

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
FOR THE LAS VEGAS BOULEVARD IMPROVEMENTS  
(TONOPAH AVENUE TO CAREY AVENUE)**

This Professional Engineering Services Agreement (as such may be modified, amended or supplemented, the "Agreement") is made and entered into as of the 5<sup>th</sup> day of November, 2014, by and between the City of North Las Vegas, a Nevada municipal corporation, ("City"), and C.A. Group, Inc. a Nevada corporation (hereinafter referred to as "Consultant").

**RECITALS:**

1. City intends to construct roadway improvements along Las Vegas Boulevard extending from Tonopah Avenue to the south to Carey Avenue to the north to enhance the roadway features, address roadway deficiencies, and improve the roadway safety and operations. The construction activities will include modifying the roadway cross section, mitigate the pavement deficiencies, install various landscape treatments, modify the roadway pavement striping and markings, install or improve intersection control devices, adjust or install curb, gutter, and sidewalk, mitigate ADA deficiencies, install roadway flood control measure, install or modify utilities, and other appurtenances usually associated with an arterial roadway improvements (hereinafter referred to as the "Improvements").
2. City desires to obtain quality professional services of Consultant to perform design services that includes all necessary and required analysis, design, and engineering that includes both a Preliminary and Final Design Services (hereinafter referred to as the "Project") for construction of the Improvements.
3. Consultant's scope of service and compensation have been arrived at after meaningful negotiations between City and Consultant.

NOW, THEREFORE, in consideration of the above recitals and mutual promises contained herein, the parties hereto agree to the following terms, conditions and covenants set forth in Sections I through XII hereof.

**SECTION I - RESPONSIBILITY OF CONSULTANT**

In addition to any other responsibilities of Consultant set forth in this Agreement, Consultant shall have the following responsibilities:

- A. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Consultant, by Consultant's subconsultants, and by any of the principals, officers, employees and agents of Consultant or any subconsultant under this Agreement. In performing these services, Consultant shall follow practices consistent with generally accepted professional engineering standards of care. Consultant shall, without additional compensation, promptly correct and revise any errors or deficiencies in its design, drawings, specifications, reports and other services, or in any portion of the Project

performed by Consultant's subconsultants. Approval by City of any products or services furnished by Consultant shall not in any way relieve Consultant of responsibility for the professional and technical accuracy of its services.

- B. Consultant shall assign Chad D. Anson, whose Nevada professional engineer license number is 14136, as the Principal-In-Charge and James J. Caviola, whose Nevada professional engineer license number is 9525, as the Project Manager ("Project Manager"). All of the services specified by this Agreement shall be performed by the Project Manager, or by Consultant's associates, employees and subconsultants under the personal supervision of the Project Manager. Should the Principal-in-Charge or the Project Manager be unable to complete his or her responsibility for any reason, Consultant shall notify City in writing, and within four (4) calendar days thereafter, nominate a replacement for City approval, in its reasonable discretion, who has an equivalent amount of experience performing the same type of services as required for the Project. An approved replacement shall be assigned to the Project within ten (10) calendar days.
- C. In accordance with NRS 338.140, Consultant shall not produce a design and/or specification for the Project which would limit the bidding, directly or indirectly, to any one specific concern unless a unique or novel product application is required to be used in the public interest, or only one brand or trade name is known to City. City shall be notified of and must pre-approve any sole source proposals.
- D. Consultant and any subconsultant shall furnish City with a preliminary draft of any proposed correspondence to any federal, state or other regulatory agency for the City's review and approval at least seven (7) calendar days prior to mailing such correspondence.
- E. Consultant agrees that its officers, partners, employees, and subconsultants will cooperate with City in the performance of services under this Agreement and will be available for consultation with City at such reasonable times with advance notice as to not conflict with other responsibilities.

## **SECTION II - RESPONSIBILITY OF CITY**

- A. City will cooperate with Consultant in the performance of services under this Agreement and will be available for consultation with Consultant at such reasonable times with advance notice as to not conflict with their other responsibilities.
- B. The services to be performed by Consultant under this Agreement are subject to periodic review by City. For those documents submitted to City by Consultant with regard to the Project, City will examine and respond in writing to Consultant within twenty-one (21) calendar days of receipt of such documents. It is understood that City comments upon review of Consultant's documents do not relieve Consultant from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

- C. City shall assemble selected data and information related to the Project and provide same to Consultant on or prior to the kick-off meeting. The data and information to be provided by City is identified as follows:

1. Drafting and plan sheet layout standards;
2. Standard "front-end" contract documents and general conditions; and,
3. Cover sheet format and City logo in AutoCAD 2013 format.

