
| Long Beach, CA 90801 | Email: michael.palacios@instracking.com |
- A certified, true and exact copy of each of the project specific insurance policies (including renewal policies) required under this Section E-5 shall be provided to the City if so requested.
- (c) The City, its officers and employees shall be named as additional insureds and such notation shall appear on the certificate of insurance furnished by the Company's insurance carrier. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. Each insurance carrier's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The City requires insurance carriers to maintain a Best's Key rating of A VII, or higher. The adequacy of the insurance supplied by the Company, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City.
- (d) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention may exceed \$10,000.00 without the prior written approval of the City.
- (e) If the Company fails to carry the required insurance, the City may (i) order the Company to stop further performance hereunder, declare the Company in breach, pursuant to Paragraph E-4, and terminate the Contract if the breach is not remedied, or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to the Company, or charge the replacement insurance costs back to the Company.
- (f) Any subcontractor or subconsultant approved by the City shall be required to procure, maintain and submit proof of insurance to the City of the same insurance requirements specified above, and as required in this paragraph.
- (g) The Company is encouraged to purchase any additional insurance it deems necessary.
- (h) The Company is required to remedy all injuries to persons and damage or loss to any property of the City, caused in whole or in part by the Company, its subcontractors or anyone employed, directed or supervised by the Company.
- (i) The policies required in E-5 (a) i-iii shall have a Waiver of Subrogation provision endorsement in favor of the City of Las Vegas.

Contract No. 100184-PH
Public Space Recycling and Advertising

- (j) The Company shall maintain a performance bond insuring performance of all of the Company's obligations as required by the Contract, in the lump sum amount of \$150 per receptacle. The lump sum bond amount is established based on the number of bins installed; however, the City's ability to claim on the bond shall not be limited to \$150 per bin location. The City may claim on the bond in whatever amount necessary to remedy any location, up to the bond lump sum amount. The bond must be issued by a surety who is listed in Circular 570 (current edition) issued by the Department of Treasury, Fiscal Services as a company holding a certificate of authority as an acceptable surety or reinsuring company of federal projects. The Surety must be licensed to do business in the State of Nevada. Bonds issued by individuals as surety are not acceptable to the City. The Company shall require the agent who executes the bond on behalf of the Surety to attach to the bond a correct copy of the power of attorney authorizing the agent to execute the bond.

E-6 Indemnification [R]

- (a) In addition to the insurance requirements set forth in Paragraph E-5 (Insurance), the Company shall protect, indemnify and hold harmless the City, its officers, employees, agents, and consultants (collectively herein the "City") from any and all claims, liabilities, damages, losses, suits, actions, intellectual property infringements, decrees, and judgments including attorney's fees, court costs or other expenses of any and every kind or character (collectively herein the "Liabilities") which may be recovered from or sought against the City as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of the Company, its officers, employees, or agents in the performance of the terms, conditions and covenants of this Contract, regardless of whether the Liabilities were caused in part by the City.
- (b) If a third party claim against the City for negligent performance by the Company is within the limits of its liability insurance and the insurance company has accepted the City's tender of defense, then the City will pay the Company what is due and owing to them, within the payment method specified in this Contract. However, if the claim is greater than the coverage amount, the City, for its protection, may retain any money due and owing the Company under this Contract, until the claim has been resolved.

It is expressly agreed that the Company shall defend the City against the Liabilities and, in the event that the Company fails to do so, the City shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to the Company.

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

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

E-8 Waiver [R]

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

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

- (a) The City is exempt from paying Sales and Use Taxes under the provisions of Nevada Revised Statutes 372.325(4), and Federal Excise Tax, under Registry Number 88-87-0003k. The Company shall pay all taxes, levies, duties and assessments of every nature and kind which may be applicable to any work under this Contract. The Company shall make any and all payroll deductions required by law. The Company agrees to indemnify and hold the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.
- (b) The Company, in the performance of the obligations of this Contract, shall comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Contract

Contract No. 100184-PH
Public Space Recycling and Advertising

including, but not limited to, the Federal Occupational Safety and Health Act, and all state and federal laws prohibiting or relating to discrimination by reason of race, sex, age, religion or national origin.

