

**NORTH LAS VEGAS CITY COUNCIL
AGENDA ITEM**

Number:

19

SUBJECT:

Professional Inspection Services Agreement with Aztech Materials Testing, Inc. for the Alexander Library and Park Project.

REQUESTED BY:

Kathy Pennell, Library District Director
Dr. Qiong Liu, P.E., PTOE, Director of Public Works

RECOMMENDATION OR RECOMMENDED MOTION:

That the City Council approve the Professional Inspection Services Agreement for the Alexander Library and Park Project with Aztech Materials Testing, Inc. in a form approved by the City Attorney's Office.

FISCAL IMPACT:

Amount: \$256,540.00 Explanation: General Obligations Bonds

ACCOUNT NUMBER:

406-200523-450540

STAFF COMMENTS AND BACKGROUND INFORMATION:

Council previously approved a Construction Agreement with Burke & Associates for construction of the Alexander Library and Park Project. This Project will provide a 16,400 square foot, single story, branch library facility and associated 2-acre park on a City-owned parcel located on Alexander Road just west of Martin Luther King Boulevard, as shown on the attached Vicinity Map. The Library Project includes general reference, adult and general reading areas, computer area, children's area, meeting rooms, landscaping, parking, book and video drops, and all associated HVAC, electrical, and data systems. The Park Project includes benches, tot-lot with shade structure and safety surface, picnic areas with shade structures, drinking fountain, lighting, ADA accessible walkways, turf amphitheater, a small desert demonstration garden and trash receptacles.

A consulting firm is required to supplement staff resources since all Construction Management staff are currently fully utilized on other projects. In total, more than 2,500 hours of labor will be required to properly inspect and manage the construction of this Project. A Professional Inspection Services Agreement was negotiated with Aztech Materials Testing, Inc. to provide Pre-Construction, Inspection, Materials Testing, and Post-Construction Services. The negotiated not-to-exceed fee is \$256,540. Project construction is scheduled to begin in March 2008 and be completed within 335 calendar days following issuance of the Notice-to-Proceed.


LIST CITY COUNCIL GOAL(S):

This Branch Library Project is consistent with Council's Priorities of Community Services and Cultural Amenities and Quality Municipal Services.

PREPARED BY:



