



EXHIBIT A:
CONTRACT FOR CONSTRUCTION MANAGER AT RISK (CMAR) PRECONSTRUCTION SERVICES FOR THE UNIVERSITY OF NEVADA, LAS VEGAS

This Contract ##### ("**Contract**") is made effective as of the date last signed below by any authorized signatory (the "**Effective Date**") by and between the Board of Regents of the Nevada System of Higher Education ("**NSHE**"), on behalf of the University of Nevada, Las Vegas ("**UNLV**") and (**INSERT NAME OF FIRM**), a [**INSERT STATE AND MANNER OF ORGANIZATION, E.G. CORPORATION, LIMITED LIABILITY COMPANY AND ANY DBA. THE NAME HERE MUST MATCH THE SIGNATURE BLOCK**], (**INSERT EIN**) ("**Contractor**"), and is based on the following facts:

RECITALS

On _____, 20__, UNLV issued its Request for Proposal No. _____ (the "**RFP**") seeking proposals from qualified contractors to provide Contractor at Risk ("**CMAR**") services in connection with the CMAR _____ (The "**Project**").

On _____, 20__, Contractor submitted a proposal ("**Proposal**") in response to the RFP.

On _____, 20__, Contractor submitted a fee proposal ("**Fee Proposal**") in response to the RFP.

On _____, 20__, UNLV selected Contractor to proceed with CMAR Preconstruction Services (defined below) for the Project pursuant to the criteria set forth in the RFP.

Based on the foregoing Recitals, and for other valuable consideration, the parties agree as follows:

AGREEMENT

ARTICLE I DEFINITIONS AND TERM

A. DEFINITIONS

1. "**Apprentice**" means a person enrolled in a Program.
2. "**Apprenticeship Utilization Act**" means the Apprenticeship Utilization Act which was passed by Senate Bill 207 (2019 Nev. State., ch 527, §1.7) and codified at Nev. Rev. Stat. §338.01165.

3. **“Apprentice Waiver”** means a waiver from the Labor Commissioner of an obligation under the Apprenticeship Utilization Act.
4. **“Calendar Day”** means any day of the year including weekends and holidays.
5. **“Contract Amount”** shall have the meaning set forth in Article III.
6. **“Contract Documents”** shall mean this Contract, together with all drawings, specifications, attachments, addenda, and exhibits, the RFP, and the Proposal (including all modifications, but not including any legal terms)
7. **“Good cause”** means: (1) There are no Apprentices available from a Program within the jurisdiction where the Project is to be completed; (2) Contractor or one of its subcontractors is required to perform uniquely complex or hazardous tasks on the public work that require the skill and expertise of a greater percentage of journeymen; or (3) Contractor or one of its subcontractors has requested Apprentices from a Program and the request has been denied or the request has not been approved within five (5) business days. The term does not include the refusal of Contractor or one of its subcontractors to enter into an apprenticeship agreement.
8. **“Program”** means an apprenticeship program recognized by the State Apprenticeship Council (as defined in Nev. Rev. Stat. §610.30) for the particular craft or type of work.
9. **“Project”** means the Project identified on the cover page as briefly summarized with any special requirements noted on Exhibit A.

A. INITIAL TERM

The Contract shall commence as of the Effective Date and remain in effect for one (1) year, unless otherwise terminated or extended in accordance with this Contract (**“Initial Term”** or **“Term”**).

B. CONTRACT EXTENSION

Without renewing the Term of this Contract, UNLV shall have the right to extend this Contract for up to ninety (90) calendar days from its expiration date of the then applicable Term for any reason. Should UNLV exercise its right to extend this Contract for ninety (90) days beyond the expiration of this Contract, Contractor shall be entitled to receive consideration as provided for in this Contract, pro-rated for the period for which UNLV requests additional services.

ARTICLE II SCOPE OF CONTRACT

Contractor shall provide the preconstruction services as further described below, in Exhibit A and in the RFP, along with those set forth in the Contractor’s Proposal to the extent not rejected by UNLV, (the **“Services”** or **“Preconstruction Services”**), which shall include any applicable Deliverable(s) and all materials, labor, equipment, tools and services to complete the scope of work contemplated herein, including preparation of the proposed Guaranteed Maximum Price (**“GMP”**). Preconstruction Services shall be completed on or before **Month Year** following issuance of the Purchase Order and Notice to Proceed.

