

PRIME DESIGN SERVICES CONTRACT FOR BNR FACILITIES SETTLEMENT STUDY

THIS CONTRACT 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 333 North Rancho Drive, Las Vegas, Nevada 89106, and BROWN AND CALDWELL, (the "Consultant"), a Corporation, whose address is 8337 West Sunset Road STE 290, Las Vegas, Nevada 89113.

WITNESSETH:

WHEREAS, the City intends to construct the BNR FACILITIES SETTLEMENT STUDY (herein the "Project"); and

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

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

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 Contract 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 Contract 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 Contract, 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 Contract.

1.03 Document Review. The Consultant shall review each document prepared by the Consultant and its subconsultants including, without limitation, the plans, drawings and specifications for conformance with quality control requirements, Project standards and applicable federal, state and local laws and other regulations. Consultant shall also review each document for violations or infringements 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 Contract or of any cause of action arising out of the performance of this Contract. 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 Contract.

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

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

If the Consultant's personnel are unable to complete their responsibilities for any reason under this Contract, 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 to 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 Contract for default as provided in Section 10.03 of this Contract.

1.06 Correspondence Review. The Consultant shall furnish the City Representative draft copies of each correspondence to be 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 Contract 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 estimate prepared by the Consultant. If the bids or proposed price received by the City exceeds the Consultant's estimate, the Consultant agrees to cooperate with the City in revising the requirements of the Project as required to lower the cost and to change the construction documents. If the changes requested by the City cause an increase in the cost or time required to perform any of the services required under this Agreement, the Consultant may submit a request for an Adjustment in Compensation pursuant to Section 3.02.

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 Contract. 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 Contract.

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 Contract. 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 Contract.

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

SECTION THREE CHANGES TO CONSULTANT'S SERVICES

3.01 Requested Changes. The City may at any time, by written order of the City Representative, 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 Contract, 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 Contract 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 Contract. 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 Contract.

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 Contract.

SECTION FIVE SUBCONSULTANT CONTRACT

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

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

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

(iii) the subconsultant agrees to be bound by the terms, conditions and obligation of this Contract 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 Contract.

SECTION SIX TERM OF CONTRACT

6.01 **Term.** This Contract shall commence on the day it is approved by the City (which date shall be inserted in the introductory paragraph of this Contract) 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 Contract. Such termination shall not release either party from any of its continuing obligations under this Contract.

6.02 **Disputes.** This Section shall not be construed to preclude the filing of any dispute arising out of the performance of this Contract 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 Contract 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 Contract 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 Contract.

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 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 Contract.

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. Within seven (7) days, 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. The Consultant may dispute the right or amount of the off-set made by the City by providing written notification to the City within fourteen (14) days after receipt of the City's written notice. The City Representative shall provide a written response to the Consultant within seven (7) days of receipt of the Consultant's written dispute notice. If the Consultant disputes the City Representative's determination, 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 Contract, 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 Contract 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 Contract. The Consultant agrees to maintain books, records and other documents directly pertinent to performance of this Contract 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 Contract shall be maintained for three (3) years after the date of the final payment for the services under this Contract. In addition, those records and other documents which relate to any arbitration, litigation or the settlement of any claim arising out of this Contract, 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 Contract in all its subcontracts directly related to performance of services specified in this Contract 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 Contract for such period of time as the City, in its sole discretion, may prescribe by providing written notice to the Consultant. The suspension shall be effective as of the date set forth in the written notice. With such suspension, the City agrees to pay to the Consultant the amount of compensation, based on percentage of completion of the Project, earned as of the effective date of suspension less all previous payments. The Consultant shall not provide any further services under this Contract after the effective date of suspension until otherwise notified in writing by the City. In no event shall the City be liable to the Consultant for services in excess of the percentage of the Project completed at the time of suspension.

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

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

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 any additional 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 thirty (30) 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 notice of claim or dispute pursuant to the 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 City.