Kathy Pennell
Library District Director

 2/13/08

Dr. Qiong Liu, P.E., PTOE
Director of Public Works

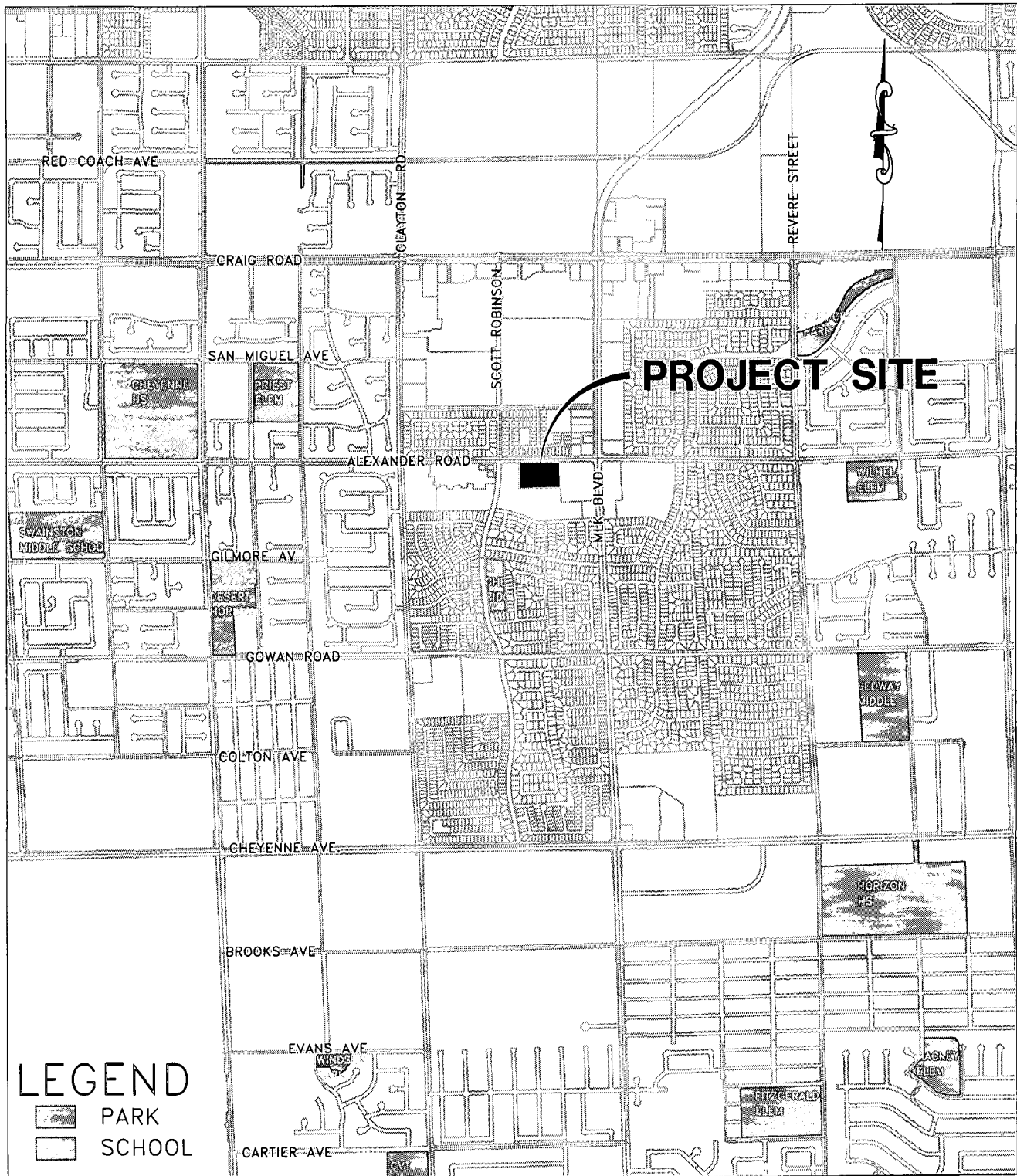
**RESPECTFULLY
SUBMITTED:**



Gregory E. Rose
City Manager

**CITY COUNCIL
MEETING DATE:**

03/05/08
04/02/08



VICINITY MAP



DEPARTMENT OF PUBLIC WORKS
ENGINEERING SERVICES DIVISION

ALEXANDER PARK AND LIBRARY

SCALE: NTS

DRAWING NAME: 10224-VIC

DRAWN BY: JRZ

DATE: 01/25/2007

SHEET NUMBER 1 OF 1

PROFESSIONAL INSPECTION SERVICES AGREEMENT FOR THE ALEXANDER LIBRARY AND PARK PROJECT

THIS PROFESSIONAL INSPECTION SERVICES AGREEMENT (as such may be modified, amended or supplemented, the **"AGREEMENT"**) is made and entered into as of the 5th day of March, 2008, by and between the **CITY OF NORTH LAS VEGAS, NEVADA**, a political subdivision of the State of Nevada, (hereinafter referred to as **"CITY"**), and **AZTECH MATERIAL TESTING, INC.** a Nevada corporation, (hereinafter referred to as **"CONSULTANT"**).