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

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

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

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

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

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

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

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

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

Contract No. 100184-PH
Public Space Recycling and Advertising

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

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

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

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

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

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

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

E-18 Confidentiality – City Information [R]

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

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

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

Contract No. 100184-PH
Public Space Recycling and Advertising

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

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

E-21 Changes – Fixed-Price Services [R]

- (a) The City may at any time, by written order, make changes within the general scope of this Contract in any one or more of the following:
- (i) Description of services to be performed.
 - (ii) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (iii) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the City shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.
- (c) The Company must assert its right to an adjustment under this clause within 90 days from the date of receipt of the written order; however, if the City decides that the facts justify, the City may receive and act upon a proposal submitted before final payment of the Contract.
- (d) If the Company's proposal includes the cost of property made obsolete or excess by the change, the City shall have the right to prescribe the manner of disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under Paragraph E-1 (Disputes); however, nothing in this clause shall excuse the Company from proceeding with the Contract as changed.

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

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

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

SECTION F – List of Attachments/Exhibits

The following attachments are hereby incorporated into this contract:

<u>Identifier</u>	<u>Title/Text Reference</u>	<u>Pages</u>
Exhibit 1	Bin Design (Section C-3)	1
Exhibit 2	Sample Encroachment Agreement (Section C-4)	5

Contract No. 100184-PH
Public Space Recycling and Advertising

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

CITY OF LAS VEGAS

KATHLEEN C. RAINEY, Manager
Purchasing and Contracts

"City"

ATTEST:

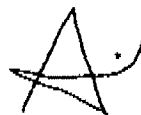
BEVERLY K BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Robert S. Glavin
Deputy City Attorney

5-10-11
Date

GREENER CORNERS

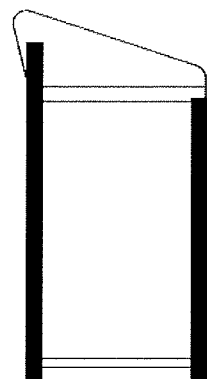
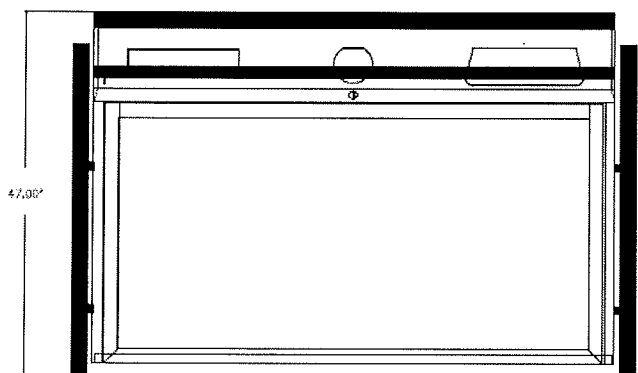
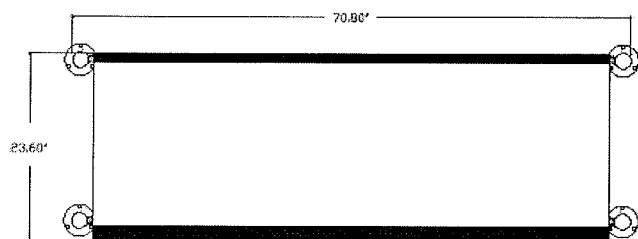


AARON KLEIN, CEO

"Company"

Greener Corners Public Space Recycling Program

Proposed Recycling Bin Design, Las Vegas:



Powder Coated Finish to match Downtown street furniture

- Weight: Approximately 300 lbs.
- Board Messaging: Area per single face: 60.5" x 31.5"
- Dimensions: 23.6" (width) x 70.8" (length) x 47" (height)



APN: 123-45-678-910

ENCROACHMENT AGREEMENT
(Short-Term)

SAMPLE ONLY

THIS AGREEMENT, made and entered into this _____ day of _____, 2008, by and between the CITY OF LAS VEGAS, a municipal corporation of the State of Nevada (hereinafter referred to as the "City"), and ABC CORPORATION, 1500 SUNNY STREET, LAS VEGAS, NEVADA, 89999 (hereinafter referred to as "Owner").