In the event completion of the Preconstruction Services is not achieved by the date specified above, except as a result of delays for which the Owner is chargeable under the Contract Documents or from Unavoidable Delay, Contractor agrees that Owner shall have the right to deduct from any sums due to Contractor hereunder the sum of To Be Determined for each day that completion of the Preconstruction Services is actually delayed, provided, however that (i) Owner may commence to make such deductions prior to the scheduled date of completion of the Preconstruction Services in the event Owner reasonably projects that the Project will not be completed on the scheduled date of completion of the Preconstruction Services and (ii) Contractor shall pay to Owner in cash any amounts which Owner is entitled to deduct in the event the remaining amount of funds due hereunder is less than the amounts Owner has the right to deduct. Owner and Contractor agree and acknowledge that (i) Owner's actual damages for the failure of completion of the Preconstruction Services would be substantial but extremely difficult to ascertain and (ii) such sum represents a fair and reasonable estimate of the costs Owner will incur as a result of such late achievement of completion of the Preconstruction Services and is not intended as a penalty.

"Unavoidable Delay" means delays due to any of the following, and only the following, (provided that such delay is beyond Contractor's reasonable control): war, insurrection, civil commotion, strikes, slowdowns, lock outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, acts of terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental moratoriums, unusually severe or abnormal weather conditions, failure of utilities, or a court order which means a delay (unless resulting from a wrongful act of Contractor.) In no event shall the application to Contractor of any applicable law, regulation, rule or other governmental requirement constitute an Unavoidable Delay. Contractor shall use reasonable good faith efforts to notify Owner not less than five (5) days after Contractor knows of the occurrence of an Unavoidable Delay. An extension of time for an Unavoidable Delay shall only be for the period of the Unavoidable Delay, which period shall commence to run from the time of the commencement to the cause of the Unavoidable Delay.

This Contract, together with all attachments, addenda, and exhibits, the RFP, and the Proposal (including all modifications, but not including any legal terms), constitutes the entire agreement between the parties and supersedes all previous agreements, whether written or oral between the parties with respect to the subject matter hereof, whether express or implied and shall bind the parties unless the same be in writing and signed by the parties. The parties further understand and agree that the other party and its agents have made no representations or promises with respect to this Contract, except as in this Contract expressly set forth. In the event of conflict among any of the terms and conditions set forth in any of the preceding documents, the terms and conditions of such documents shall govern in the following order of precedence: (1) this Contract, (2) the RFP, (3) the Proposal (including all modifications, but not including any legal terms and conditions. Contractor agrees to be bound by any warranties and representations made by Contractor in the Proposal and shall notify UNLV immediately if there are any material changes to the warranties and representations set forth by Contractor in its Proposal, as applicable. This Contract incorporates the following documents by reference: the RFP, the proposal, and the Fee Proposal.

The Contractor assumes overall responsibility for ensuring that the Preconstruction Services are completed in a satisfactory manner.

Contractor's Preconstruction Services include, but are not limited to, the following:

General Obligations

Contractor shall comply with the duties and powers of CMAR in accordance with Nevada Revised Statutes (“**NRS**”) Chapter 338 and Nevada Administrative Code (“**NAC**”) Chapter 338, including NRS §338.16985.

Contractor shall make all submissions required by NRS Chapter 338 and NAC Chapter 338.

Contractor shall organize and manage regularly scheduled meetings to apprise UNLV and its architect of the progress of the Project and to discuss any issues with constructability, construction cost, scheduling or any other related matter.

Contractor shall provide UNLV with Contractor’s proposed site use plan, including construction staging, operations, and parking that affects the site/adjacent sites or UNLV’s use of the site/adjacent site in any way.

Contractor shall develop proposed schedules and prepare construction cost models/estimates. Schedules and cost estimates shall be updated as the Project design is further developed (at a minimum upon completion of the schematic design, design development and fifty percent (50%) of the construction documents). All preliminary cost estimates shall reflect local market and relevant cost data and projections for all Project elements and cost backup for major Project and systems elements. The cost estimate shall have a direct link to, and basis in, local market costs and local market expertise, and shall provide for labor, materials and other construction elements. Based on the Project scope intent, all preliminary cost estimates shall include an allowance for all items to deliver the Project scope intent, including a cost estimate to deliver a fully functional, constructible and code compliant facility. All cost estimates shall include amounts required to comply with the prevailing wage requirements. Cost estimates shall be in the Construction Specifications Institute (CSI) 16 Division format, with sufficient backup detail.