RECITALS:

1. The CITY intends to construct an approximately 16,400 square foot single story branch library to be located off Alexander Road just west of Martin Luther King Boulevard. The work generally involves site preparation, foundation, structural, mechanical, electrical, landscaping and offsite construction necessary for a complete facility. The work also includes a park consisting of site preparation, landscaping and irrigation, parking areas, shade shelters, and play equipment. This work is as depicted and described in the construction documents, including addendums thereto for Bid No. 1301 (hereinafter referred to as the **"IMPROVEMENTS"**).
2. The CITY desires to obtain quality professional services of the CONSULTANT to perform Inspection Services, including Pre-Construction Services, Materials Testing Services and Post-Construction Services (herein referred to as the **"PROJECT"**) for construction of the IMPROVEMENTS; and
3. The CONSULTANT's scope of service and compensation have been arrived at after meaningful negotiations between the CITY and the 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. The CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by the 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 inspection standards of care. The CONSULTANT shall, without additional compensation, promptly correct and revise any errors or deficiencies in its reports and other services, or in any portion of the PROJECT performed by CONSULTANT's subconsultants. Approval by the CITY of any products or services furnished by CONSULTANT shall not in any way relieve the CONSULTANT of responsibility for the professional and technical accuracy of its services.

- B. CONSULTANT shall assign Claire Kohatsu P.E., whose license number is Nevada Civil Engineer 13960, as the Principal-in-Charge ("PRINCIPAL-IN-CHARGE"), and Steven Wright as the Inspector ("INSPECTOR"). All of the services specified by this AGREEMENT shall be performed by the INSPECTOR, or by CONSULTANT's associates, employees and subconsultants under the personal supervision of the INSPECTOR. Should the PRINCIPAL-IN-CHARGE or the INSPECTOR be unable to complete his or her responsibility for any reason, the CONSULTANT shall notify the 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. 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.
- D. The CONSULTANT agrees that its officers, partners, employees, and subconsultants will cooperate with the 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. The 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 the CITY. For those documents submitted to the CITY by the CONSULTANT with regard to the PROJECT, the CITY will examine and respond in writing to the CONSULTANT within fourteen (14) calendar days of receipt of such documents. It is understood that CITY comments upon review of the CONSULTANT's documents do not relieve CONSULTANT from the responsibility for the professional and technical accuracy of all work delivered under this AGREEMENT.

SECTION III - SCOPE OF SERVICES

Services to be performed by the 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. The 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 the CONSULTANT's cost or time required for performance of any service 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 the CONSULTANT of notification of changes by the 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 the CONSULTANT for changes in scope of work without the prior written authorization of the 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 the 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 the 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 the CITY and, upon written request by the CITY, to obtain and provide to CITY lien releases from the subconsultant for such payment.
- B. The subconsultant does not have any rights against the 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 the CITY in a formal CITY Council proceeding and shall end one (1) year after the date the CITY makes final payment to the CONSULTANT for services rendered under this AGREEMENT, unless this AGREEMENT is terminated by the CITY.

SECTION VIII - COMPENSATION AND TERMS OF PAYMENT

A. TOTAL COMPENSATION

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

<u>Basic Services</u>	<u>Time & Material Amount</u>
1. Pre-Construction Services	\$6,390.00
2. Special Inspection Services	\$179,750.00
3. Materials Testing Services	\$34,000.00
4. Post-Construction Services	\$16,400.00
	Subtotal \$ 236,540.00

	<u>Time & Material Amount</u>
Supplemental Services	Not-to-exceed \$ 20,000.00
<u>Grand Total Not-to-Exceed</u>	<u>\$ 256,540.00</u>

B. TERMS OF PAYMENT

1. Subject to the CITY's right to dispute any charges, the CITY shall make monthly progress payments to the CONSULTANT for services performed as follows:
 - A. The CITY shall make progress payments for completed Basic Services on a Time and Material basis in accordance with the Fee Schedule provided in Exhibit "B".
 - B. With respect to Supplemental Services that are authorized in writing by the CITY's representative, the 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 the CONSULTANT under Section VIII.A.1 shall be made within thirty (30) calendar days of the date CITY receives each invoice provided by the CONSULTANT to the CITY, provided that such invoice is complete, correct, and undisputed by the CITY, and that it contains the following information:
 - (a) With respect to payments for Basic Services, the CONSULTANT shall prepare and submit to the 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 Subsection VIII.A.1. above and shall be supported by backup documentation detailing labor costs and other expenses directly related to the authorized work.
 - (b) For payment of Supplemental Services authorized in writing by the CITY's representative, the CONSULTANT shall prepare and submit to the 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. The 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 the 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.N.
4. If the CITY fails to pay the CONSULTANT an undisputed amount within thirty (30) calendar days after the date the CITY receives the invoice, the 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 the CITY.