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 City agrees to waive any and all claims against the Consultant and to defend, indemnify and hold the Consultant harmless from and against any and all claims, losses, liabilities and damages arising out of or resulting from the City's use, reuse or alteration or the City's authorized use, reuse or alteration by any new consultant or other agent of the City. of the Consultant's designs, 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 which may include written permission to make changes or modifications to the plans.

B. Other Works. To the extent that the Consultant's services does not involve the design of an architectural work and upon the City's payment for the services rendered by the Consultant, 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, for the aforementioned purposes, from any and all claims in connection with the use or reproduction of the drawings and specifications. The City agrees to waive any and all claims against the Consultant and to defend, indemnify and hold the Consultant harmless from and against any and all claims, losses, liabilities and damages arising out of or resulting from the City's use, reuse or alteration or the City's authorized use, reuse or alteration by any new consultant or other agent of the City of the Consultant's designs, 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 which may include written permission to make changes or modifications to the plans. The Consultant shall be entitled to retain a reproducible copy of the documents furnished to the City.

C. Definition of Architectural Work. For purposes of this Contract, "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.

(i) In the event of the completion of this Agreement and upon the City's payment in the services rendered by the Consultant, 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.

(ii) In the event of the suspension or termination of this Agreement, the Consultant shall have the right to invoice the City to request full payment for all services performed or furnished in accordance with this Agreement through the suspension or termination date. Any dispute regarding the amount of any payment to be made by the City under this Agreement shall not diminish, restrict or limit the right of the City to promptly receive delivery of any and all plans, drawings, specification, 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 possession of the City. The Consultant may file a claim pursuant to Section 10.20 of this Agreement for any disputed payment claims.

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 Contract 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 Contract.

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. Provided, that however, none of the documents or materials are intended or represented by Consultant to be suitable for reuse by the City, or others on extension of the project or on any other project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at City's sole risk and without liability or legal exposure to Consultant. The City agrees to indemnify, defend and hold harmless Consultant for any claims related to the City's or City's authorized use of the design concepts developed by the Consultant. 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 this Contract, 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. Any deductible or self-insured retention under the commercial general liability policy will be the sole responsibility of the Consultant and may not exceed \$10,000 without the written approval of the City. If the Consultant desires authority from the City to have a deductible in a higher amount, the Consultant shall so request in writing, specifying the amount of the desired deductible and making available for review the most current audited financial statements so that the City can ascertain the ability of the Consultant to cover the deductible from its own resources.

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. Any deductible or self-insured retention under the commercial automobile liability policy will be the sole responsibility of the Consultant and may not exceed \$10,000 without the written approval of the City. If the Consultant desires authority from the City to have a deductible in a higher amount, the Consultant shall so request in writing, specifying the amount of the desired deductible and making available for review the most current audited financial statements so that the City can ascertain the ability of the Consultant to cover the deductible from its own resources.

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. Any deductible or self-insured retention under the professional liability insurance policy will be the sole responsibility of the Consultant and may not exceed \$100,000 without the written approval of the City. If the Consultant desires authority from the City to have a deductible in a higher amount, the Consultant shall so request in writing, specifying the amount of the desired deductible and making available for review the most current audited financial statements so that the City can ascertain the ability of the Consultant to cover the deductible from its own resources.

E. Cancellation or Modification of Coverage. The Consultant's Commercial General 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 employees and agents. 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. 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. The Consultant shall maintain all insurance coverages specified in Section 10.05 for the duration of this Agreement and liability coverage as required by Section 10.05 for two years following completion of this Agreement.

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

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

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 Contract 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 Contract shall be held to be invalid or unenforceable, the remaining provisions of this Contract 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 this Contract 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, amendments, and change orders to this Contract 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 Contract 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 or (ii) 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 Contract.

10.19 Prohibition Against Contingent Fees. The Consultant warrants that no person or entity has been employed or retained to solicit or secure this Contract 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 Contract 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 mediating that particular claim or dispute pursuant to Section 10.20C of this Contract, 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 Contract.

