

## SERVICES AGREEMENT

This agreement ("Contract") is made and entered into by and between the City of Boulder City, a municipal corporation and political subdivision of the State of Nevada ("CITY") and Wilson Engineers LLC., an Arizona limited liability company ("CONTRACTOR").

### RECITALS

**WHEREAS**, the CITY requires a project management services for its Nevada Way Reconstruction Project, Boulder City Project 20-1155-STR, as more particularly described in Exhibit A (the "Services" or "Scope of Services"); and

**WHEREAS**, the CITY has selected the CONTRACTOR in accordance with Nevada Revised Statutes ("NRS") Chapter 332, as applicable; and

**WHEREAS**, the CONTRACTOR represents that it has the experience, knowledge, labor, and skill to perform the Services; and

**NOW, THEREFORE**, in consideration of the above recitals, mutual covenants, and terms and conditions contained herein, the parties agree as follows:

### AGREEMENT

#### SECTION 1. DESCRIPTION OF SERVICES

- (a) The CONTRACTOR shall perform the Services in accordance with the terms and conditions set forth herein. The CONTRACTOR shall be solely responsible for the means, methods, and procedures of performing the Services. It shall be the CONTRACTOR's responsibility to meet the schedule.
- (b) The CITY and the CONTRACTOR recognize the Services may require modification due to unforeseen events that may be encountered. Therefore, an amendment to this Contract may be prepared, negotiated, and executed by the parties in accordance with the terms of this Contract if there has been or is to be a significant change, including but not limited to:
  - (1) Scope, complexity, or character of the Services to be performed;
  - (2) Conditions under which the Services are required to be performed, such as a change in applicable standards or a change in available base data that would require significant additional work to successfully complete the Contract; or
  - (3) Duration of work if the time period for completion of the Services warrants such adjustment.

Any modification required by the CITY that results in a change in the Services will also be specified in an amendment to this Contract which will set forth the nature, scope, and payment therefore.

## **SECTION 2. COMPENSATION AND MANNER OF PAYMENT**

- (a) The CITY agrees to pay the CONTRACTOR for the Services, a not-to-exceed sum of One Hundred Eighty Thousand Six Hundred Fifty Dollars and Zero Cents (\$180,650.00), which sum includes all fees for time and labor for salaries, overhead, materials, equipment, licenses, direct non-salary expenses incurred by the CONTRACTOR, and actual approved subcontractor costs.

It is expressly understood that all Services must be completed by the CONTRACTOR, and it is the CONTRACTOR's responsibility to ensure that hours and tasks are properly budgeted so that all Services are completed for the total not-to-exceed amount set forth above.

The CONTRACTOR, as a prerequisite to the obligation on the part of the CITY for payment of fees provided herein, must submit monthly invoices describing the Services performed during the preceding month. Invoices must list all direct and non-direct costs, identify names and titles of individuals, and hours worked. A project status report must be included with each invoice detailing work performed on each task, deliverables and milestones achieved, and current status of the task. (Remove if not applicable) The CITY shall pay the CONTRACTOR all undisputed amounts within thirty (30) days of the CITY's receipt and approval of properly submitted invoice(s). All invoices shall reference the CITY's applicable purchase order number. The CITY may offset any such payment to reflect amounts owing from the CONTRACTOR to the CITY pursuant to this Contract.

- (b) The CITY will not reimburse the CONTRACTOR for any travel expenses other than those pre-approved travel expenses, if any, that are set forth in the Scope of Services and include a cost estimate. The CONTRACTOR must obtain prior written approval from the CITY concerning the number of employees to be sent by the CONTRACTOR each time travel is required in performing this Contract. The CITY will reimburse the CONTRACTOR for travel expenses paid or incurred on its behalf as follows:
- (1) Meals, incidentals and lodging reimbursements must not exceed rates established by the U.S. General Services Administration (GSA) for the primary destination. For current rates, refer to: [http:// www.gsa.gov/perdiem](http://www.gsa.gov/perdiem). GSA rates vary by location, and for some locations, by time of year. If a city/county is not listed, then the GSA standard rate for continental U.S. applies. Reimbursement for lodging taxes is in addition to this rate but only up to the lodging taxes applicable based on the GSA rate.

- (2) Travel to the CITY in performing this Contract where overnight lodging is necessary must be arranged at hotels located within the City of Boulder City, Nevada.
- (3) Air travel costs will be limited to coach or economy class only; original receipts are required.
- (4) Mileage will be limited to direct routes and reimbursed at IRS standard business rates. Other ground transportation (*e.g.*, taxi, shuttle, bus, rental car) are at actual costs; original receipts required. Rental car reimbursement is limited to midsize sedan or equivalent; original receipts are required.

Original receipts are required as stated herein and no reimbursement will be allowed for costs not directly related to the furtherance of the CONTRACTOR's business under this Contract with the CITY.

### **SECTION 3. TIME OF PERFORMANCE**

- (a) This Contract shall be effective on the Effective Date (defined below) and will continue to be in effect until, and all Services shall be completed within six (6) months ("Term"), unless terminated earlier in accordance with the terms herein. The "Effective Date" is the later of the date of Boulder City City Council action (if required and as reflected on the signature page) or the date of full execution of this Contract, as reflected on the signature page or recorded through Esignlive.
- (b) Neither the completion of the Services nor any earlier termination of this Contract shall impact any replacement or re-performance of a Nonconforming Service, representations, indemnities, insurance requirements, confidentiality obligations, termination obligations or other obligations which by their own terms are intended to survive the completion of the Services, all of which shall continue in full force and effect after the Term.

### **SECTION 4. SUSPENSION OF SERVICES**

The CITY may suspend performance by the CONTRACTOR under this Contract for such period of time as the CITY, at its sole discretion, may prescribe by providing written notice to the CONTRACTOR at least ten (10) days prior to the date on which the CITY wishes to suspend. The CONTRACTOR shall not perform further work under this Contract after the effective date of suspension until receipt of written notice from the CITY to resume performance, and the time period for the CONTRACTOR's performance of the Services shall be extended by the amount of time such performance was suspended. If the CITY delivers notice of its intent to suspend services under this Contract, the CONTRACTOR shall suspend performance of the Services on a schedule acceptable to the CITY. If suspension is for the CITY's convenience, the CITY shall pay the

CONTRACTOR for all the Services performed and an equitable amount for incremental costs incurred by the CONTRACTOR as a result of the suspension; provided, however, that if the suspension is due to the CONTRACTOR's failure to comply with this Contract, no such payment shall be made.

## **SECTION 5. TERMINATION FOR CONVENIENCE**

The CITY may terminate this Contract in whole or in part at any time without cause prior to completion of the Services or the Term by sending to the CONTRACTOR written notice of such termination. Upon such termination, the CITY shall pay to the CONTRACTOR, in full satisfaction and discharge of all liabilities and obligations owed the CONTRACTOR, an equitable amount for all Services satisfactorily performed by the CONTRACTOR as of the date of termination plus the actual cost for any charges incurred by the CONTRACTOR that cannot be canceled or reasonably mitigated. In that notice, the CITY shall specify whether it is terminating this Contract in whole or in part and the effective date of Contract termination. The CITY shall not be liable for anticipated profits based upon Services not yet performed. In the event this Agreement is terminated, all rights and obligations of the parties hereunder shall cease, other than indemnity obligations and matters that by their terms survive the termination thereof.

## **SECTION 6. TERMINATION FOR CAUSE**

- (a) The occurrence of any of the following events constitutes a default by the CONTRACTOR (an "Event of Default"):
- (1) A breach by the CONTRACTOR of any material term, condition, or covenant contained herein, if such breach continues uncured for a period of ten (10) days after receipt of written notice from the CITY, unless such breach cannot by its nature be remedied within such period in which event the CONTRACTOR shall provide evidence reasonably satisfactory to the CITY within ten (10) days after receipt of such notice that the cure of such breach has commenced and the CONTRACTOR thereafter makes reasonable and continuous progress to that end. For purposes of this Contract, such a breach by the CONTRACTOR shall be deemed to include, without limitation, the CONTRACTOR's refusal or neglect to supply sufficient and properly skilled labor or subcontractors, the CONTRACTOR's refusal or neglect perform the Services in accordance with applicable standards, or the CONTRACTOR's failure in any respect to prosecute the Services or any part thereof with promptness, diligence and in accordance with all of the material provisions hereof; or
  - (2) CITY's determination that any representation, statement or covenant made by the CONTRACTOR in this Contract, or in any other statement, report or document that the CONTRACTOR is required to furnish to the CITY, was false or misleading in any material respect; or