SECTION IX - TIME OF PERFORMANCE

CONSULTANT shall commence work immediately following written notice to proceed by the 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 the CONSULTANT and the CITY.

SECTION X - AUDIT: ACCESS TO RECORDS

- A. The 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. The CONSULTANT shall also maintain the financial information and data used by the CONSULTANT in the preparation or support of the invoices, and a copy of the cost summaries and invoices submitted to the CITY. The 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. The 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. The 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 the 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 the CITY is a "public record" open to inspection and copying by any person, except for those documents otherwise declared by law to be confidential. The CITY shall not in any way be liable to CONSULTANT for the disclosure of any public record. In any event the 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 the 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. The 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 has 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. The CONSULTANT'S PRINCIPAL-IN-CHARGE is a duly licensed Engineer with the State of Nevada, and 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 or registered architect or engineer, 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 the 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 the 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 the CITY be liable to the CONSULTANT for more than \$2,000.00.

B. TERMINATION:

The CITY may terminate this AGREEMENT, with or without cause, upon fourteen (14) calendar days prior written notification of the termination to the CONSULTANT. Notification to the CONSULTANT of such termination shall be sent by the CITY in accordance with Section XII.U.

In the event of termination, the CITY agrees to pay the 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:

The 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 the 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 reports, photographs, studies, materials analysis, test results, permits, estimates, or other like documents (instruments of service) given, prepared or assembled by the CONSULTANT or any subconsultant which are related to the performance of this AGREEMENT are deemed to be the property of the 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 the 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. The CONSULTANT's Comprehensive General Liability policy shall automatically include or be endorsed to cover CONSULTANT's contractual liability to the CITY, to waive subrogation against the CITY, its officers, agents, servants and employees, and to provide that the 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 the CITY.
6. Certificates indicating that such insurance is in effect shall be delivered to the CITY before work is begun under this AGREEMENT. If the 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 the CITY annually with a Certificate of Insurance as evidence of such insurance. It is further agreed that the CONSULTANT and/or Insurance Carrier shall provide the 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 the 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 the 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 the CONSULTANT, its subconsultants, or agents or anyone employed by the 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. The CONSULTANT shall not assign, sublet or transfer its interest in this AGREEMENT without the prior written approval of the 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 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 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 the 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 the CITY's policies and decisions with respect to the services of the CONSULTANT.

J. CONSULTANT'S EMPLOYEES:

The 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 the CITY deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the CITY to be contrary to the public interest, the CITY reserves the right to require such removal as a condition for the continuation of this AGREEMENT.

K. INDEPENDENT CONTRACTOR:

It is hereby expressly agreed and understood that in the performance of the services provided herein, the CONSULTANT and any other person employed by CONSULTANT hereunder shall be deemed to be an independent contractor and not an agent or employee of the 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, the 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.

The 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:

The 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, the 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. The CITY's representative and the CONSULTANT's SPECIAL INSPECTOR 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, the CITY's representative and the 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 the CITY's representative and the CONSULTANT's SPECIAL INSPECTOR, and provided to the CITY's Public Works Director and the CONSULTANT's PRINCIPAL-IN-CHARGE. Within thirty (30) calendar days thereafter, the CITY's Public Works Director, or his designee, and the 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 the CITY's Public Works Director or his designee, and the CITY's Public Works Director or his designee, will render a determination regarding such dispute.