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 mediate the claim or dispute, in which event the parties shall proceed pursuant to provisions of Section 10.20C. 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 Mediation. Upon receipt of the request to mediate authorized pursuant Section 10.03B or Section 10.20B, the City and the Consultant shall come to an agreement as to the appointment of a mediator for purposes of hearing the appeal. If the parties cannot agree upon an independent private mediator within 45 days after notice of the receipt of the request to mediate, the party may proceed to file a judicial action with the Eighth Judicial District Court, Clark County, Nevada. The mediation shall take place in Clark County, Nevada, unless otherwise agreed to by the parties. The fees and expenses of the mediator shall be equally shared by both parties. Each party is responsible for their own costs, expenses, consultant fees and attorney fees incurred in the presentation or defense of any claim, dispute or controversy that is subject to mediation between the parties. The decision of the mediator shall be non-binding.

D. Right of Judicial Action. Any claim, dispute, or other matter in question between the parties concerning any provisions of this Contract that cannot otherwise be resolved between the parties through the use of mediation required herein may be submitted for judicial action. Prior to the exercise of this right, the party seeking judicial relief shall have provided the other party 30 days prior written notice before filing such judicial action.

10.21 Attorney Fees. The City or the Consultant as the prevailing party that brought any litigation or arbitration 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 Contract to days are to calendar days unless otherwise indicated.

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

10.24 Counterparts; Electronic Delivery. 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.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

10.25 Contract Version. This document reflects the current standard provisions for the City's Professional Services Contract updated as of March 13, 2014.

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

CITY OF LAS VEGAS

CONSULTANT

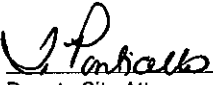
By _____
Yolanda Jones, Manager, Purchasing & Contracts

By _____
Jon Osborne, Brown and Caldwell

ATTEST

Beverly K. Bridges, MMC, City Clerk Date

APPROVED AS TO FORM

 _____ 5/20/14
Deputy City Attorney Date

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

BNR Facilities Settlement Study

Project Background

The BNR Facilities on the existing City of Las Vegas (CITY) Water Pollution Control Facility (WPCF) are experiencing settling. Operations have noted minor cracking of the concrete structure and shifting of piping and mechanical equipment. There was a similar issue with the BNR Influent Pump Station a couple of years ago. The pump station was stabilized by pressure injection of cement grout into the ground around the facility. Additionally, the BNR suction header was supported on piers to take loading off the slab. Previous to that, there was a similar settling issue of the electrical gear on the west side of the TWAS facility, which was resolved in a similar fashion.

Evidence of settlement is showing in the tunnel below and between the clarifiers, built in the last ten (10) years. Regular adjustments are being made to the piping to accommodate the movement. Spauling of concrete from the tunnel ceiling in some locations has occurred and construction joints have been re-caulked as the cracking has increased. Some of the floor-to-ceiling bracing is bending as a result of the movement and misalignments are starting to occur in their horizontal shafts between the pumps and motors. One of the pump motors has burned up, which may be attributed to the movement.

Project Scope

This project is comprised of an investigation into the severity of settling of the BNR Facilities on the existing City of Las WPCF. A study will be conducted and recommendations will be developed for future rehabilitation or stabilization of the facility. A geotechnical review (subconsultant) will be completed of the existing soils reports and as-built documents, and additional subsurface investigations will be conducted at the facility to make recommendations. A structural review will be completed of the as-built documents and the facility will be inspected for damage to make recommendations. A mechanical review will be completed of the building piping and mechanical equipment to make recommendations. A surveyor (subconsultant) will provide monitoring points on the structure, establish a base line survey, and take measurements on a quarterly basis for 2 years to track future settlement.

In general, the scope of work will consist of the following major tasks:

- Task 1.0: Project Management
- Task 2.0: Initial Investigations
- Task 3.0: Investigations
- Task 4.0: Final Investigations and Recommendations
- Task 5.0: Additional Services

Task 1.0: Project Management

- 1.1 Management: CONSULTANT will monitor and review work progress and budget of the project team and provide general project management.
- 1.2 Monthly Invoicing: CONSULTANT will prepare and submit to the CITY monthly invoices including a schedule.
- 1.5 Meetings: The CONSULTANT will attend up to two (2) meetings with the CITY and prepare meeting agendas and minutes.
 - Kick-off (which will include a site visit & Operations interviews, see below)
 - Final Report Findings & Recommendations Summary
- 1.6 Coordination: The CONSULTANT will be responsible for ensuring the work of its sub-consultants is performed within the guidelines established herein, in a timely manner.
- 1.8 Overall Project Schedule: The CONSULTANT will prepare an overall project schedule using Microsoft Project Schedule which designates milestones agreed to by CITY and CONSULTANT.