- (3) The occurrence of any of the following: (a) the filing by or against the CONTRACTOR of a proceeding under any bankruptcy or similar Law (defined below), unless such proceeding is dismissed within thirty (30) days from the date of filing; (b) the making by the CONTRACTOR of any assignment for the benefit of creditors; (c) the filing by or against the CONTRACTOR for a proceeding for dissolution or liquidation, unless such proceeding is dismissed within thirty (30) days from the date of filing; (d) the appointment of or the application for the appointment of a receiver, trustee or custodian for any material part of the CONTRACTOR's assets unless such appointment is revoked or dismissed within thirty (30) days from the date thereof; (e) the attempt by the CONTRACTOR to make any adjustment, settlement or extension of its debts with its creditors generally; (f) the insolvency of the CONTRACTOR; or (g) the filing or recording of a notice of lien or the issuance or the obtaining of a levy of execution upon or against a material portion of the CONTRACTOR's assets, unless such lien or levy of execution is dissolved within thirty (30) calendar days from the date thereof; or
- (4) The CONTRACTOR, in the reasonable opinion of the CITY, has experienced a material adverse change in the CONTRACTOR's financial condition or the CONTRACTOR's ability to fulfill its obligations under this Contract.
- (b) Upon the occurrence of any Event of Default, following the giving of any notice and the expiration of any cure period expressly provided in Subsection (a)(1) above, the CITY shall be entitled upon written notice to the CONTRACTOR - without notice to the CONTRACTOR's sureties and without limiting any of the CITY's other rights or remedies - to terminate this Contract or to terminate the CONTRACTOR's right to proceed with that portion of the Services affected by any such default.
- (c) Upon receipt of any such written notice of termination of the entire Contract or of any right to proceed with any portion of the Services following the applicable process described in this Section, the CONTRACTOR shall, at its expense, assess the status of any deliverables still due, preserve any Services performed, and deliver to the CITY any partially-completed Services performed by the CONTRACTOR and any subcontractor, including without limitation documentation, software source media, flow charts, documents and other deliverables.
- (d) In the event of such termination, the CITY may finish the Services by whatever method the CITY may deem expedient including: (1) the CITY may hire a replacement contractor(s) to complete the remaining Services that the CONTRACTOR was otherwise obligated to complete under the Contract using such form of agreement as the CITY may deem advisable; or (2) the CITY may itself provide any labor or materials to complete the Services.

- (e) In the event of such a termination, the CITY may suspend all payments otherwise due to the CONTRACTOR hereunder and the CITY has no further obligation to pay the CONTRACTOR for the Services, except for payment of the reasonable value for all Services satisfactorily performed to the date of termination. However, the CITY is not obligated to make any such payment until after all Services are completed to the CITY's satisfaction.
- (f) If the CITY terminates this Contract and finishes the Services pursuant to Subsection (d) above and the total cost of completing the Services, including all payments made to the CONTRACTOR, is less than the total amount budgeted for this Contract by the CITY, then the CITY shall pay to the CONTRACTOR, within thirty (30) days after the completion of the Services, the amount of any payment that would otherwise (*i.e.*, in the absence of the default) be due to the CONTRACTOR for any Services performed by the CONTRACTOR prior to termination. If the CITY terminates this Contract and finishes the work pursuant to Subsection (d) above and the total cost of completing the Services, including all payments made to the CONTRACTOR, is greater than the total amount budgeted for this Contract, then the CONTRACTOR shall pay the amount by which the total cost of completing the Services exceeds the total amount budgeted to the CITY within thirty (30) days after CITY provides an invoice to the CONTRACTOR.
- (g) All rights and remedies provided in this Section are cumulative, and are not exclusive of any other rights or remedies that may be available to the CITY, whether provided by Law, equity, in any other agreement between the parties or otherwise. Upon the occurrence of an Event of Default, following the applicable process described in this Section, the CITY shall be entitled to pursue any and all other rights and remedies, including without limitation damages, that the CITY may have against the CONTRACTOR under this Contract, at Law, in equity or pursuant to another agreement between the parties. "Law" means all applicable federal, state and local laws, statutes, ordinances, regulations, rules, codes, orders, policies, standards, guidelines or other governmental requirements, including the NRS, Nevada Administrative Code ("NAC"), and the City of Boulder City Municipal Code, as amended or that may be enacted or promulgated subsequently.
- (h) This Contract may be terminated by the CONTRACTOR in the event the CITY defaults in the due observance and performance of any material term, condition, or covenant contained herein and such default is not cured within thirty (30) days after the CONTRACTOR delivers written notice of such default to the CITY, unless such breach cannot by its nature be remedied within such period in which event the CITY shall provide evidence reasonably satisfactory to the CONTRACTOR within ten (10) days after receipt of such notice that the cure of such breach has commenced and the CITY thereafter makes reasonable and continuous progress to that end. For purposes of this Contract, such a breach by the CITY shall be deemed to include, without limitation, failure to pay an invoice in accordance with the "COMPENSATION AND MANNER OF PAYMENT" Section.

## SECTION 7. DELAYS

- (a) Neither party shall be liable for delays caused by a Force Majeure Event; provided, however, that both parties agree to seek to mitigate the potential impact of any such delay. Any delay attributable to a Force Majeure Event shall not be the basis for a request for additional compensation, and the CITY shall not in any case be held liable or responsible to the CONTRACTOR for any damage caused by such delay. In the event of any such delay, the required completion date may be extended for a reasonable period not exceeding the time actually lost by reason of the Force Majeure Event. A “Force Majeure Event” means a delay caused by fire, flood, storm, earthquake, strikes, labor disputes, war, acts of vandalism, destruction, public disobedience, terrorism, the action of civil or military authorities, or other events: (1) that are not reasonably foreseeable as of the Effective Date; (2) that are attributable to a cause beyond the control and without the fault or negligence of the party incurring such delay; and (3) the effects of which cannot be avoided or mitigated by the party claiming such delay through the use of commercially reasonable efforts; provided that economic hardship, including lack of money, downturn in the economy, or credit and changes in exchanges rates, does not constitute a Force Majeure Event.
- (b) If the CONTRACTOR is actually delayed in its performance of the Services by the actions or omissions of the CITY (excluding the CITY’s good faith exercise of rights and remedies provided under the Contract or a Force Majeure Event), or by changes ordered with respect to the Services, and if the CONTRACTOR is able to prove that it has used all reasonable means to avoid or minimize the effects of the delay, then the deadline to complete the Services shall be equitably adjusted to reflect the impacts of such CITY-caused delays. The CITY may, at its discretion, in lieu of granting an extension of time, require the CONTRACTOR to regain the schedule whereby the CITY shall compensate the CONTRACTOR for all additional, actual costs reasonably incurred thereby. No adjustment under this Subsection (b) shall be made for any delay to the extent that it is caused or contributed to by the CONTRACTOR or performance would have otherwise been delayed by any other cause, including the errors, omissions, fault or negligence of the CONTRACTOR.
- (c) If, at any time, the CITY determines the progress of completing the Services is not being performed in accordance with the agreed-upon schedule or reasonably believes CONTRACTOR will not complete all Services before the Term expires, the CITY may direct the CONTRACTOR to take corrective actions to ensure the timely and orderly prosecution of the Services, at no additional cost to the CITY. The CONTRACTOR shall execute and deliver all documents and perform such acts as are reasonably requested by the CITY to complete the Project.

## **SECTION 8. CORRECTION OF WORK**

If any deficiency, error, or omission in the Services, including any deliverable, is found or, in the CITY's opinion, fails to conform to the requirements in this Contract, whether during or after the Term (each a "Nonconforming Service"), the CONTRACTOR shall expeditiously and at no expense to the CITY, re-perform or replace the Nonconforming Service and make any necessary corrections so as to conform with the requirements herein. If the CONTRACTOR fails to expeditiously make any replacement or re-performance as required herein, the CITY may conduct the necessary work at the CONTRACTOR's expense, and the CONTRACTOR shall reimburse the CITY for the cost of any replacement or re-performance performed by the CITY and a CITY contractor. If a Nonconforming Service is used or otherwise relied upon by the CITY or a CITY contractor and any other work is performed, the CONTRACTOR shall reimburse the CITY for all costs incurred by the CITY to have that work re-performed and replaced so that such work uses Services that conform with the requirements in this Contract. The CONTRACTOR shall reimburse the CITY by paying the amount invoiced by the CITY within thirty (30) days after the CITY provides an invoice(s) to the CONTRACTOR. This Section survives default, expiration, or termination of this Contract or excuse of performance.

## **SECTION 9. STANDARD OF CARE**

The CONTRACTOR covenants that all Services performed, including deliverables supplied, shall conform to the specifications, drawings, samples, and other descriptions set forth in this Contract, shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of CONTRACTOR's profession and in accordance with generally accepted industry standards prevailing at the time the Services are performed and deliverables supplied, and do not infringe the intellectual property rights of a third party. The foregoing covenants are not intended as a limitation, but are in addition to all other express covenants set forth in this Contract and such other warranties as are implied by Law, custom, and usage of trade.