Consultant shall be responsible for updating this data and information during the Project development process, and shall be responsible for acquiring supplemental data and information which Consultant deems necessary.

- D. City will be responsible for performing the work noted below and upon completion will provide the results thereof to Consultant:

1. Obtaining preliminary title reports on those properties involving right-of-way acquisition, permanent easement or temporary construction access;
2. Obtaining right-of-way and easements;
3. Printing of the construction bidding document package;
4. Completing the competitive bidding procedures for public works projects; and,
5. Performing construction management, inspection and quality assurance during construction of the Improvements.

### **SECTION III - SCOPE OF SERVICES**

Services to be performed by Consultant shall consist of the Basic Services described in Exhibit "A", and may consist of those Supplemental Services described in Exhibit "A-1" of this Agreement.

### **SECTION IV - CHANGES TO SCOPE OF SERVICES**

- A. City may at any time, but only by written order, make changes within the general scope of this Agreement and in the services or work to be performed. If such changes cause a significant increase or decrease in Consultant's cost or time required for performance of any services under this Agreement, the Parties shall formally amend this Agreement. Any claim of Consultant for adjustment under this clause must be asserted in writing within thirty (30) calendar days from the date of receipt by Consultant of notification of changes by City, or such claim shall be deemed waived by Consultant and Consultant will be deemed to have agreed to the

changes without modification of the compensation or time of performance hereunder.

- B. No additional compensation shall be paid, and no increase in the time of performance shall be awarded, to Consultant for changes in scope of work without the prior written authorization of City to proceed with such changes.
- C. No additional compensation shall be paid to Consultant for additional costs or delay due to the negligence or intentional acts of Consultant or any subconsultant or any of the officers, employees, or agents of Consultant or any subconsultant.

#### **SECTION V - SUPPLEMENTAL SERVICES OF CONSULTANT**

Supplemental Services will be provided only as specifically authorized in writing by City's representative and may consist of any or all of the work described in Exhibit "A-1". Any other significant change of work determined by City as essential to efficient and timely completion of the Project shall require a formal Amendment to this Agreement as provided by Section IV of this Agreement.

#### **SECTION VI - SUBCONSULTANTS**

Consultant agrees to include in all professional service subcontracts in connection with performance of the terms and obligations imposed under this Agreement provisions in substantially the following form:

- A. Consultant agrees to pay the subconsultant when Consultant is paid for the subconsultant's portion of the work by City and, upon written request by City, to obtain and provide to City lien releases from the subconsultant for such payment.
- B. The subconsultant does not have any rights against City.
- C. The subconsultant agrees to be bound by all terms, conditions and obligations of Consultant under this Agreement. Consultant shall provide a copy of this Agreement to each subconsultant.
- D. City has the right in its reasonable discretion to approve every subconsultant prior to such subconsultant's performance of any portion of the Project.
- E. The term "subconsultant" as used herein, also means a sub-subconsultant.

#### **SECTION VII - TERM OF AGREEMENT**

This Agreement commences upon the date this Agreement is approved by City in a formal City Council proceeding and shall end one (1) year after the date City makes final payment to Consultant for services rendered under this Agreement, unless this Agreement is terminated by City.

## SECTION VIII - COMPENSATION AND TERMS OF PAYMENT

### A. TOTAL COMPENSATION

1. City shall pay Consultant an amount for each of the tasks described in Exhibits "A" and "A-1" as follows:

<u>Basic Services</u>		<u>Lump Sum Amount</u>
1. Preliminary Design Services		\$345,145.00
2. Final Design Services		\$199,021.00
<b>Subtotal for Basic Services</b>		<b>\$544,166.00</b>
		<u>Time &amp; Material Amount</u>
<b>Supplemental Services</b>	Not-to-exceed	<u>\$55,834.00</u>
<b><u>Grand Total Not-to-Exceed</u></b>		<b>\$600,000.00</b>