Task 2.0: Initial Investigations

Initial investigations will be made after the kick-off meeting to establish a base for comparison throughout the project. It will include:

- 2.1 Background Information: CONSULTANT has been provided copies of the drawings and geotechnical reports for the facilities in question. These studies and drawings will be reviewed.
- 2.2 Initial Site Visit & Ops Interviews: After the kick-off meeting, the CONSULTANT will interview operations staff during a site visit to obtain observations, system maintenance and operations, etc. to define a background of the possible problems and a baseline of items to monitor.
- 2.3 Mechanical Initial Assessment: CONSULTANT will assess and document the condition of the existing equipment & piping in the BNR facilities based on Operations personnel interviews and physical exterior examination. These observations will help to determine a baseline of process equipment condition and of items of most concern to monitor.
- 2.4 Structural Initial Assessment: CONSULTANT's structural engineer will review the geotechnical reports for the facilities and any reports produced by a structural engineer related to other facilities at the site that have experienced settlement in the past and any drawings and/specifications that were produced related to remedial measures. The structural engineer will also visit the site along with project geotechnical subconsultant to observe and record settlement related problems.

- 2.5 Survey Base: The CONSULTANT's Survey Subconsultant will determine methods to establish and maintain control and identify multiple locations to monitor during the site visit. Procedures will be determined with Plant personnel to obtain quarterly access to the site.
- 2.6 Preliminary Findings TM: CONSULTANT will document in a brief Technical Memorandum (TM) the results of the site investigations and monitoring locations. The TM will also note any immediate items of concern.

Task 3.0: Investigations

Investigations will be continued for two (2) years after the initial assessment. These will include:

- 3.1 Intermediate Site Visit & Ops Interviews: After approximately one (1) year from kick-off, the CONSULTANT will interview operations staff during a site visit to obtain observations, system maintenance and operations, etc.
- 3.2 Mechanical Intermediate Assessment: CONSULTANT will assess and document the condition of the existing equipment & piping in the BNR facilities based on Operations personnel interviews and physical exterior examination during the 1 year site visit. These observations will help to determine the effects settlement of the facilities is having on the process equipment.
- 3.3 Structural Intermediate Assessment: CONSULTANT's structural engineer will review the information collected to date related to structure settlement such as comparison of subsequent level survey with the initial level survey. The structural engineer will also visit the site to observe changes in the structures since the initial site investigation.
- 3.4 Quarterly Survey: CONSULTANT's Survey Subconsultant will perform a survey every 3 months of the pre-determined locations and track the findings.
- 3.5 Geotechnical Investigations & Report: CONSULTANT's Geotechnical Subconsultant will drill, log & sample eight (8) borings at depths of approximately 30-40 feet. Two borings will include temporary piezometers (groundwater measuring pipes). A Draft Geotechnical Report will include the findings of the soils and groundwater study.
- 3.6 Additional Basement Floor Slab Cores: CONSULTANT's Geotechnical Subconsultant will determine the groundwater level from the boring performed under Task 3.5. If it is determined the groundwater level is low enough, the Geotechnical Subconsultant will perform two (2) concrete cores through the basement slab and hand auguring subsurface soils to depths of 5-10 feet to evaluate the floor slab thickness and subsurface conditions.
- 3.7 Annual Findings TM: After the intermediate site visit, the CONSULTANT will document in a brief TM the results of the site investigations and

monitoring locations. The TM will also note any immediate items of concern. The TM will include a summary of the monthly survey taken to date.