## **SECTION 10. OWNERSHIP OF DOCUMENTS**

All materials, drawings, specifications, reports or other documents given, prepared, or assembled by the CONTRACTOR, which are related to the performance of this Contract, are deemed to be the property of the CITY when prepared, whether delivered to the CITY or not, and shall, together with any materials furnished to the CONTRACTOR and its personnel by the CITY hereunder, be delivered to the CITY upon request, and, in any event, upon termination or final acceptance of the Services. The CONTRACTOR agrees that all such work prepared by it, or its employees, agents or subcontractors of any tier, or their employees, under this Contract which is subject to protection under copyright Laws constitutes "work made for hire," all copyrights to which belong to the CITY. In any event, the CONTRACTOR assigns to the CITY all intellectual property rights in such work whether by way of copyright, trade secret or otherwise, and whether or not subject to protection by copyright Laws. The CONTRACTOR shall retain all rights to its preexisting standard details, specifications, computer software or other intellectual property. Such preexisting

materials are hereby licensed to the CONTRACTOR, through a fully paid, worldwide, royalty-free, non-exclusive and perpetual license, for (a) the CITY's own use for the Services that are the subject of this Contract to the fullest extent necessary to accomplish the purposes of this Contract and (b) any future use, replacement, or correction of the Services. However, the CONTRACTOR may keep copies of these documents for its files, subject to the "CONFIDENTIALITY" Section. If CONTRACTOR or a subcontractor labels a document owned by the CITY as the CONTRACTOR's (or a subcontractor's) proprietary or confidential document, such label shall be deemed void. This Section survives default, expiration, or termination of this Contract or excuse of performance.

**SECTION 11. INSURANCE**

- (a) The CONTRACTOR, upon request, shall furnish the CITY within ten (10) business days with a Certificate of Insurance, endorsed to include the CITY as "Additional Insured" on the commercial general liability and automotive liability policies, signed by an authorized representative, as well as any endorsements affecting the coverage required by this clause. All deductibles and self-insured retentions(s) shall be fully disclosed in the Certificates of Insurance.

All insurance coverage required herein must be written by a company with a current A.M. Best's rating of not less than A:VII.

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY.

The CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish separate certificates or endorsements for each subcontractor. All coverage for subcontractors shall be subject to all above requirements.

The CONTRACTOR and each subcontractor, at its own cost, shall maintain in full force and effect throughout the term of this Contract the following insurance coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis:

**MINIMUM SCOPE AND LIMITS OF INSURANCE:**

- (1) General Liability: Policy shall include bodily injury, property damage and broad form contractual liability coverage:

Each Occurrence:	\$1,000,000
Personal and Advertising Injury:	\$1,000,000
General Aggregate:	\$2,000,000

- (2) Automobile Liability: This policy shall provide coverage for bodily injury and property damage for any owned, hired, leased, borrowed, and non-owned vehicles used in the performance of this Contract:

Combined Single Limit (CSL)            \$1,000,000

This policy should contain a Waiver of Subrogation endorsement for the CITY.

- (3) Workers' Compensation and Employers' Liability: The policy shall contain a waiver of subrogation against the CITY.

Workers' Compensation:	Statutory
Employer's Liability:	
Each Accident:	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- (b) The commercial general liability and automotive liability policies are to contain, or be endorsed to contain, the following:

- (1) The CITY, its officers, officials, employees, agents, and volunteers are to be covered with respect to: liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR, premises occupied or used by the CONTRACTOR (its officers, employees, agents, subcontractors). The coverage shall contain no special limitations on the scope of protection afforded to the CITY.
- (2) For any claims related to this Contract, the CONTRACTOR's coverage shall be primary and non-contributory with respect to all other available sources and to the CITY, its officers, officials, employees, volunteers and agents.
- (3) The CONTRACTOR's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) Should any of the described policies be canceled before the expiration date thereof, notice will be delivered in accordance with the policy provisions (pursuant to ISO ACORD Form 25, current revision), and in such event CONTRACTOR shall promptly provide written notice to the CITY. If any of the insurance coverage required hereunder is canceled and not replaced, reduced or restricted, the CITY reserves the right to terminate this Contract for cause without penalty or further obligation or liability to the CONTRACTOR.

## SECTION 12. INDEMNITY

- (a) The CONTRACTOR specifically and expressly agrees (at no cost to an Indemnitee) to indemnify, defend, and hold harmless the CITY and its officers, officials, employees, volunteers, and agents (individually, an “Indemnitee”) from and against any and all claims, demands, suits, losses, judgments, expenses, fines, penalties, proceedings, costs and damages of every kind and description, including attorneys’ fees and costs (each a “Claim”) brought or made against or incurred by any of the Indemnitees caused by, resulting from or arising out of the negligence, errors, omissions, recklessness or intentional misconduct of the CONTRACTOR or its employees, agents, representatives or subcontractors of any tier in the performance or nonperformance of the CONTRACTOR’s obligations under this Contract or in any way related to this Contract. The CONTRACTOR’s indemnity obligations under this Section shall include without limitation:
- (1) Loss of or damage to any tangible or intangible property of the CITY, the CONTRACTOR or any third party or to the environment;
  - (2) Bodily injury to, or death of any person(s), including without limitation employees of the CITY, or of the CONTRACTOR or its subcontractors of any tier;
  - (3) Claim or amounts arising out of or recovered under the Workers’ Compensation, unemployment compensation, or similar Laws or obligations applicable to employees of the CONTRACTOR or its subcontractors of any tier; or arising out of the failure of such CONTRACTOR to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree;
  - (4) Claims arising from the failure of CONTRACTOR or its subcontractors of any tier to comply with a Law; and
  - (5) Violation or infringement of any patent, copyright or uncopyrighted work.
- (b) The CITY must give the CONTRACTOR notice of a Claim promptly after the CITY has actual knowledge thereof, provided that the CITY’s failure to give such notice shall not relieve the CONTRACTOR of its obligations hereunder except to the extent that the CONTRACTOR is materially damaged as a result of its failure to receive actual notice. If the CONTRACTOR wishes to settle a Claim, any settlement must not impose any obligations or expense on the CITY, must fully resolve the Claim against the CITY, and must ensure that the CITY receives Services and Documents that are satisfactory to the CITY and functionally equivalent to those the CONTRACTOR is obligated to deliver under this Contract.

- (c) In case any Services or Documents (as defined below), or any combination thereof, constitutes or is alleged to constitute such an infringement or violation or infringement of any patent, copyright or uncopyrighted work and the use of any of the foregoing is enjoined, the CONTRACTOR shall, at its expense and through mutual agreement between the CITY and the CONTRACTOR, either procure for the CITY the right to continue using said Services and Documents, replace same with non-infringing Services and Documents, or modify the same so they become non-infringing, are satisfactory to the CITY and are functionally equivalent to those the CONTRACTOR is obligated to deliver under this Contract. “Document” means any material, drawing, specification, report or other document the CONTRACTOR is obligated to deliver the CITY under this Contract.
- (d) The CONTRACTOR’s indemnity obligations owing to Indemnitees under this Section are not limited by any applicable insurance coverage identified in the “INSURANCE” Section or by any limitation of liability provision. The CONTRACTOR’s indemnity obligations under this Contract shall not extend to any liability caused by the sole negligence of any of the Indemnitees.
- (e) For purposes of the CITY’s enforcement of an indemnity obligation only, the CONTRACTOR specifically and expressly waives any immunity under workers’ compensation Laws or other employee benefits acts of any state or jurisdiction that conflicts with the CONTRACTOR’s indemnification obligations in this Contract. The CONTRACTOR acknowledges that this waiver was mutually negotiated by the parties herein.
- (f) The invalidity, in whole or in part, of any of the foregoing Subsections will not affect the remainder of such Subsections or any other Subsections in this Section.
- (g) This Section survives default, expiration, or termination of this Contract, or excuse of performance, until such time as the applicable statutes of limitation expire.

### **SECTION 13. INTELLECTUAL PROPERTY RIGHTS**

In performance of the Services and in connection with the provision of any deliverables, the CONTRACTOR must not take any action that would violate or infringe any patent, copyright or uncopyrighted work. The CONTRACTOR represents that (a) it has, and upon completion of the work required under this Contract will have, all rights necessary with respect to the Services and deliverables (and each part thereof); and (b) the Services and deliverables (and each part thereof) do not and will not violate or infringe any patent, copyright or uncopyrighted work. To the extent the CITY does not own the intellectual property rights in the Services as required by the “OWNERSHIP OF DOCUMENTS” Section, the CONTRACTOR grants to the CITY, must obtain and transfer to the CITY, and must cause any subcontractor to grant, obtain, and transfer to the CITY perpetual, fully-paid, worldwide, royalty-free, unrestricted, non-revocable licenses to use, reproduce and modify all intellectual property provided by the CONTRACTOR and any

subcontractor to the CITY in connection with this Contract, together with any warranties related thereto. This Section survives default, expiration, or termination of this Contract or excuse of performance.