### B. TERMS OF PAYMENT

1. Subject to City's right to dispute any charges, City shall make monthly progress payments to Consultant for services performed as follows:
  - (a) With respect to progress payments for Basic Services completed for Task 1 and Task 2, Preliminary and Final Design Services, City shall pay that percentage of the lump sum amount for each task (as set forth in Subsection VIII.A.1 above) which relates to the percentage of completion of such task, less amounts paid by City to Consultant in prior progress payments.
  - (b) With respect to Supplemental Services that are authorized in writing by City's representative, City shall make progress payments for completed Supplemental Services on a Time and Material basis in accordance with the Fee Schedule provided in Exhibit "B".
2. Payment to Consultant under Section VIII.A.1 shall be made within thirty (30) calendar days of the date City receives each invoice provided by Consultant to City, provided that such invoice is complete, correct, and undisputed by City, and that it contains the following information:
  - (a) With respect to progress payments for Basic Services for Task 1 and Task 2, Preliminary and Final Design Services, Consultant shall prepare and submit to City a written invoice indicating the percentage of completion of each Basic Services task set forth in Section VIII.A.1 during the invoice period. The invoice amount shall be supported with

a written summary noting the various tasks worked on during the invoice period.

- (b) For payment of Supplemental Services authorized in writing by City's representative, Consultant shall prepare and submit to City a written invoice of costs for the work completed during the invoice period. The invoice amount shall be determined on a Time and Material basis in accordance with the Fee Schedule provided in Exhibit "B", and shall be supported by backup documentation detailing labor costs and other expenses directly related to the authorized work.
- 3. City shall have fourteen (14) calendar days after receipt of an invoice to dispute any or all of the charges on the invoice. Undisputed amounts shall be paid to Consultant within thirty (30) calendar days of the date City receives the invoice. Disputed amounts shall be resolved through the Dispute Resolution mechanism in Section XII.O.
- 4. If City fails to pay Consultant an undisputed amount within thirty (30) calendar days after the date City receives the invoice, City may be assessed one-half of one percent ( $\frac{1}{2}\%$ ) of the undisputed amount each month, not to exceed \$1,000 total for the Project.
- 5. Billings shall be submitted during the first week of each month for work performed during the preceding month. Invoices shall conform to the format provided by City.

#### **SECTION IX - TIME OF PERFORMANCE**

Consultant shall commence work immediately following written notice to proceed by City. Work shall be completed in accordance with the Project Schedule attached as Exhibit "C", as it may be amended from time to time by written agreement between Consultant and City.

If Consultant's performance of services is delayed, Consultant shall notify City's representative in writing of the reasons for delay and prepare a revised schedule for performance of services and submit the revised schedule to City's representative. If Consultant is delayed, City shall have the right to retain from monthly payments up to ten percent (10%) of subsequent invoices until such time as Consultant has complied with the schedule or presented an acceptable plan for compliance with the schedule.

No additional time shall be given to Consultant for delay due to the negligence or intentional acts of Consultant or any subconsultant or any of the officers, employees, or agents of Consultant or any subconsultant.

## **SECTION X - AUDIT: ACCESS TO RECORDS**

- A. Consultant shall maintain books, records, documents, and other evidence directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles and practices. Consultant shall also maintain the financial information and data used by Consultant in the preparation or support of the invoices, and a copy of the cost summaries and invoices submitted to City. City, or any of its duly authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. Consultant will provide proper facilities for such access and inspection.
- B. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines for the reviewing or audit agencies.
- C. Consultant agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraph "A" above, to any Project funding agency provided that Consultant is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report.
- D. Records pursuant to paragraph "A" above shall be maintained and made available during performance under this Agreement and until three (3) years from date of final payment for the Project. In addition, those records which relate to any dispute resolution, litigation or appeal, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date of resolution of such dispute, litigation, appeal, claim, or exception. This Section X.D. shall survive the completion of the Project and the termination or expiration of this Agreement.
- E. Public Records Act. Pursuant to NRS 239.010, each and every document provided to City is a "public record" open to inspection and copying by any person, except for those documents otherwise declared by law to be confidential. City shall not in any way be liable to Consultant for the disclosure of any public record. In any event City is required to defend an action with regard to a public records request for documents submitted by Consultant, Consultant agrees to indemnify, hold harmless, and defend City from all damages, costs, and expenses, including court costs and attorney fees, in any action or liability arising under or because of the Nevada Public Records Act, NRS 239.010. This Section X.E. shall survive the completion of the Project and the termination or expiration of this Agreement.
- F. Consultant agrees to include language substantially similar to the language of paragraphs "A" through "E" of this section in all Consultant subcontracts directly related to performance of services specified in this Agreement which are in excess of \$10,000.00.