Task 4.0: Final Investigations and Recommendations

Final investigations will be conducted, findings will be summarized and remedial steps will be recommended. These will include:

- 4.1 Final Site Visit & Ops Interviews: After approximately one (1) year after the mid site visit, the CONSULTANT will interview operations staff during a site visit to obtain observations, system maintenance and operations, etc.
- 4.2 Mechanical Final Assessment: CONSULTANT will assess and document the condition of the existing equipment & piping in the BNR facilities based on Operations personnel interviews and physical exterior examination during the final site visit. These observations will help to determine the effects settlement of the facilities is having on the process equipment.
- 4.3 Structural Final Assessment: CONSULTANT's structural engineer will conduct a final site visit to observe the structures for signs of damage beyond those observed during the initial site observations. The structural engineer will confer with all subconsultants and determine the best remedial measures for the structures.
- 4.4 Geotechnical Final Report: CONSULTANT's Geotechnical Subconsultant will document the findings of the three geotechnical reconnaissance and recommendations. A Final Geotechnical Report will include the findings and recommendations of the reconnaissance, soils study, groundwater monitoring, and, if performed, concrete cores.
- 4.5 Final Findings & Recommendations TM: After the final site visit and the investigations are complete, the CONSULTANT will document in a TM the results of the assessment, survey and geotechnical study. The TM will include findings, conclusions and recommendations which will include recommendations for repair and stabilization of the BNR facilities.

Task 5.0: Additional Services

The CONSULTANT will provide any or all of the following, in accordance with unit rates as identified below. All Additional Services must be authorized in writing by the CITY:

- 7.1 Additional Engineering Services: The CITY may request the CONSULTANT perform additional miscellaneous engineering services not defined in the subtasks above or in the Scope of Services. The CITY may request CONSULTANT to perform any engineering tasks for which it is qualified, which would enhance the work being performed as part of this contract, or which require immediate remedial measures due to consequences of failure. Cost for such work will be on a lump sum basis as agreed between both parties.

EXHIBIT "B"

REQUIRED SUBMITTALS

ARTICLE 200: GENERAL

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

200.2 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 Contract. The required certificates must be signed by the authorized representative of the insurance company shown on the certificate with proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon.

Submit certificates of insurance to:

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

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

A certified, true and exact copy of each of the project specific insurance policies (including renewal policies) shall be provided to the City upon request.

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

END OF EXHIBIT "B"

EXHIBIT "C"

PERFORMANCE SCHEDULE

ARTICLE 300: NOTICE TO PROCEED

- 300.1** The start date for the Consultant's scope of services shall be, without any further notice requirement, the date of this Contract signed by the parties. The Consultant shall perform the services required as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Scope of Service set forth in this Contract and the compensation to the Consultant for said Scope of Services is based upon the Consultant and the City each performing its responsibilities in a timely manner.
- 300.2** *Performance Schedule.* The parties hereto have agreed to a general performance schedule (the "Performance Schedule") which is set forth herein. Subsequent to the execution of this Contract, the Consultant shall furnish to the City's Representative for approval a more detailed schedule of performance (herein the "Detailed Performance Schedule").
- 300.3** *Revised Performance Schedule.* If the Consultant's performance is delayed or the sequence of tasks changed, the Consultant shall notify the City's Representative in writing of the reasons for the delay or the change. The Consultant shall then prepare a revised General and Detailed Performance Schedule for submission to and approval by the City's Representative.

ARTICLE 301: PERFORMANCE SCHEDULE

- 301.0** Performance of Agreement will be in accordance with Scope of Work and Project Manager Input.

ARTICLE 302: DESIGN AND PERMITTING SCHEDULE DELAYS

- 302.1** The Consultant declares that they are experienced and knowledgeable with all governmental, agency, and utility company design approval processes, procedures, applications, fees, design standards, reviews, required corrective actions, and time schedules required for the Project, and that the schedule set forth for the Scope of Services is reasonable and achievable within these design approval parameters.
- 302.2** Although it is acknowledged that neither the City nor the Consultant have full control over these design approval processes, the Consultant shall be held accountable for any impacts to the City resulting from their actions or lack of actions, including but not limited to their failure to make timely submittals, their failure to routinely follow-up on submittals, their failure to notify the City of anticipated delays and required design changes, and their failure to process and re-submit comments and corrections received in a timely manner.