3. If the CONSULTANT disagrees with the determination of the CITY's Public Works Director, or his designee, the CONSULTANT may only initiate an action in the Eighth Judicial District Court in and for Clark County to resolve such dispute. The 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 the CONSULTANT's compensation as provided for in the AGREEMENT is just and reasonable compensation for performance hereunder including reasonably foreseen and foreseeable risks, hazards and difficulties in connection therewith based on such above-ground observations.

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
Attention: Robert E. Huggins, P.E.
Manager, Construction Management
Engineering Services Division
2266 Civic Center Drive
North Las Vegas, NV 89030

TO CONSULTANT: AZTECH MATERIAL TESTING, INC.
Attention: Claire K. Kohatsu, P.E.
4700 Copper Sage Street, Suite A
Las Vegas, NV 89115

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, the Parties have caused this AGREEMENT to be executed the day and year first above written.

CITY OF NORTH LAS VEGAS, NEVADA

AZTECH MATERIAL TESTING, INC.

By: _____
MICHAEL L. MONTANDON
MAYOR

By: *Daniel M. Deungh*
for
CLAIRE K. KOHATSU, P.E.
ENGINEERING MANAGER

ATTEST:

By: _____
KAREN L. STORMS, CMC
CITY CLERK

APPROVED AS TO FORM:

CARIE TORRENCE, CITY ATTORNEY

By: *Bethany Rudd Sanchez*
BETHANY RUDD SANCHEZ
DEPUTY CITY ATTORNEY

PROFESSIONAL INSPECTION SERVICES AGREEMENT FOR THE ALEXANDER LIBRARY AND PARK PROJECT

EXHIBIT "A" SCOPE OF SERVICES

GENERAL

The CITY requires pre-construction services, inspection services, material testing services, post-construction services, and supplemental services to assist with the construction of the Alexander Library and Park Project.

The CONSULTANT shall provide qualified professional, technical, and administrative personnel to perform the duties and responsibilities assigned under the terms of this AGREEMENT. The City, at its option, may elect to expand, reduce, modify, or delete the extent of each work element described in this Scope of Services, provided such action does not alter the intent of this AGREEMENT.

The Scope of Services is subdivided into four (4) primary tasks: 1.0 Pre-Construction Services, 2.0 Inspection Services, 3.0 Materials Testing Services, and 4.0 Post-Construction Services.

STAFFING

The CONSULTANT shall provide the following staff for the PROJECT. All staff provided by the CONSULTANT shall be subject to approval by the CITY.

1. One (1) full time inspector responsible for daily observation/inspection for all construction activities related to the project.
2. One (1) part time materials testing technician responsible for sampling and testing all materials for all construction activities related to the project.

TASK 1.0 PRE-CONSTRUCTION SERVICES

Upon receipt of written authorization by the CITY, the CONSULTANT shall perform the services listed below.

- 1.01** Preconstruction Conference - Attend the pre-construction conference prior to the start of any field activities.
- 1.02** Mobilization of Project - Provide any furniture and/or equipment required in addition to what is provided by Contractor. Assist in establishing the PROJECT'S field office (supplied and maintained by the contractor).

TASK 2.0 INSPECTION SERVICES

Upon receipt of written authorization by the CITY, the CONSULTANT shall perform the services listed below.