## **SECTION XI - REPRESENTATIONS AND WARRANTIES**

Consultant hereby represents and warrants for the benefit of City, in addition to any other representations and warranties made in this Agreement, with the knowledge and expectation of City's reliance thereon, as follows:

- A. Consultant is a duly formed and validly existing corporation and is in good standing pursuant to the laws of the State of Nevada and the full power, authority and legal right to execute, deliver and perform under this Agreement.
- B. The execution and delivery of this Agreement, the consummation of the transactions provided for herein, and the fulfillment of the terms hereof on the part of Consultant will not result in a breach of any instrument to which Consultant is a party or by which Consultant is bound or of any judgment, decree or order of any court or governmental body or any law, rule or regulation applicable to Consultant.
- C. The execution, delivery and performance of this Agreement and the taking of all other lawful actions necessary to consummate the Project contemplated hereunder, by the persons executing, delivering and performing the same on behalf of Consultant, have been duly and validly authorized (and by their execution hereof or of any document delivered in connection with the Project contemplated hereunder such persons individually represent and warrant that they are so authorized), and this Agreement and the other Agreements and instruments contemplated hereby, constitute legal, valid and binding obligations of Consultant, enforceable in accordance with their respective terms.
- D. No consent, approval or authorization of any governmental authority or private party is required in connection with the execution of this Agreement by Consultant.
- E. Consultant's Project Manager and Principal-in-Charge are each a duly licensed Engineer with the State of Nevada, and each has a license that is in full force and effect. Consultant has obtained any and all licenses, certificates and permits that are required to be obtained by Consultant by the Nevada Revised Statutes and the Nevada Administrative Code, and by any other law, rule, regulation or ordinance applicable to Consultant and to the performance of the Project by Consultant.
- F. Consultant is duly licensed and authorized to do business in the City, and Consultant's business license is in full force and effect.
- G. Consultant is a sophisticated and qualified Consultant, whose personnel possess the level of professional expertise and experience that is necessary to properly perform the Project within the required time period, with an appropriate level of diligence, skill and care, and pursuant to the terms, specifications and conditions of this Agreement. Consultant has the necessary personnel, equipment, tools, supplies, materials, and facilities to properly perform the Project within the required time period, with an appropriate level of diligence, skill and care, and pursuant to the terms, specifications and conditions of this Agreement.



- H. Consultant is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Project within the time period required by this Agreement, and to perform its obligations under this Agreement.
- I. Consultant shall require that each subconsultant performing any portion of the Project:
  - 1. Is duly formed, in good standing, and authorized to do business in the State of Nevada;
  - 2. Is a duly licensed engineer, architect, or surveyor, as the case may be, with the State of Nevada, and such license or certificate of registration is in full force and effect;
  - 3. Has obtained any and all licenses, certificates and permits that are required to be obtained by subconsultant by the Nevada Revised Statutes and the Nevada Administrative Code, and by any other law, rule, regulation or ordinance applicable to subconsultant and to the performance of any part of the Project by subconsultant;
  - 4. Is duly licensed and authorized to do business in City, and such business license is in full force and effect; and,
  - 5. Shall comply with all laws, rules, regulations, and ordinances, as such may be amended, supplemented or modified from time to time, that are applicable to subconsultant and any portion of the Project performed by subconsultant.

The representations and warranties made by Consultant herein shall survive the completion of the Project and the termination or expiration of the Agreement.

## **SECTION XII - MISCELLANEOUS PROVISIONS**

### **A. SUSPENSION:**

City may suspend performance by Consultant under this Agreement for such period of time as City, in its sole discretion may prescribe, by providing written notice to Consultant at least seven (7) calendar days prior to the date on which City wishes to suspend such performance. Upon such suspension, City shall pay Consultant compensation based on percentage of Project completion, earned until the effective date of suspension less all previous payments. Consultant shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from City to resume performance. In the event that City suspends performance by Consultant for any cause other than the error or omission of Consultant for an aggregate period in excess of thirty (30) calendar days, Consultant shall be entitled to an equitable adjustment of the compensation payable to Consultant under this Agreement to reimburse Consultant for additional costs

occasioned as a result of such suspension of performance by City. In no event will City be liable to Consultant for more than \$2,000.00.

**B. TERMINATION:**

City may terminate this Agreement, with or without cause, upon fourteen (14) calendar days prior written notification of the termination to Consultant. Notification to Consultant of such termination shall be sent by City in accordance with Section XII.V.

In the event of termination, City agrees to pay Consultant the reasonable value for all work and services performed to the date of termination in accordance with the Section entitled "Compensation and Terms of Payment" of this Agreement.