ARTICLE 303: CONSTRUCTION

- 303.1** No adjustments shall be made to the Post Construction Phase fee due to extended schedules.

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 Contract including Basic Services, Additional Services, and Reimbursable Expenses shall not exceed **\$263,411**. Increases to total compensation may only be authorized by written amendment or change order to this Contract. This total compensation amount is comprised of the parts described in this Exhibit "D" (Fee Breakdown).

ARTICLE 401: BASIC SERVICES PAYMENT BASED UPON COMPLETION OF TASKS

- 401.1** The City agrees to pay the fixed fee attributable to each task and, if applicable, each subtask, set forth in Exhibit "A" (Scope of Services) which is completed by the Consultant. The Consultant agrees to perform the services necessary to complete each task and, if applicable, each subtask, for the amount of the fixed fee set forth in this Exhibit "D" (Fee Breakdown). Payment shall be made for completed tasks pursuant to monthly invoices submitted in accordance with this Contract. 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).

BASIC SERVICES		REMARKS
TOTAL NOT TO EXCEED COST	\$239,465.00	

- 401.1** The following table(s) show the breakdown of the Total Not to Exceed Cost for Basic Services by Task.
- 401.2** The table(s) show the fixed cost for each task along with the estimated hours to be expended by various Consultant personnel over the course of the Project for each of the various tasks, and/or the dollar value of the estimated hours. Although this table represents the basis for how the Total Not to Exceed Cost for Basic Services was established, the personnel, hours, and dollar value of the hours shown are not a part of this Contract and are not to be used as the basis for payment. The fee for each task is a fixed fee regardless of the number of man-hours expended to complete each task or the personnel used to perform the work.
- 401.3** The scope of work for each of the tasks may be adjusted by the City Representative over the course of the Project, including establishing new tasks or the deletion of listed tasks. The cost of these adjustments shall be calculated utilizing the rates agreed to in this Contract to the extent they are applicable.
- 401.4** The City Representative shall have the authority to make such work scope adjustments to the line item tasks contained within Basic Services without processing this Contract for an amendment or change order to be approved and signed by City Council or their designee, if (1) the revisions are documented in writing signed by the Consultant and City prior to performance, (2) the Total Not to Exceed Cost for Basic Services is not exceeded, and (3) the change(s) are within the scope of the Project.

[illegible]

ARTICLE 402: ALLOWANCE FOR ADDITIONAL SERVICES

- 402.1** A Not-To-Exceed Allowance for Additional Services is hereby established as set forth below. The City Representative has authority to pre-authorize in writing Additional Services up to the Total Not-To-Exceed Cost. Services performed prior to receiving the required written authorization or in excess of the Total Not-To-Exceed Cost shall not be obligated for compensation.
- 402.2** Additional Services are services provided in the interests of the Project that are not set forth in Exhibit "A" (Scope of Services).
- 402.3** The Consultant shall be compensated for Additional Services in accordance with the Additional Services fees set forth in Exhibit "E" (Additional Compensation), or if no Additional Service fee has been established for the service, in accordance with the Consultant Hourly Rates established in Exhibit "E" (Additional Compensation). Additional Service compensation disputes shall be resolved in accordance with the claims and disputes provisions of this Contract and shall not be cause for the Consultant to delay providing requested services. Payment shall be made for each completed Additional Service pursuant to invoices submitted in accordance with this Contract.
- 402.4** Reimbursable Expenses may be compensated from this Allowance for Additional Services to the extent they are allowed by Exhibit "E" (Additional Compensation). Payment shall be made for each completed Reimbursable Expense pursuant to invoices submitted in accordance with this Contract. Expenses not listed in Exhibit "E" (Additional Compensation) as allowed Reimbursable Expenses shall not be compensated without amendment or change order to this Contract to allow them as Reimbursable Expenses.
- 402.5** Reimbursable Travel Expenses. If travel is required in performance of services under this Contract, reasonable travel expenses will be paid when services are performed in Las Vegas. Reimbursement is subject to certain limitations. The City will reimburse airfare up to the cost of a coach fare, with 7-day advance purchase. Reimbursement for all other expenses including, but not limited to, lodging, meals, transportation, rental cars, parking, and incidental expenses, will be paid at a per diem rate of \$163 per day. This per diem rate will start concurrently with the first day of work performed on site at the City and end with the last day of scheduled on site work at the City. The Company must complete a minimum of six (6) hours of work for every day a per diem is paid. Company shall coordinate all travel in advance with the City's Project Manager. The City's Project Manager must approve any deviations to these procedures.
- 402.6** Increases to this Total Not-To-Exceed Cost for Additional Services may only be authorized by written amendment or change order to this Contract.