- 2.01** Construction Administration Procedures - Assist the Construction Manager with responding to the Contractor's request for clarifications and interpretations of the contract documents; reviewing shop drawings, samples and other submittals; reviewing change order proposals; written proposals for substitutions; payment applications, and permits. Maintain the following documents at the job site: copy of the contract documents, and progress reports. Maintain reports of job site conferences, meetings, and discussions among the CITY and Contractor.
- 2.02** Permits - Verify that the required permits, including building, grading, traffic control, and encroachment permits, have been obtained and that the conditions of permits are adhered to by the Contractor. Such action by CONSULTANT shall not relieve the Contractor of its responsibility to comply with the provisions of the Contract Documents.
- 2.03** Construction Schedule - Assist in reviewing the Contractor's construction schedule and updates.
- 2.04** Progress Meetings and Reporting - Attend weekly progress meetings. Such meetings shall serve as a forum for the exchange of information concerning the PROJECT and the review of construction progress.
- 2.05** Progress Payments - Assist in reviewing the applications submitted by the Contractor and determine whether the amount requested reflects the actual progress of the Contractor's work.
- 2.06** Quality Assurance/Construction Inspection/Special Inspection - Monitor the quality of construction, and assist in guarding the PROJECT against defects and deficiencies in the work of the Contractor. Review the work for compliance with the contract documents and 2006 IBC. The CONSULTANT'S inspector will maintain daily reports detailing the progress of the work, manpower and equipment assigned to the PROJECT, and schedule of activities. Reject work and transmit to the CITY and Contractor a notice of nonconforming work when it does not conform to the requirements of the contract documents. Maintain a daily diary of events at the jobsite, including but not limited to, the following: Contractor and subcontractor's personnel and equipment; observed delays and causes; weather conditions; daily activities and progress; quantities installed; data relative to claims for extras or deductions; material received on site, and test results.

- 2.07** Photographs & Video - Provide photographic documentation, both still and video, of PROJECT site prior to and during construction. Label and date photographs and maintain log of photographs.
- 2.08** Surveying Coordination - Coordinate and schedule all PROJECT construction staking activities with CITY surveying crews to ensure survey control. In addition, coordinate with Contractor and CITY surveying crews to ensure that all new underground facilities are GPS inventoried by CITY prior to backfill operations.
- 2.09** Inspection Coordination - Coordinate and schedule all PROJECT construction inspection activities with contractor to ensure timely inspection services.
- 2.10** Dispute/Conflict Resolution - Make recommendations and implement procedures for reducing the likelihood of disputes and claims. While construction proceeds, review construction drawings and specifications for future items of work. Identify design conflicts and/or errors and attempt to resolve conflicts in a timely manner. When disputes or claims arise, assist the CITY in gathering applicable data, reviewing Contractor's documents substantiating disputes or claims, and in resolving construction disputes. Make recommendations for Alternate Dispute Resolution methods, as required.

TASK 3.0 MATERIAL TESTING SERVICES

Upon receipt of written authorization by the CITY, the CONSULTANT shall perform the services listed below.

- 3.01** Material Testing - CONSULTANT will self perform all Quality Control Testing Services. CONSULTANT will perform tests and review reports and test results. CONSULTANT will visit the site as needed to ensure a quality project and address any problems. Sample and test construction materials for compliance with the contract documents. Provide a certified material testing laboratory. Provide all test reports and records for review by CONSULTANT and CITY. Provide a monthly testing summary report. Provide a final project report.

TASK 4.0 POST-CONSTRUCTION SERVICES

Upon receipt of written authorization by the CITY, the CONSULTANT shall perform the services listed below.

- 4.01** Project Closeout - Assist the CITY during the testing, start-up, and debugging of the PROJECT. Deliver all PROJECT files and documents to the CITY.
- 4.02** Final Inspection and Punchlist - Conduct final inspection with PROJECT participants. Assist in preparing a list of construction deficiencies for resolution by

Contractor and verify completion of these items. The CONSULTANT will make recommendations to CITY regarding Contractor's final progress payment request. Assist in preparation of final progress payment report for submission to CITY.

- 4.03** "As-Built" Drawings - Maintain one set of field contract documents with up-to-date information regarding all addenda, substitutions, clarifications, and change orders. Near the end of construction, transmit corrected set of "as-builts" to the City for incorporation of changes into the permanent (mylar) set of documents.
- 4.04** Warranty Condition - Assist CITY during 12-month PROJECT warranty period.