#### **SECTION 14. ASSIGNMENT**

The CONTRACTOR shall not assign, transfer, convey or otherwise dispose of this Contract or its right, title, or interest in or to the same, or any part thereof, without previous written consent of the CITY and any sureties, and any attempted assignment in violation hereof shall be void. Nothing contained herein shall be construed as creating any personal liability on the part of any CITY officer, official, employee, or agent. Any attempts to assign this Agreement by the CONTRACTOR without previous written consent of the CITY shall be void.

#### **SECTION 15. WAIVER**

No consent or waiver, express or implied, by the CONTRACTOR or the CITY of any breach or default by the other in the performance of any obligations under the Contract shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party. Failure on the part of the CONTRACTOR or the CITY to complain of any act or failure to act of the other party or to declare that other party in default under this Contract, irrespective of how long such failure continues, shall not constitute a waiver of the rights of that party and that party continues to have the right to enforce each and every provision of the Contract. Inspection by, payment by, 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 Services or any part thereof and shall not release the CONTRACTOR of any of its obligations hereunder.

#### **SECTION 16. DESIGNATION OF REPRESENTATIVES**

- (a) Jim Keane, City Engineer, is hereby designated as the CITY representative with respect to the Services. Said representative shall have complete authority to issue task orders, transmit instructions, receive information, and provide interpretations of CITY policies and decisions with respect to the Services.
- (b) The CONTRACTOR hereby designates Shane Cunningham as its authorized representative and coordinator having responsible charge of all Services. Said representative or coordinator shall have complete authority to act on behalf of the CONTRACTOR.
- (c) Either party may change its authorized representative by providing notice to the other party in accordance with the "NOTICES" Section.

## **SECTION 17. CONTRACTOR REPRESENTATIONS**

- (a) The CONTRACTOR represents that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete this Contract; that it is able to furnish the plant, tools, materials, supplies, equipment and labor; that it is experienced in, qualified, and competent to perform the Services contemplated by this Contract; and, that it is authorized to do business in the State of Nevada.
- (b) The CONTRACTOR further represents that the CONTRACTOR 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.
- (c) The CONTRACTOR represents that the person signing this Contract on behalf of the CONTRACTOR has all requisite authority to bind the CONTRACTOR to the terms and conditions herein.

## **SECTION 18. CONTRACTOR PERSONNEL**

- (a) The CONTRACTOR shall employ in the performance of the Services only persons qualified for the same. The CONTRACTOR shall at all times enforce strict discipline and good order among its personnel and the personnel of any subcontractor of any tier. In the performance of the Services, the CONTRACTOR shall not permit or allow any CONTRACTOR personnel to introduce or use any firearms, illegal drugs or intoxicating liquor upon any of the grounds occupied, controlled, or used by the CITY. The CONTRACTOR shall be responsible for taking such disciplinary action with respect to its personnel as may be necessary. The CONTRACTOR shall immediately remove from the work, whenever requested by the CITY, any person considered by the CITY to be incompetent, insubordinate, careless, disorderly, in violation of the CITY's safety requirements, in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, under the influence of illegal drugs or intoxicating liquor, or whose continued employment on the work is deemed by the CITY to be contrary to the public interest, and such person shall not again be employed in the performance of the Services without the written consent of the CITY.

## **SECTION 19. INDEPENDENT CONTRACTOR**

The CONTRACTOR is an independent contractor. Neither the CONTRACTOR nor the CITY is, nor will they be deemed to be, for any purpose, the agent, representative or employee of the other by reason of this Contract. Nothing in this Contract or any agreement or subcontract by the

CONTRACTOR will create any contractual relationship between the CONTRACTOR's employee, agent, or subcontractor and the CITY.

## **SECTION 20. COMPLIANCE WITH LAWS**

The CONTRACTOR shall, in the performance of its obligations hereunder, comply with all Laws, including without limitation the Federal Occupational Health and Safety Act, Title VII of the Federal Civil Rights Act of 1964 *et seq.*, including the Equal Employment Opportunity Act of 1972; 42 U.S.C. § 1981, the Age Discrimination in Employment Act of 1967, as amended (“ADEA”), the Americans with Disabilities Act, and Nevada’s Employment Practices Statutes (NRS 613.330 *et seq.*), as applicable. The CONTRACTOR shall not discriminate against any person on the grounds of race, color, creed, religion, sex, sexual orientation, gender identity or gender expression, age, disability, national origin or any other status protected under Law. If the CITY was required by NRS 332.039.1 to advertise or request a proposal for this Contract, by signing this Contract the CONTRACTOR provides a written certification that the CONTRACTOR is not currently engaged in, and during the Term shall not engage in, a Boycott of Israel. The term “Boycott of Israel” has the meaning ascribed to that term in Section 3 of Nevada Senate Bill 26 (2017). The CONTRACTOR shall be responsible for fines, penalties, and repayment of any State of Nevada or federal funds that may arise (including those that the CITY pays, becomes liable to pay, or becomes liable to repay) as a direct result of the CONTRACTOR’s non-compliance with this Section.

## **SECTION 21. SEVERABILITY**

If any provision 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. Any invalid or unenforceable provision will be deemed severed from this Contract, and the balance of this Contract will be construed and enforced as if it did not contain the particular invalid or unenforceable provision. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

## **SECTION 22. PUBLICITY**

Except with respect to internal business communications, communications with governmental agencies, or as required by Law, the CONTRACTOR shall not use this Contract nor its relationship with the CITY for purposes of or in any manner that intentionally gives rise to advertising or publicity without first consulting with and obtaining the prior written consent of the CITY.

## SECTION 23. CONFIDENTIALITY

- (a) By virtue of this Contract, the CITY might provide Confidential Information (as defined below) to the CONTRACTOR. The CONTRACTOR shall (1) maintain the confidentiality of the CITY's Confidential Information and not disclose it to a third party, except as authorized by the CITY in writing, as required by Law, or as required by a court or other regulatory body or government agency of competent jurisdiction; (2) restrict disclosure of Confidential Information to personnel who have a reasonable basis for needing access to such information and who are bound by confidentiality obligations similar to those in this Contract; (3) take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its personnel who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be with the same degree of care that the CONTRACTOR uses to protect its own Confidential Information and in no event less than a reasonable amount of care; (4) not use the Confidential Information, except to further the purposes of this Contract or as may be required to report to the CONTRACTOR's governing body, legal advisors, financial advisors, or regulators, and not sell the Confidential Information; (5) promptly notify the CITY upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Section; and (6) establish and maintain any additional physical, electronic and procedural controls and safeguards to protect the Protected Data (as defined below) from unwarranted disclosure as may be required for the CITY to comply with all Laws. The responsibilities under this Section shall continue during the Term and for five (5) years thereafter for Confidential Information that is not Protected Data or a trade secret under Law and for Protected Data and trade secrets shall continue for so long as such Confidential Information remains Protected Data or a trade secret under Law.
- (b) The CONTRACTOR must also require subcontractors and vendors to comply with the requirements in this Section and shall include this confidentiality provision in its agreements with all subcontractors and vendors related to the Services.
- (c) "Confidential Information" means information that is disclosed by the CITY under this Contract in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent. Confidential Information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by the CITY by submitting a written document to the CONTRACTOR within thirty (30) days after such disclosure. That written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent. However, Confidential Information does NOT include any information that: (1) is or becomes publicly known through no wrongful act of the CONTRACTOR; (2) is already known to the CONTRACTOR without restriction when it is disclosed; (3) is or becomes, rightfully and

without breach of the Contract, in the CONTRACTOR's possession lawfully without any obligation restricting disclosure; (4) is independently developed by the CONTRACTOR without breach of this Contract; (5) is explicitly approved for release by written authorization of the CITY; or (6) required to be open to public inspection pursuant to NRS 239.010 and is not subject to an applicable exception or declared by Law to be confidential (as determined by the CITY in its sole and absolute discretion).