**C. FISCAL FUNDING OUT:**

City reasonably believes that sufficient funds can be obtained to make all payments during the term of this Agreement. Pursuant to NRS Chapter 354, if City does not allocate funds to continue the function performed by Consultant obtained under this Agreement, this Agreement will be terminated when appropriate funds expire in accordance with Section XII.B.

**D. OWNERSHIP OF DOCUMENTS:**

All plans, drawings, specifications, reports, photographs, studies, permits, estimates, digital mapping, CAD files, mylar, surveying, engineering calculations, correspondence or other like documents given, prepared or assembled by Consultant or any subconsultant which are related to the performance of this Agreement are deemed to be the property of City, except to the extent such is not allowed by the Nevada Administrative Code or the Nevada Revised Statutes.

**E. INSURANCE:**

Consultant shall procure and maintain, and shall cause each subconsultant to procure and maintain, at its own expense, during the entire term of this Agreement, the following insurances:

1. Workers' Compensation Insurance. Such insurance must be provided by an insurance company authorized to provide workers' compensation insurance in Nevada by the Nevada Department of Business and Industry, Division of Insurance. Such insurance must protect Consultant and City from employee claims based on Project related sickness, disease or accident.
2. Comprehensive General Liability (bodily injury and property damage) insurance with respect to Consultant's agents and vehicles assigned to the prosecution of work under this Agreement in a policy limit of not less than \$1,000,000 for combined single limit per occurrence. Consultant's General

Liability insurance policies shall be endorsed as to include City as an additional insured.

3. Professional Liability insurance, for the protection 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 Professional Liability insurance will provide for coverage in an amount of not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for the period of time covered by this Agreement. Consultant will provide City thirty (30) calendar days notice in writing of any cancellation of, or material change in, the above described policy.
4. Consultant's Comprehensive General Liability policy shall automatically include or be endorsed to cover Consultant's contractual liability to City, to waive subrogation against City, its officers, agents, servants and employees, and to provide that City will be given thirty (30) calendar days notice in writing of any cancellation of, or material change in, the policy.
5. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed \$250,000 without the written approval of City.
6. Certificates indicating that such insurance is in effect shall be delivered to City before work is begun under this Agreement. If Consultant 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. Consultant shall provide City annually with a Certificate of Insurance as evidence of such insurance. It is further agreed that Consultant and/or Insurance Carrier shall provide City with 30-day advance written notice of policy cancellation of any insurance policy required to be maintained by Consultant.

#### **F. INDEMNITY:**

Notwithstanding any of the insurance requirements herein above set forth or limits of liability set forth therein, Consultant shall defend, protect, indemnify and hold harmless City, its officers, agents and employees from any liabilities, claims, damages, losses, expenses, proceedings, suits, actions, decrees, judgments, reasonable attorney fees, and court costs which City suffers, and/or its officers or employees suffer, as a result of, or arising out of, the intentional or negligent acts or omissions of Consultant, its subconsultants, or agents or anyone employed by Consultant or its subconsultants or agents, in fulfillment or performance of the terms, conditions or covenants of this Agreement. This Section XII.F. shall survive the completion of the Project and the termination or expiration of this Agreement until such time as the applicable statutes of limitation expire.

**G. ASSIGNMENT:**

This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns. Consultant shall not assign, sublet or transfer its interest in this Agreement without the prior written approval of City representative. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**H. WAIVER:**

No consent or waiver, express or implied, by either party to this Agreement or of any breach by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act on 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 City or the failure of City to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release Consultant of any of its obligations hereunder.

**I. DESIGNATION OF REPRESENTATIVE:**

The Director of Public Works or the Director's authorized representative is hereby designated as City's representative with respect to the work to be performed under this Agreement. Said representative shall only have the authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to the services of Consultant.

**J. CONSULTANT'S EMPLOYEES:**

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

**K. INDEPENDENT CONTRACTOR:**

It is hereby expressly agreed and understood that in the performance of the services provided herein, Consultant and any other person employed by Consultant hereunder shall be deemed to be an independent contractor and not an agent or employee of City. This Agreement is not intended to create, and shall not be deemed to create, any partnership, joint venture or other similar business arrangement between City and Consultant.

**L. APPLICABLE LAW:**

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

**M. COMPLIANCE WITH LAWS:**

In connection with the performance of work under this Agreement, Consultant agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship.