**PROFESSIONAL INSPECTION SERVICES AGREEMENT
FOR THE ALEXANDER LIBRARY AND PARK PROJECT**

**EXHIBIT "A-1"
SUPPLEMENTAL SERVICES**

Task 5.0 SUPPLEMENTAL SERVICES

The CONSULTANT shall provide Supplemental Services directly related to the PROJECT when requested, and authorized in writing to do so by the CITY. Compensation for Supplemental Services shall be made pursuant to Section VIII, B.1 (B). The Fee Schedule included as Exhibit "B" shall be in effect for the duration of the PROJECT. Supplemental Services performed by the CONSULTANT may include any, or all of the following:

- 5.01 **Time Extension** - CONSULTANT shall provide continuous construction management services beyond the specified three hundred thirty five (335) calendar days if the construction contract is extended due to "Acts of God" or contract change order time extensions.
- 5.02 **Overtime Inspection** - Overtime inspection will be any work in excess of forty (40) hours a week or eight (8) hours in a 24-hour period.
- 5.03 **Materials Testing Services Extension** - Provide for the extension of geotechnical and/or materials testing services beyond the specified construction duration of three hundred thirty five (335) calendar days should the PROJECT schedule be extended or due to changes in subsurface site conditions.

**PROFESSIONAL INSPECTION SERVICES AGREEMENT
FOR THE ALEXANDER LIBRARY AND PARK PROJECT**

**EXHIBIT "B"
FEE SCHEDULE**

AZTECH MATERIALS TESTING LABOR

	<u>Rate (\$/hr)</u>
Principal-In-Charge	\$ <u>125.00</u>
Construction Manager (Project Manager)	\$ <u>100.00</u>
Special Inspector	\$ <u>90.00</u>
Material Tester/Field Technician	\$ <u>75.00</u>
Administration	\$ <u>45.00</u>

These hourly rates for CONSULTANT and all Subconsultants shall remain in effect for the duration of the AGREEMENT, and include direct salaries, overhead and profit.

DIRECT EXPENSES (APPLICABLE TO THE PROJECT)

Expenses for the PROJECT may include, but are not limited to:

<u>Item</u>	<u>Cost</u>
Reproduction (copies/printing)	At cost
Blueprinting	At cost
Graphic Art Displays/Exhibits	At cost
Photography: Film and Development	At cost
Postage/Overnight Mail Delivery	At cost
Public Notices/Advertisements	At cost
Subconsultant Fees	At cost
Permit Fees	At cost

Direct Expenses (non-salary costs) shall be billed at actual cost without markup as verified by receipts, invoices or other documentation acceptable to the CITY.

AZTECH INSPECTION SERVICES, LLC LABOR

	<u>Rate (\$/hr)</u>
Special Inspector	<u>\$ 90.00</u>
Material Tester/Field Technician	<u>\$ 75.00</u>

SCHEDULE OF FEES FOR LABORATORY TESTING

	<u>Rate (\$/test)</u>
R-Value	<u>\$ 270.00</u>
Expansion Potential (Swell)	<u>\$ 122.00</u>
Sieve Analysis/Bitumen Ratio	<u>\$ 232.00</u>
Theoretical Max Density (Rice)	<u>\$ 110.00</u>
Sieve Analysis	<u>\$ 129.00</u>
Atterberg Limits	<u>\$ 129.00</u>
Maximum Density Curve	<u>\$ 192.00</u>
Fractured Face	<u>\$ 100.00</u>
LA Abrasion	<u>\$ 149.00</u>
Concrete, grout or mortar Compressive Strength (Set of 4)	<u>\$ 116.00</u>
Prisms	<u>\$ 100.00</u>
Asphalt Core	<u>\$ 30.00</u>
Sand Equivalent	<u>\$ 100.00</u>
Soluble Sulfate	<u>\$ 100.00</u>
Solubility	<u>\$ 94.00</u>

Data compilation and analysis and report preparation will be billed at hourly rates listed above.

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
FOR THE ALEXANDER LIBRARY AND PARK PROJECT
SPECIAL INSPECTION**

EXHIBIT "C"

PROJECT SCHEDULE

TASK NUMBER	TASK NAME	MONTH																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1	PRE-CONSTRUCTION SERVICES																		
2	INSPECTION SERVICES																		
3	PROJECT CLOSE OUT																		