- (d) "Personal Information" means (1) any data or information accessible by the CONTRACTOR as a result of its business relationship with the CITY that can be used to identify or locate a natural person, including but not limited to: name, address, telephone number, e-mail address, social security number, or driver's license number; (2) any other data, such as, but not limited to, identifiers, demographic or behavioral data, when such data is linked or has the capacity to be linked to a specific person; and (3) "personal information" as that term is defined In NRS 603A.040 or any comparable Nevada statutes, and any Nevada regulations promulgated under such state statutes. Personal Information includes any list, description or other grouping of individuals that is derived using any of the foregoing.
- (e) "Protected Data" means any Personal Information that is protected or covered by Law or a CITY policy. Protected Data will not be excluded from coverage under this Contract merely because it is provided to the CONTRACTOR in a manner that commingles the Protected Data with other data that is not Protected Data.
- (f) This Section survives default, expiration, or termination of this Contract or excuse of performance.

#### **SECTION 24. SUBCONTRACTOR AGREEMENTS**

- (a) The CONTRACTOR agrees to include in all subcontractor agreements, in connection with performance of the terms and obligations imposed under this Contract, the following:
  - (1) A provision that the CONTRACTOR agrees to pay the subcontractor when paid for that portion of the work by the CITY, that no liability arises on the part of the CONTRACTOR to the subcontractor for payment of the subcontracted work until payment has been made by the CITY, and that if the CITY has paid the CONTRACTOR for said subcontracted work, then the subcontractor's only recourse is against the CONTRACTOR and not against the CITY, either through the institution of legal or equitable action or the attachment of any lien.
  - (2) A provision that the subcontractor has no rights against the CITY and is not a CITY agent, representative or employee.

- (3) A provision that the subcontractor agrees to be bound by all the terms and in this Contract applicable to the CONTRACTOR.
- (b) Further, Services specified by this Contract may not be subcontracted by the CONTRACTOR without prior written approval of the CITY. Approval by the CITY of the CONTRACTOR's request to subcontract, or acceptance of or payment for subcontracted work by the CITY, shall not in any way relieve the CONTRACTOR of responsibility for the professional and technical accuracy and adequacy of the work. The CONTRACTOR shall be and remain liable for all damages to the CITY caused by negligent performance or non-performance of Services under this Contract by the CONTRACTOR's subcontractor or its sub-subcontractor. The compensation due under the "COMPENSATION AND MANNER OF PAYMENT" Section will not be affected by the CITY's approval of the CONTRACTOR's request to subcontract.

## **SECTION 25. VENUE**

All actions shall be initiated in the courts of Clark County, Nevada or the federal district court with jurisdiction over Clark County, Nevada. The CONTRACTOR agrees that it shall not initiate an action against the CITY in any other jurisdiction. The CONTRACTOR irrevocably agrees to submit to the exclusive jurisdiction of the courts located in Clark County, Nevada over any dispute or matter arising under or in connection with this Contract.

## **SECTION 26. GOVERNING LAW**

This Contract, its validity, construction, and performance shall be governed by and construed and interpreted in accordance with the substantive and procedural laws of the State of Nevada and the City of Boulder City Municipal Code, without giving effect to its choice or conflicts of law provisions.

## **SECTION 27. NOTICES**

- (a) All notices, demands, and other instruments that are required under this Contract shall be in writing and delivered by personal delivery, by a recognized courier, or by certified U.S. mail (postage prepaid, return receipt requested), and addressed to the receiving party at the address below:

CITY: City of Boulder City  
Attention: Paul Sikora, Purchasing Manager  
401 California Avenue  
Boulder City, Nevada 89005

CONTRACTOR: Wilson Engineers LLC  
Attention: Shane Cunningham  
1401 North Green Valley Pkwy, Suite 150  
Henderson, NC 89074

- (b) Such notice will be deemed to have been received by the party to whom it was addressed on the date of delivery if delivered personally, on the date officially recorded as delivered (or delivery refused) according to the record of delivery if delivered by courier, or three (3) days after mailing. Either party may change its contact information for purposes of the Contract by giving written notice to the other party in the manner set forth above.

#### **SECTION 28. MODIFICATION**

This Contract may be modified or amended only by a written instrument signed by both the CITY and the CONTRACTOR with the same formality as this Contract.

#### **SECTION 29. NO THIRD PARTY BENEFICIARIES**

This Contract is intended only to benefit the parties hereto, their permitted successors and assigns, and Indemnitees. This Contract shall not be deemed to be for the benefit of any entity or person that is not a party hereto, is a party's permitted successor or assign, or an Indemnitee and does not create any rights, benefits or causes of action for any other person, entity or member of the general public.

#### **SECTION 30. ENTIRE AGREEMENT**

This Contract constitutes the complete and exclusive statement of the agreement between the CITY and the CONTRACTOR regarding the subject matter of this Contract and supersedes all prior or contemporaneous agreements, promises, proposals, negotiations, and understandings, whether written or oral, relating to this subject matter.

#### **SECTION 31. WAIVER OF CONSEQUENTIAL DAMAGES**

The CITY shall not be liable to the CONTRACTOR, a subcontractor, or a third party for any consequential, indirect, exemplary or incidental damages, including, without limitation, damages based upon delay, loss of use, lost revenues, or lost profits. This Section survives default, expiration, or termination of this Contract or excuse of performance.

#### **SECTION 32. FISCAL FUNDING**

The CONTRACTOR acknowledges that funding of this Contract is dependent on budget appropriations set each fiscal year. Accordingly, if necessary funds to continue with the specified

Services are not allocated by the CITY, this Contract shall terminate at the expiration of the appropriated funds without further action by the CITY and without liability to the CONTRACTOR, unless the CITY terminates this Contract earlier.

### **SECTION 33. PUBLIC RECORDS**

- (a) The CITY is a governmental entity and subject to the public records Laws and regulations set forth in chapter 239 of the NRS and NAC. Therefore, the CITY's records are public records and are subject to inspection and copying by any person unless there is an applicable exception or the record is declared by Applicable Law to be confidential. The CONTRACTOR is advised, and acknowledges, that the Contract and documents provided in connection with this Contract become a public record and, unless the information is declared by Law to be confidential or is otherwise excluded from the public records disclosure requirements, may be subject to inspection and copying.
- (b) If the CONTRACTOR believes any information it submits should be considered confidential or proprietary in nature, or contains trade secrets (as defined in NRS 600A.030), the CONTRACTOR shall **mark the page or pages that contain such information "CONFIDENTIAL,"** shall provide a summary sheet identifying each and every page that contains information so marked, shall represent in writing on that sheet that protections exist under Law to preserve the integrity, confidentiality and security of the information, and shall specify with particularity the basis thereof. If the CONTRACTOR fails to do all of the foregoing, such information shall be deemed to not be confidential.
- (c) If the CITY receives a public records request that applies to this Contract (either specifically or otherwise), it will analyze the documents provided in connection with this Contract to see if the information so marked may legally be withheld from inspection and copying. The CITY takes no responsibility and is not liable for release of (1) any information not so marked and summarized or (2) any information that is so marked and summarized in the event that the CITY determines in its sole and absolute discretion that the CITY must provide the information because an applicable exception does not apply or the information is not declared by Applicable Law to be confidential.

### **SECTION 34. RECORDS AND AUDITING**

- (a) The CONTRACTOR shall maintain, and shall cause its subcontractors to maintain, accurate and complete books, documents, accounting records and other records pertaining to the Services for six (6) years from the date of the final payment under the Contract (or longer as required by Law). In addition, the CONTRACTOR shall maintain, and shall cause to be maintained, those records that relate to any dispute, litigation, or the settlement of claims arising out of the CONTRACTOR's performance under the Services until six (6) years after the date of resolution of such dispute, litigation, or claim (or longer as required by Law). The CONTRACTOR shall make such records available, and shall cause its subcontractors to make such records available, to the CITY and its representatives for inspection, audit, examination,

reproduction, and copying at the CONTRACTOR's offices at all reasonable times. However, if requested, the CONTRACTOR shall furnish copies of said records at its expense, within seven (7) business days of the request. Such records shall include but not be limited to those books, documents and accounting records that represent the CONTRACTOR's costs of delivering the Services, including those of any of its subcontractors. These rights also apply to any other governmental entity or agency participating in the funding of the Contract, or any authorized agents thereof.

- (b) If the CONTRACTOR believes any record it is required to furnish to CITY should be considered confidential or proprietary in nature, or contains trade secrets (as defined in NRS 600A.030), the CONTRACTOR shall: provide CITY written notice in which CONTRACTOR identifies each record that contains such confidential or proprietary information, represents in writing that protections exist under Law to preserve the integrity, confidentiality and security of the record, and shall specify with particularity the basis thereof; enter into a non-disclosure agreement acceptable to CITY; and, furnish the record to CITY, subject to that non-disclosure agreement.

### **SECTION 35. SAFETY REQUIREMENTS**

The CONTRACTOR while performing any Services at a CITY work site shall (1) make itself aware of and adhere to, and cause each subcontractor to be aware of and adhere to, all CITY work-site regulations, including without limitation environmental protection, loss control, safety, and security. The CITY, or its audit representatives, shall have the right at any reasonable time or times to examine, audit and copy the records and documents pertaining to such requirements, provided the CONTRACTOR may redact personal information (*i.e.*, SSNs/birthdates) from such records.