Consultant further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

Consultant shall comply with laws, rules, regulations, and ordinances applicable to the work performed by Consultant with respect to the Project, as such laws, rules, regulations and ordinances may be modified, supplemented or amended from time to time.

**N. PROHIBITION AGAINST CONTINGENT FEES:**

Consultant warrants that no person or entity has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach of this warranty, City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**O. DISPUTE RESOLUTION:**

Disputes concerning standards of performance, time of performance, scope of work, compensation or terms specified in the Agreement shall be resolved in the following manner:

1. City's representative and Consultant's Project Manager will endeavor to conduct good faith negotiations in an effort to resolve any and all disputes in a timely manner.
2. If any disputes between the Parties remain unresolved after thirty (30) calendar days, City's representative and Consultant's Project Manager shall, within fourteen (14) calendar days, prepare a brief, concise written report summarizing the:

- (a) basis for the dispute,
- (b) negotiations accomplished and results thereof, and
- (c) current status of all relevant unresolved issues.

Copies of each written summary shall be exchanged between City's representative and Consultant's Project Manager, and provided to City's Public Works Director and Consultant's Principal-in-Charge. Within thirty (30) calendar days thereafter, City's Public Works Director, or his designee, and Consultant's Principal-in-Charge will meet to resolve the dispute. A written record of these negotiations will be made. The record will summarize:

- (a) all issues of dispute,
- (b) the resolutions to resolved issues, and
- (c) unresolved issues, if any.

The written record will be reviewed by City's Public Works Director or his designee, and City's Public Works Director or his designee, will render a determination regarding such dispute.

3. If Consultant disagrees with the determination of the City's Public Works Director, or his designee, Consultant may only initiate an action in the Eighth Judicial District Court in and for Clark County to resolve such dispute. City retains the right to all remedies available in law or equity. The Parties agree that no dispute under this Agreement shall be submitted to or resolved through arbitration or mediation.

**P. ATTORNEY'S FEES:**

In the event any action is commenced by either Party against the other in connection herewith, the prevailing Party shall be entitled to its reasonable costs and expenses, including reasonable attorney's fees, as determined by the court. This Section XII.P shall survive the completion of the Project and the termination or expiration of this Agreement.

**Q. SITE INSPECTION:**

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

**R. SEVERABILITY:**

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

**S. AMENDMENTS:**

This Agreement may only be modified by a written Amendment that is executed by both Parties hereto.

**T. FINAL INTEGRATION:**

This Agreement is fully integrated and constitutes the entire Agreement and understanding between the Parties concerning the subject matter of this Agreement. This Agreement supersedes all other oral and written negotiations, Agreements and understandings of any and every kind relating to the subject matter of this Agreement.

**U. CONSTRUCTION:**

In the event of any dispute regarding any provision of this Agreement, the terms of this Agreement shall not be construed more strongly against or in favor of either party. The parties acknowledge that each has participated equally in the negotiation and drafting of this Agreement.

**V. NOTICE:**

Any notice required to be given hereunder shall be deemed to have been given when sent to the party to whom it is directed by personal service, hand delivery or U.S. certified mail, return receipt requested, at the following addresses:

To City:                                      City of North Las Vegas  
Allan Fajardo, PE, PTOE, MBA  
2250 Las Vegas Boulevard N., Suite 610  
North Las Vegas, NV 89030

To Consultant:                              C.A. Group, Inc.  
James Caviola, PE, PTOE  
2785 S. Rainbow Boulevard  
Las Vegas, NV 89146

**W. HEADINGS:**

The headings of the various Sections of this Agreement have been inserted only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement, or to be used in any manner in the interpretation of this Agreement.

**X. CONFIDENTIALITY:**

Consultant shall treat all information relating to the Project and all information supplied to the Consultant by the City as confidential and proprietary information of the City and shall not permit its release by Consultant's employees to other parties or make any public announcement or release without the City's prior written authorization. Consultant shall also require subconsultants and vendors to comply with this requirement.



In Witness Whereof, Parties have caused this Agreement to be executed the day and year first above written.

City of North Las Vegas, Nevada  
a Nevada municipal corporation

By: 

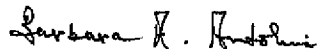
John J. Lee  
Mayor

Attest:

C.A. Group, Inc.  
a Nevada Corporation

By: 

Chad Anson, P.E.  
Secretary

By: 

Barbara A. Andolina  
City Clerk

Approved as to Form:

By: 

Sandra Douglass Morgan  
City Attorney