ADDITIONAL SERVICES ALLOWANCE		ALLOWED SERVICES
TOTAL NOT-TO-EXCEED COST	\$23,946.00	See list below.

- 402.6.1** Additional Services may include, but are not limited to, the following:
- 402.6.2 Addenda** – As required by the City, the Consultant shall assist the City with the preparation of contract addenda during the bid process.
- 402.6.3 Additional Design Services** – As required by the City, Consultant shall perform additional design services required for the Project.
- 402.6.4 Additional Topographic Survey** – As required by the City, Consultant shall obtain additional field measurements to supplement the original topographic mapping as requested by the client.
- 402.6.5 As-Builts** – As requested by the City, Consultant shall provide As-Builts.
- 402.6.6 Construction Assistance** – As required by the City, Consultant shall attend progress meetings during construction of the Project.
- 402.6.7 Dam Safety Permit** – As required by the City, Consultant shall coordinate with the State Engineer's Office and update the existing dam safety permit, if one is required for the Project.
- 402.6.8 Drainage Study** – As required by the City, Consultant shall prepare a Drainage Study for the Project.
- 402.6.9 Facility Specific Environmental Assessment** – As required by the City, Consultant shall prepare a Facility Specific Environmental Assessment.
- 402.6.10 Hydrology and Hydraulics** – As required by the City, Consultant shall provide additional hydrology and hydraulics.
- 402.6.11 Master Plan Amendment** – As required by the City, Consultant shall revise and resubmit the Master Plan Amendment already performed by the City of Las Vegas.
- 402.6.12 Public Meetings** – As required by the City, Consultant shall attend and participate in public meetings.
- 402.6.13 Removal of Inflow/Infiltration Sources to Sanitary Sewer System** – As required by the City, Consultant shall provide design plans that redirect inflow/infiltration sources to the sanitary sewer to other authorized discharge systems.
- 402.6.14 Right-of-Way** – As required by the City, Consultant shall obtain title report and legal descriptions, prepare exhibits and write legal descriptions in locations where additional right-of-way or easements are required for the Project.
- 402.6.15 Section 404 Permit Application** – As required by the City, Consultant shall prepare the permit application and conduct environmental analysis in support of the Section 404 Permit.
- 402.6.16 Sewer Design** – As required by the City, Consultant shall provide plan and profile design of new, reconstructed, or relocated sewer pipelines.
- 402.6.17 Slope/Embankment Design** – As required by the City, Consultant shall provide additional design for treatment (soil cement, slope paving, etc.) to the detention basin embankments and slopes.

- 402.6.18 Spillway/Energy Dissipater** – As required by the City, Consultant shall provide additional design for reconstruction of the Rainbow Detention Basin spillway and energy dissipater structure.
- 402.6.19 Storm Drain Retrofit Design** – As required by the City, Consultant shall provide in-situ retrofit design of existing storm drain pipes.
- 402.6.20 Structural** – As required by the City, Consultant shall provide additional structural design.
- 402.6.21 Structural Design** – As required by design should the alternatives selection require a retaining walls, drainage structure or other structural design on the project.
- 402.6.22 Structural Engineering** – The existing manholes and junction structures may need to be modified to provide access for the Contractor to rehabilitate the facilities. An allowance is provided to prepare the required structural modifications and/or new facilities to provide access.
- 402.6.23 Survey** – As required by the design, Consultant shall obtain additional survey in critical areas of design to supplement the aerial mapping provided with the basic services. In addition, Consultant shall obtain additional survey for additional utility potholing.
- 402.6.24 Title Reports** – As required by the City, Consultant shall prepare Title Reports as required for the Project.
- 402.6.25 Traffic Control Plans** – As required by the City, Consultant shall provide additional design and drawings for traffic control throughout the project limits.
- 402.6.26 Utility Potholing** – As required by the City, Consultant shall provide additional utility potholing, prepare pothole location map and obtain information for subsurface utilities.
- 402.6.27 Waterline Design** – As required by the City, Consultant shall provide plan and profile design of new, reconstructed, or relocated water pipelines.