### **SECTION 36. INTERPRETATION**

The language of this Contract has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract. Preparation of this Contract has been a joint effort of the CITY and the CONTRACTOR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

### **SECTION 37. CONFLICT OF INTEREST**

- (a) The CONTRACTOR represents and warrants that as of the Effective Date it has no interest, and shall not have any interest, direct or indirect, that would conflict in any manner with the performance of work and Services required under this Contract. If any conflict of

interest should nevertheless arise after the Effective Date, the CONTRACTOR shall promptly notify the CITY of the existence of such conflict of interest.

- (b) If the CONTRACTOR becomes aware or otherwise believes that it is (or might be) employing a Family Member, the CONTRACTOR will promptly provide the CITY written notice that identifies the name and title of the Family Member, that person's date of hire, and the name of the possibly-related Public Servant.
- (c) If a conflict of interest arises after the Effective Date or CONTRACTOR employs a Family Member and any of the foregoing causes the CITY to violate an ethics Law, the CITY shall have the right to immediately terminate this Contract for cause without penalty or further obligation or liability to the CONTRACTOR.

### **SECTION 38. TIME OF ESSENCE**

Time is of the essence with respect to the CONTRACTOR's obligations under this Contract. The CITY recognizes that CONTRACTOR's performance must conform to any standard of care applicable to CONTRACTOR.

### **SECTION 39. REMEDIES**

All rights and remedies of the CITY and the CONTRACTOR provided for in this Contract will be cumulative and in addition to, and not in lieu of, any other remedies available to the CITY and the CONTRACTOR at law, in equity, or otherwise.

### **SECTION 40. HEADINGS; EXHIBITS; CROSS REFERENCES**

The section titles contained in this Contract are used solely for convenience and do not constitute a part of this Contract, nor should they be used to aid in any manner in the construction of this Contract. All references in this Contract to Sections, Subsections and Exhibits are to Sections, Subsections and Exhibits in this Contract, unless otherwise specified. All Exhibits, and any attachments to an exhibit, are incorporated into and made a part of this Contract. Unless the context otherwise requires, the singular includes the plural and the plural includes the singular and the neuter includes the feminine and masculine.

### **SECTION 41. CONSTRUCTION OF THE WORD "INCLUDE" AND ITS DERIVATIVES**

When followed by an example, the words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation."

## **SECTION 42. ORDER OF PRECEDENCE**

The parties shall attempt to construe the terms and conditions in the various documents comprising this Contract, in a manner that avoids conflict or inconsistency and in a manner that is supplementary or complementary in nature rather than in conflict. If, however, a conflict or inconsistency between the terms and conditions of the documents cannot be so avoided through such efforts, the conflict shall be resolved in accordance with the following descending order of priority:

- (a) The main body of this Contract
- (b) Exhibit A, Scope of Work

## **SECTION 43. PERFORMANCE OF ACTS ON BUSINESS DAYS**

Any reference in this Contract to time of day refers to local time in Nevada. Unless specifically stated to the contrary, all references to days herein refer to calendar days. Any reference herein to a “business day” refers to a day that is not a Friday, Saturday, Sunday or legal holiday for State of Nevada or CITY governmental offices. If the final date for payment of any amount due or performance of any act required hereunder falls on a Friday, Saturday, Sunday or legal holiday, that payment may be made or act performed on the next business day.

## **SECTION 44. COMMERCIALLY REASONABLE EFFORTS**

Reference in this Contract to the “commercially reasonable efforts” of a party means that, with respect to a given goal, the efforts that a reasonable person in the position of that party would use so as to achieve that goal as expeditiously as possible.

## **SECTION 45. COUNTERPARTS**

The CITY and the CONTRACTOR may execute the Contract in counterparts. Each of these counterparts, when signed and delivered, is deemed an original and, taken together, constitutes one and the same instrument.

## **SECTION 46. ATTORNEYS’ FEES**

If the prevailing party in an action to enforce this Contract is entitled to reasonable attorneys’ fees and costs.

## **SECTION 47. ESTIMATES AND PROJECTIONS**

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, CONTRACTOR has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and

maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Although CONTRACTOR makes no warranty that the CITY's actual project costs, financial aspects, economic feasibility, or schedules will not vary from CONTRACTOR's opinions, analyses, projections, or estimates for the foregoing reasons, CONTRACTOR agrees to perform and provide such opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects consistent with the professional skill and care that would be exercised by those who perform similar services in the commercial marketplace and in accordance with accepted industry practice.

**SECTION 48. ELECTRONIC SIGNATURES**

For purposes of this Agreement, signatures provided via facsimile, email, or other electronic medium shall have the same effect as original signatures.

**[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have executed and delivered this Contract as of the Effective Date.

Date of Council Action if applicable:   N/A  

CITY OF BOULDER CITY  
a Nevada municipal corporation

By:

\_\_\_\_\_  
NED THOMAS  
City Manager

ATTEST:

By:

\_\_\_\_\_  
TAMI MCKAY, MMC, CPO  
City Clerk

APPROVED AS TO FORM:

By:

\_\_\_\_\_  
BRITTANY WALKER  
City Attorney

CONTRACTOR  
WILSON ENGINEERS LLC.  
An Arizona limited liability company

\_\_\_\_\_  
Date

**EXHIBIT A**  
**SCOPE OF SERVICES**



1401 North Green Valley Pkwy, Ste 160  
Henderson, NV 89074  
Wilson-Engineers.com

May 1, 2025

Mr. Gary Poindexter  
City of Boulder City  
401 California Ave  
Boulder City, NV 89005

Re: Proposal for Nevada Way Reconstruction  
Staff Augmentation Construction Administration and Observation

Dear Mr. Poindexter:

Wilson Engineers is pleased to submit this proposal to the City of Boulder City to provide staff augmentation for construction administration and observation for the Nevada Way Reconstruction. This proposal includes services as outlined in attachment C1 scope of services

Our proposed scope of services is included in Attachment C1 and our fee breakdown is included in Attachment C2. In summary, our proposed fee breakdown is as follows:

· Time and Materials Fee Budget:	\$ 180,650
· <u>Reimbursable Expenses:</u>	<u>\$ 0</u>
· Total:	<u>\$ 180,650</u>

Our anticipated contract duration for this effort is 4 months. If you have any questions or comments, please feel free to contact me at 702-376-3795 or at [shane.cunningham@wilson-engineers.com](mailto:shane.cunningham@wilson-engineers.com).

## WILSON ENGINEERS

Shane  
Cunningham

Digitally signed by Shane Cunningham  
DN: cn=Shane Cunningham, o=Wilson  
Engineers, ou,  
email=scunningham@wilson-  
engineers.com, c=US  
Date: 2025.05.05 09:54:25 -0700

Shane Cunningham  
Southern Nevada Business Leader



**CITY OF  
BOULDER CITY**

**STAFF AUGMENTATION CONSTRUCTION  
ADMINISTRATION AND OBSERVATION**

**ATTACHMENT C1 - SCOPE OF SERVICES**

Project Title: Nevada Way Reconstruction

Boulder City Project Number: 20-1155-STR

Date: May 1, 2025

**SECTION 0100 - GENERAL**

The staff augmentation services to be provided under this scope shall include work related to the construction phases of the above referenced project as outlined by the following tasks. In general, the work consists of services as defined by the City's outline as provided (Reference APPENDIX A):

- A) Project Administration (Section 0200)
- B) Resident Representation (Section 0300)
- C) Documentation Management (Section 0310)
- D) Overall Schedule Review (Section 0320)
- E) Progress Schedule & 3 Week Look Ahead (Section 0330)
- F) Schedule Tracking Sheet & Real Time Review (Section 340)
- G) Correspondence & Submittal Management (Section 0350)
- H) Shop Drawing Management and Review (Section 0360)
- I) Request for Information (RFI) (Section 0370)
- J) Daily Inspection (Section 0380)
- K) QA Management and QC Verification (Section 0385)
- L) Special Inspection/ Survey (Section 0390)
- M) Weekly Progress Meetings (Section 0400)
- N) Monthly Summary Report / Files Update (Section 0500)
- O) Stored Materials and Samples (Section 0550)
- P) Payment Application Process (Section 0600)
- Q) Project Completion / Closeout (Section 0700)



(CONSTRUCTION MANAGER-Representative (CONSTRUCTION MANAGER)) acknowledges that the City may retain other consultants, engineering and otherwise, and that coordination between said consultants and CONSTRUCTION MANAGER may be necessary from time to time to ensure services herein performed are effective. CONSTRUCTION MANAGER agrees to provide such coordination as necessary within the scope of services contained herein.