WITNESSETH

WHEREAS, the City owns the public right-of-way that is commonly known as "A" STREET and more particularly described in Exhibit "A" which is attached hereto and by this reference made a part hereof; and

SAMPLE ONLY

WHEREAS, the Owner is the owner of certain real property located at THE SOUTHWEST CORNER OF "A" STREET AND "B" AVENUE, LAND DEVELOPMENT PROJECT HANSEN # 9999, ENCROACHMENT HANSEN # 99991 (ABC CORPORATE HEADQUARTERS) which adjoins said public right-of-way and is also described in Exhibit "A"; and

WHEREAS, the Owner has developed and improved said property in a manner which has encroached upon or into said described public right-of-way; and

WHEREAS, the parties hereto intend, by this Agreement, to evidence the consent of the City to said encroachment as authorized herein and to set forth the entire agreement of said parties with respect thereto.

SAMPLE ONLY

NOW, THEREFORE, for and in consideration of the sum of Twenty Five Dollars (\$25.00), the receipt of which is hereby acknowledged by the City, and of other good and sufficient considerations, the City hereby authorizes and permits the encroachment into said described public right-of-way in accordance with, and the Owner agrees to the following terms, covenants, and conditions:

1. ENCROACHMENT AUTHORIZED: The City hereby permits a limited encroachment into said described public right-of-way, which encroachment shall be limited to the following:

SAMPLE ONLY

AN APPROXIMATE 11' WIDE AREA OF LANDSCAPING ON THE WEST SIDE OF "A" STREET EXTENDING APPROXIMATELY 156' SOUTHWARD FROM "B" AVENUE AND AN APPROXIMATE 11' WIDE AREA OF LANDSCAPING ON THE SOUTHSIDE OF "B" AVENUE EXTENDING APPROXIMATELY 66' WESTWARD FROM "A" STREET CONSISTING OF TREES, SHRUBS, GROUND COVER AND AN IRRIGATION SYSTEM FOR THE PROPOSED ABC CORPORATE HEADQUARTERS BUILDING.

Said encroachment is more particularly described in Exhibit "A". In the event that the City requires the submission of more detailed plans and drawings, such plans and drawings shall be identified as Exhibit(s) and shall be incorporated herein by this reference, and the encroachment herein permitted shall be further defined and limited by said Exhibit(s).

2. NATURE OF PERMIT: This Agreement shall not be deemed to transfer any real property interest of the City in and to said described public right-of-way. The rights of encroachment that are granted herein are in the nature of a permit only and are subject to termination by the City as provided for herein.

SAMPLE ONLY

3. USE AUTHORIZED: This Agreement does not authorize any use of said described public right-of-way, or the airspace thereabove, other than for the use and maintenance of the improvements that are authorized therein, as the same are identified in Paragraph 1 above (the "Improvements" herein).

4. TERM: This Agreement shall become effective on the date it is filed and recorded at the Office of the County Recorder of Clark County, Nevada, and shall remain in effect until the same is terminated in accordance with Paragraph 9 hereof or until the Improvements cease to exist, at which time all of the rights that are enjoyed by the Owner by virtue hereof shall cease except as the parties hereto may otherwise agree in writing.

5. REPAIRS AND MAINTENANCE: The Owner, at its own cost and expense, shall maintain the Improvements in good repair and in a clean, good and safe condition at all times during the existence of this Agreement. In the event that the Owner fails or refuses to maintain the Improvements in a manner that is satisfactory to the City and further fails or refuses to take corrective action within forty-eight

(48) hours after its receipt of written notice from the City so to do, the City, at its option, may perform or cause to be performed any repair or maintenance on the Improvements that it may deem necessary, and the Owner shall pay the cost thereof to the City upon demand. The failure of the Owner to pay the cost thereof within thirty (30) calendar days after its receipt of a written demand or invoice therefor from the City shall constitute a material breach of this Agreement.

SAMPLE ONLY

6. INDEMNIFICATION: The Owner hereby agrees to indemnify, defend and save the City, its officers, agents and employees, harmless from and against any and all liability, loss, damage, cost, claim, lien, judgment or demand of any kind whatsoever which it or they may incur, suffer or be required to pay by reason of any death, disease or bodily injury that may result to any person or persons, or of any injury or damage to, or destruction or loss of use of, any property, which may arise as a result of, or incidental to, the entering into or performance of this Agreement, the existence or maintenance of the Improvements, the use or occupancy of the Improvements, or any act or omission of the Owner or its officers, agents, employees or contractors.