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 personnel maintaining facilities, equipment and computers.

CLASSIFICATION	RATE	UNIT
Project Manager and Lead Mechanical Engineer	\$177.44	Per Hour
Project Admin	\$77.25	Per Hour
Lead Structural Engineer	\$199.54	Per Hour
Lead Civil Engineer	\$191.70	Per Hour
CM & Investigation	\$138.23	Per Hour
QA/QC	\$199.32	Per Hour

ARTICLE 501: REIMBURSABLE EXPENSES

- 501.1** The following Reimbursable Expenses are allowed:

REIMBURSABLE EXPENSE
Travel in the not to exceed amount of \$4,641

- 501.2** Reimbursable Travel Expenses. If travel is required in performance of services under this Contract, reasonable travel expenses will be paid when services are performed in Las Vegas. Reimbursement is subject to certain limitations. The City will reimburse airfare up to the cost of a coach fare, with 7-day advance purchase. Reimbursement for all other expenses including, but not limited to, lodging, meals, transportation, rental cars, parking, and incidental expenses, will be paid at a per diem rate of \$163 per day. This per diem rate will start concurrently with the first day of work performed on site at the City and end with the last day of scheduled on site work at the City. The Company must complete a minimum of six (6) hours of work for every day a per diem is paid. Company shall coordinate all travel in advance with the City's Project Manager. The City's Project Manager must approve any deviations to these procedures.
- 501.3** For Reimbursable Expenses of the Consultant, the City shall compensate the Consultant a multiple of **one (1.0)** times the actual direct costs incurred by the Consultant. The multiplier includes all compensation for overhead and profit.
- 501.4** Reimbursable Expenses are limited to specific pre-authorized items or services purchased from third parties to this Contract, dedicated to only this Project. Additions to the above allowed Reimbursable Expenses may only be granted as a written amendment or change order to this Contract.
- 501.5** If Reimbursable Expenses are established in this Contract as a fixed sum or a not-to-exceed amount, the Consultant has determined that this Reimbursable Expense amount will not be exceeded for the allowed Reimbursable Expenses for performance of the Services set forth in Exhibit "A" (Scope of Services), and accordingly does hereby assume the risk to complete the performance of this Contract without further compensation for Reimbursable Expenses should the costs exceed this fixed sum or not-to-exceed amount for Reimbursable Expenses
- 501.6** Travel and per diem expenses are included in the Basic Services Fees, Consultant Hourly Rates, Sub-Consultant Hourly Rates, and Additional Services Rates shown in this Contract, and may otherwise only be authorized as reimbursable expenses by written amendment or change order to this Contract.

END OF EXHIBIT "E"

EXHIBIT "F"

KEY PERSONNEL LIST

ARTICLE 600: CITY PERSONNEL

- 600.1 CITY REPRESENTATIVE: John Bettencourt
- 600.2 CITY REPRESENTATIVE'S SUPERVISOR: David Mendenhall

ARTICLE 601: CONSULTANT'S PROJECT STAFF

- 601.1 The following personnel will be assigned by the Consultant to work on the Project. Any changes or additions require City approval.
- 601.1.1 CONSULTANT REPRESENTATIVE: Jon Osborne
- 601.1.2 CONSULTANT REPRESENTATIVE'S SUPERVISOR:
- 601.1.3 PROJECT MANAGER: Jon Osborne

END OF EXHIBIT "F"