#### **SECTION 200 – PROJECT ADMINISTRATION SERVICES DURING CONSTRUCTION**

CONSTRUCTION MANAGER Representative will conduct and in-house plan review with key team members and review drawings and construction documents for inconsistencies and historical shortcomings in the drawings, specifications and agency standards. Other key elements that will be reviewed and commented on include:

1. Limitations of access for work to be completed
2. Review of specified materials availability and compatibility
3. Review status and recommendations of soil reports, explorations/bores and plan alignment
4. Schedule and chair a meeting with stakeholders impacted or benefactors of the construction project
5. Review existing utilities, highlight critical crossings and review pot-hole information and recommend if additional investigations would be beneficial.
6. Review and check engineer's quantities and estimates for costs

#### **PRE-CONSTRUCTION CONFERENCE**

CONSTRUCTION MANAGER will chair and conduct a Pre-Construction Conference with the City, Contractor, and CONSTRUCTION MANAGER representatives. CONSTRUCTION MANAGER will prepare a general agenda recognizing all city topics and comments prepared as a guide for this scope of work and submit for review and approval by the city prior to issuance/distribution. The major items included in the Pre-construction conference will include but not be limited to : all company personnel and chain of command by organization, dispute resolution protocol, submittals, business license(s), digital / hard copy record keeping and protocol, utility contacts and requirements, construction sequence and key milestone dates, schedule, schedule updates, storage of equipment and materials, , environmental, traffic control, Laws and Police location, hospital location, news media, safety program and adherence, payment requirements and procedures, prevailing wage and certified payroll, partnering, and Value Engineering.

#### **Representation on Behalf of City**

CONSTRUCTION MANAGER shall consult with and advise City and act as its representative during construction.

CONSTRUCTION MANAGER shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s), or the safety precautions and programs incident to the work of Contractor(s).

CONSTRUCTION MANAGER efforts shall be directed toward providing a greater degree of confidence for the City that the completed work of Contractor(s) will conform to the Contract Documents, the CONSTRUCTION



MANAGER Representative shall not be responsible for failure of Contractor(s) to perform the work in accordance with the Contract Documents or Schedule.

On the basis of on-site examination of materials, equipment, and workmanship, CONSTRUCTION MANAGER shall keep City informed of the progress of the work, shall endeavor to guard City against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents. CONSTRUCTION MANAGER will notify contractor of defective work and document as necessary.

CONSTRUCTION MANAGER will attend all project meetings as needed during the pre- construction and construction period. CONSTRUCTION MANAGER will prepare an agenda for all meetings and prepare minutes following all meetings on behalf of the city.

### **SECTION 300 – RESIDENT/OBSERVATION SERVICES DURING CONSTRUCTION**

#### **A. General**

CONSTRUCTION MANAGER will be furnished contract documents and will act as directed by City, in order to assist observing performance of the work of the Contractor(s).

CONSTRUCTION MANAGER will provide project management and resident project observers, as the City agent, will act as directed by and under the supervision of City, and will confer with Construction management staff by the City. CONSTRUCTION MANAGER Representative's dealings in matters pertaining to the on-site work shall in general be only with City and Contractor, and dealings with subcontractors shall only be through or with full knowledge of Contractor. Written communication with City will be only through or as direct by City staff.

CONSTRUCTION MANAGER will serve as the liaison with Contractor, working principally through Contractor's superintendent and assist the superintendent with understanding the intent of the Contract Documents.

As required, obtain from City additional details or information necessary for the proper execution of the work.

#### **Duties and Responsibilities (Section 0310 – Section 0390)**

##### **Document Management**

CONSTRUCTION MANAGER will maintain a real time document management program (ProjectWise) to include all submittals and pertinent project data and documentation. CONSTRUCTION MANAGER Team members will be provided access to the web-based file management system, in order to access to pertinent files to review and respond within the timeframes allowed in the project specifications. A CONSTRUCTION MANAGER Representative will serve as the point of contact for all communication and coordination with the City's staff and Contractor representatives.

##### **Overall Schedule Review & 3 Week Look Ahead**

CONSTRUCTION MANAGER will review the schedule for compliance with the current construction contract. The schedule is to be considered a tool that the contractor uses for their scheduling activities.

**Correspondence, Submittals, Shop Drawings, Request for information and Samples**

CONSTRUCTION MANAGER representatives will receive and log all correspondence, submittals, shop drawings, request for information and samples for use during the project. All logs will be maintained on a daily and weekly basis for reporting and review at the weekly project meetings.

- a. Receive and log Shop Drawings and samples, which are furnished by Contractor.
- b. Coordinate Review of specified Shop Drawings with design engineer or city representatives, samples, test results, and other data that Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review shall not extend to means, methods, sequences, techniques or procedures of construction selected by Contractor(s), or to safety precautions and programs incident thereto.
- c. Advise Contractor or its superintendent immediately upon the commencement of any work requiring a Shop Drawing or sample submission if the products have not been submitted and reviewed. Stop work order will be coordinated with all staff on an as needed basis for this task.

**Daily Inspection/Resident Representation, Supervision and Special Inspections**

Review of Work, Rejection of Defective Work, Inspections, and Tests

- a. Conduct on-site observations of the work in progress to assist City in determining if the work is proceeding in accordance with the Contract Documents and that completed work will conform to the Contract Documents.
- b. Report to City and Contractor whenever CONSTRUCTION MANAGER or observer believe that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or does not meet the requirements of any inspections, tests or approval required to be made, or has been damaged prior to final payment; and advise if work should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
- c. Verify that all material tests and quality control functions are conducted as required by the Contract Documents and in the presence of the required personnel and that Contractor maintain adequate records thereof; observe, record, and report appropriate details relative to the test procedures and start-ups.

- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project; record the outcome of these inspections and report to City.
- e. Handle notifications of non-compliant work and log work accordingly until all work is compliant.

#### Interpretation of Contract Documents

CONSTRUCTION MANAGER shall issue necessary interpretations and clarifications of the Contract Documents; have authority as City's representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work there under, and make recommendations on all claims of City and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract documents pertaining to the execution and progress of the work. CONSTRUCTION MANAGER shall render all interpretations of decisions in good faith and in accordance with the requirements of the Contract Documents. Transmit to Contractor and City all clarifications and interpretations of the Contract Documents.

#### Changes

Consider and evaluate Contractor's suggestions for changes in Drawings or Specifications and report them with recommendations to the City. Evaluate and process all appropriate contract change order and/or value engineering recommendations.

#### Records

Maintain orderly files for correspondence, reports of job conferences, Shop Drawings and samples submissions, reproductions of original Contract Documents including all addenda, change orders, field orders, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretation of the Contract Documents, progress reports, and other Project related documents.

Prepare daily reports including digital photographs with proper labeling for recording Contractor's hours on the job site, weather conditions, data relative to questions of extras or deductions, list of visiting officials and representatives of manufacturers, fabricators, suppliers and distributors, daily activities, decisions, on-site equipment, subcontractors on-site, observations in general and specific observations in more detail as in the case of observing test procedures.

CONSTRUCTION MANAGER will Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment to the project site.

Maintain notes to be capable of verifying record drawing information for accuracy and completeness. Maintain a set of record drawings.

CONSTRUCTION MANAGER shall meet with any outside agencies that are stakeholders in this project and the contractor to make sure all project documentation is in compliance.

#### Reports

Furnish periodic reports as required by the progress of the work and Contractor's compliance with the reviewed progress schedule.

Consult with Contractor and city in advance of scheduled major tests, inspections or start of important phases of the work.

#### Survey

Collect survey data (location and elevation) of all project improvements using GPS for the purposes of asset management. For all below ground improvements, survey all points of inflection (horizontal or vertical), begin/end of pipe, boxes, vaults and all other improvements as necessary, prior to backfill.

#### **SECTION 0400 – Weekly Progress Meetings**

CONSTRUCTION MANAGER Representatives will schedule and Conduct weekly progress meetings including an advanced agenda submittal prior to the upcoming meeting, sign-in sheet, update and submit all submittal logs, and record all meeting and take accurate and comprehensive meeting notes.

All meetings will include an agenda item for schedule updates, conflicts, utilities coordination, traffic impacts, stakeholder interface and notices, and an overall project participation survey on a bi-weekly basis to maintain the highest level of service and communication throughout the project. The agenda shall include and reference all project "logs" including: RFI's, Submittal, etc.

All meetings shall be recorded, however once the meeting notes have been distributed and accepted by all the recording shall be deleted.

#### **SECTION 0500 – Monthly Summary Report, Files Update and Stored Materials, Samples**

CONSTRUCTION MANAGER Representatives will maintain a real time reporting system and prepare a summary report to highlight the performance and progress of the construction activities on a monthly basis. All files will be reviewed and reported for on time updates and a summary of all stored materials and or samples that are on site or outstanding will be formally reported.