7. INSURANCE: (A) The Owner further agrees to secure and maintain, at a minimum and at its sole cost and expense, the following liability insurance coverages with respect to the maintenance and use of the Improvements, which coverages shall be maintained throughout the existence of this Agreement:

1. Personal injury liability for injury or death to one person: \$1,000,000.00;
2. Personal injury liability for injury or death to any number of persons with respect to one occurrence: \$1,000,000.00;
3. Property damage liability per occurrence: \$1,000,000.00.

SAMPLE ONLY

The City shall be named as an additional party insured under all of the liability coverages that are obtained with respect to the Improvements. The coverages that are required herein must be written by a company which is acceptable to the City and which is licensed to do business in the State of Nevada, and each policy with respect thereto shall provide that such coverages may not be canceled or materially altered without providing the City with sixty (60) calendar days' prior written notice of such cancellation or alteration.

(B) Within five (5) calendar days after the execution of this Agreement, and as a precondition to its continuing in force and effect, the Owner shall submit to the City a certificate of insurance which evidences the required coverages. Such insurance coverages shall be so endorsed as to create the same liability on the part of the insurer that would exist if separate policies had been written for each the Owner and the City.

(C) In the event that any of the insurance coverages that are required herein is canceled, terminated, reduced or restricted, and the Owner fails to obtain equivalent replacement coverage before such cancellation, termination, reduction or restriction becomes effective, the City may terminate this Agreement in accordance with the provisions of Paragraph 9 hereof.

SAMPLE ONLY

8. COMPLIANCE WITH LAWS AND REGULATIONS: The Owner further agrees that, during the existence of this Agreement, the maintenance and use of the Improvements, and the use of the space that will be occupied thereby, shall conform in every respect to all current and subsequently enacted building and related statutes, ordinances, codes, orders, resolutions, rules and regulations.

9. TERMINATION; RELOCATION: The City may terminate this Agreement and order the removal of the Improvements, or may order the relocation of the Improvements, for any reasons upon at least thirty (30) calendar days' written notice to the Owner. The removal or relocation of the Improvements shall be at the Owner's expense and shall be completed, in a manner satisfactory to the City, within ninety (90) calendar days after the Owner's receipt of such notice. If the Owner fails to remove or relocate the Improvements in a satisfactory and timely manner, the City shall have the right to cause the removal or relocation thereof at the Owner's expense. The Owner shall pay the costs of such removal or relocation within thirty (30) calendar days after its receipt of a written demand therefor from the City.

SAMPLE ONLY

10. NOTICES: Any notice which is required or permitted to be given under this Agreement shall be delivered in person or mailed to the parties and addresses listed below:

TO THE CITY:

City of Las Vegas
City Manager's Office
400 Stewart Avenue
Las Vegas, Nevada 89101

TO THE OWNER:

ABC CORPORATION
1500 SUNNY STREET
LAS VEGAS, NV 89999

11. BINDING UPON SUCCESSORS: It is understood and agreed that the obligations that are imposed upon the Owner by this Agreement shall run with the land and shall be binding upon any subsequent owner, assign and transferee of, and any successor in interest (including any heir of any such person) to the property, as described in Exhibit "A", for whose benefit the encroachment herein is permitted.

12. RECORDATION: This Agreement shall be filed and recorded in the Office of the County Recorder of Clark County, Nevada.

SAMPLE ONLY

13. HOLDS: In the event that this Agreement is not executed or not satisfactorily completed, and / or the \$25.00 fee has not been paid, and / or proper insurance documentation has not been received by the City, holds can and will be placed on any related civil plan approval, permits of any kind, inspections, bond releases, and / or on the Certificate of Occupancy pertaining to the project named in this Agreement and / or on the parcel(s) listed in this Agreement.

14. PARAGRAPH HEADINGS: The paragraph headings, which appear herein, are for convenience of reference only and shall not be construed as defining, limiting or extending the scope or intent of the paragraphs to which they pertain.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF LAS VEGAS

SAMPLE ONLY
OSCAR B. GOODMAN, Mayor
The "City"

Approved as to form:

SAMPLE ONLY
DATE

ATTEST:

SAMPLE ONLY
Beverly K. Bridges, CMC
City Clerk

SAMPLE ONLY

ABC CORPORATION

By SAMPLE ONLY
The "Owner"

*****USE BLACK INK ONLY AND
DO NOT WRITE OR STAMP
WITHIN THE 1" MARGIN*****

By SAMPLE ONLY
Printed name of person signing above

Document processed by Mychael E. Rigsby, City of Las Vegas, Land Development