This monthly activity is ongoing and part of the daily activities scope and accomplishments. The monthly summary activity is a part of the Consultants Quality Control and Assurance Program.

#### **SECTION 0600 - Review Contractor Payment Applications & Prevailing Wage/Labor Compliance**

Based on CONSTRUCTION MANAGER's team on-site observations, review all applications for payment and the

accompanying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to City, that the work has progressed to the point indicated, that, to the best of CONSTRUCTION MANAGER's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, and that payment of the amount recommended is due Contractor(s).

All payment applications must be on City supplied form and all items must match the Bid Documents.

Monitor certified payroll reporting, conduct employee interviews and prepare documentation to ensure Contractor's compliance with Nevada's labor laws and regulations, including prevailing wage requirements, apprenticeship utilization act and other project labor agreements as required.

#### **SECTION 0700 – Project Completion and Closeout**

CONSTRUCTION MANAGER will coordinate with the contractor's representatives in their preparation of a punch list/deficiencies list to be used to finalize the project and accept the work as complete.

CONSTRUCTION MANAGER will conduct an inspection to determine if the Project is complete based on the review of the contractors list and issue to Contractor a list of any observed items requiring completion or correction not included on their list.

Conduct final inspection in the company of City and Contractor and prepare a final list of items to be completed or corrected or make sure the contractor creates the necessary punch list if required by the contract.

Verify that all items on final list have been completed or corrected and confirm, that the Contractor has fulfilled all obligations there under so that ENGINEER may recommend, in writing, final payment to Contractor(s) and may give written notice to City and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed).

CONSTRUCTION MANAGER shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s)' or subcontractor(s)' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site(s) or otherwise performing any of the Contractor(s)' work.

CONSTRUCTION MANAGER will review the contractor's record drawings for completeness and provide 1 copy signed as part of the record drawings files for city records as part of project closeout. Record drawings will be coordinated with contractors' record drawings as required. All redlines shall be done on the drawing and not in the form of attachments to the plan set.

All files will be transferred to the City in electronic format only as part of the project turnover and closeout.

As part of this contract the Construction Manager shall review the final electronic file which will include the construction file and design file and make sure all information is present with no duplicates and certify the file for archiving.

#### **Limitations of Authority**

Except upon written instructions from the City:

- 1) Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
- 2) Shall not undertake any of the responsibilities of Contractor, subcontractors or Contractor's superintendent, or expedite the work.
- 3) Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents.
- 4) Shall not advise on or issue directions as to safety precautions and programs in connection with the work.

#### **SPECIAL SERVICES**

##### **Additional or Extended Services**

Additional services in connection with the Project, including services normally furnished by City and services not otherwise provided for in this scope of services.

- Material testing (QA) Services:

The Designated City Representative will schedule and coordinate with city's materials testing firm to perform the required material testing and laboratory services per the contract documents.

Quality Control testing, including items as listed but not limited to (Earthwork, concrete, masonry, trench and structure backfill, pavement base & surface) shall be completed by the contractor.

- Survey:  
Survey is to be completed by the Construction Contractor.

#### **APPENDIX A – City Provided scope of work Summary**

CONSTRUCTION MANAGER will:

- a. Receive all Documentation for the project
- b. Review project baseline schedule. If the contractor submits a schedule that does not match the contract documents, the schedule will be rejected and returned immediately noting cause of rejection. Construction

- cannot begin until a baseline schedule has been reviewed and released for use. CONSTRUCTION MANAGER nor the City will approve schedules, only review and release for Payment.
- c. Review progress schedules and 3 week look ahead schedules. If there has been no contract change, the calendar days must match the contract documents. If the contractor submits a schedule that does not match the contract documents, reject and return immediately with the cause for rejection noted. If the contractor submits a schedule that shows a completion date after the current contract completion date, immediately request a recovery schedule and notify the contractor that they are not in compliance with the contract documents.
  - d. Receive, review and return all submittals. – (14 calendar days) Review all submittals for compliance with the contract documents, if in compliance forward digital copy with comments and recommendation to the city for final review and approval. Once final review and approval by the city has been received respond back to the contractor as appropriate. If the submittal is not in compliance reject submittal and provide justification as to the rejection. Keep written copy and place digital copy in digital file.
  - e. Receive, Review and Return all RFI's – (14 Calendar Days) Review all RFI's and compare to contract documents. If proper information is available in the contract documents to provide a proper response, generate response and email to the City's designated project representative (CDPR) for review and final acceptance. If CONSTRUCTION MANAGER cannot generate a proper response based on the information in the contract documents, notify the CDPR immediately requesting direction. If the CDPR directs you to contact the design engineer, CONSTRUCTION MANAGER shall coordinate necessary communications to receive the response to the RFI in an expeditious manner. If the item must be sent to the design engineer, generate written correspondence notifying the contractor of such and provide written updates as to the progress of the RFI.
  - f. ALL RFI's must be answered within 14 calendar days.
  - g. Daily Construction Inspections and Observations:
    - 1. Inspect all construction activities daily, document all activities, workers, equipment, weather and any other related items for compliance with the contract documents.
    - 2. Take time and date stamped photo's showing work progress and all items inspected.
    - 3. Notify contractor for any items that are not in compliance with contract documents, any non-compliance work must be rectified the same day. Any work that is not rectified the same day CONSTRUCTION MANAGER must generate a non-compliance notice and distribute to all parties in person and via email.
    - 4. All non-compliance items generated from the construction activities as it relates to the contract documents shall be generated via a non-compliance form and distributed to the contractor/contract immediately and emailed to all parties.
    - 5. Coordinate city hired special inspections as required for the project. Receive and document all special inspections and review special inspections for compliance with the contract documents.
    - 6. Coordinate City Hired materials testing firms as required for the project. Receive and document all material reports and lab results and review for compliance with the contract documents.
    - 7. Coordinate City hired professional survey firm as required for this project. Receive all survey documentation and review all survey for compliance with the contract documents.

- h. Schedule and Administer Weekly Progress Meetings – ensure meeting attendees include: appropriate representatives from the City, contractors organization, subcontractors, utility companies (as required), emergency entities such as hospitals or fire departments (as required), other contracting authorities as necessary, create proper agenda for each meeting, record meeting, take notes, generate meeting notes, email notes and sign end sheet to everyone on sign in sheet. Meeting may be suspended by the city if requested and approved.
- i. Create Pay Application form as provided by the City
  1. Review contractor pay application forms
  2. If contractor payment request is acceptable, approve by signature and submit to the City for Payment. (5 calendar days max after receipt from the contractor)
  3. If contractor pay is not acceptable, redline payment application and return to the contractor with comments and reasons for the rejection. (5 calendar days max after receipt from contractor)
  4. If contractor does not re-submit a new payment application with in 5 calendar days max from return date, follow-up in writing and process the pay application as revised to meet current completion status.

***END SCOPE OF SERVICES***

TASK	DESCRIPTION	Construction Manager	Inspector	Hours Subtotal	Lump Sum Task Amounts
		\$ 250.00	\$ 190.00		
0100	General	0	0	0	\$ -
0200	Project Administration	32	0	32	\$ 8,000.00
0300	Resident/Business Representation	120	0	120	\$ 30,000.00
0310	Documentation Management	16	0	16	\$ 4,000.00
0320	Overall Schedule Review	8	0	8	\$ 2,000.00
0330	Progress Schedule & 3 Week Look Ahead	8	0	8	\$ 2,000.00
0340	Schedule Tracking Sheet & Real Time Review	0	0	0	\$ -
0350	Correspondence & Submittal Management	32	0	32	\$ 8,000.00
0360	Shop Drawing Management & Review	16	0	16	\$ 4,000.00
0370	Requests for Information (RFIs)	16	0	16	\$ 4,000.00
0380	Daily Inspection	0	560	560	\$ 106,400.00
0385	QA Management & QC Verification	16	0	16	\$ 4,000.00
0390	Special Inspection	0	0	0	\$ -
0400	Weekly Progress Meetings	12	0	12	\$ 3,000.00
0500	Monthly Summary Report / Files Update	3	0	3	\$ 750.00
0550	Stored Materials & Samples	0	0	0	\$ -
0600	Payment Application Process	6	0	6	\$ 1,500.00
0700	Project Completion / Closeout	12	0	12	\$ 3,000.00
<b>900</b>	<b>Total Hours</b>	<b>297</b>	<b>560</b>	<b>857</b>	
<b>900</b>	<b>Total Lump Sum Fee</b>	<b>\$ 74,250.00</b>	<b>\$ 106,400.00</b>		<b>\$ 180,650.00</b>