Contractor shall make recommendations with respect to constructability and value engineering at each phase of the design including upon completion of one hundred percent (100%) of the construction documents.

Contractor shall provide reasonable investigation and verification of existing conditions with design team and owner to ensure complete and accurate documents.

Plan reviews shall be completed by a qualified project superintendent with field experience, along with other contractor personnel as determined to ensure complete and accurate documents and thorough GMP.

Contractor shall verify lead times of equipment and material to ensure compliance with schedule requirements.

In development of the GMP the contractor shall pre-qualify subcontractors, create bid packages, and ensure all areas and scope of the project are included as best as possible. Bid packages shall be provided to owner and design team for comment.

Contractor shall cooperate with UNLV in providing the Services and will be available to UNLV for consultation.

Key Personnel

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during all performance of the work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be binding as if given to the Contractor. The Contractor shall also employ a Project manager who represents the Contractor in the overall planning, execution and closing of the Project, including but not limited to observing all constraints related to the cost, timing and scope of the Project. The Contractor shall also designate a Project executive who will serve as an Executive Contractor representative for the Project and a safety director who will be a primary contact for the Owner regarding Project safety.

The Contractor, as soon as practicable, shall furnish in writing to UNLV the names and qualifications of the proposed Project executive, safety director, superintendent and Project manager. Within fourteen (14) days of receipt of Contractor's notice, either (1) UNLV or its architect will notify Contractor that they have reasonable objections to the proposed superintendent, Project executive, safety director and/or Project manager, or (2) that UNLV or its architect require additional time for review of Contractor's proposed key personnel. Failure of UNLV or its architect to reply within the fourteen (14) day period shall constitute notice of no reasonable objection and acceptance of Contractor's proposed key personnel.

The Contractor shall not employ a Project executive, safety director, superintendent or Project manager to whom UNLV or its architect have made reasonable and timely objection. The Contractor shall not change the Project executive, safety director, superintendent or Project manager without UNLV's consent, which shall not be unreasonably withheld or delayed. The parties recognize that in the event Contractor changes the Project executive, safety director, superintendent and/or Project manager without the consent of UNLV, UNLV may incur additional expenses and delay that will be difficult or impossible to quantify. UNLV reserves the right to withhold reasonable payment from the Contractor where Contractor changes the key personnel without UNLV's consent. In the event of unforeseen circumstances, such as termination, resignation, death or serious illness which precludes the identified personnel from carrying out his or her duties and that requires a change in such personnel, Contractor shall contact UNLV immediately to determine the necessary adjustments. The Contractor's key personnel for the Preconstruction Services are:

[INSERT NAME, ADDRESS AND OTHER INFORMATION.]

Project Executive:

Project Manager:

Superintendent:

Safety Director:

Owner and Contractor agree and acknowledge that (i) Owner's actual damages as a result of Contractor's unauthorized changes to Contractor's key personnel would be substantial but extremely difficult to ascertain and (ii) such sum represents a fair and reasonable estimate of the costs Owner will incur as a result of Contractor's unauthorized changes to Contractor's key personnel.

For all Preconstruction Services and for all phases of the Project, Contractor shall comply with all UNLV Project planning, design, sustainability, operations and procedures standards, and will not

deviate from such standards unless agreed in writing by the Executive Director of Planning and Construction.

Preparation of GMP Proposal

The Parties acknowledge and agree that in accordance with the NRS a separate contract with a Guaranteed Maximum Price (**GMP**) will be required for performance of the construction services (the “**Construction Contract**”). Notwithstanding the foregoing, UNLV is not obligated to enter into a Construction Contract with Contractor.

Once the design for the Project is sufficiently complete to determine cost, Contractor shall prepare and submit a proposed GMP that includes the total cost of work plus the CMAR fee. The Contractor affirms that the Guaranteed Maximum Price shall be considered a firm offer for a period of one hundred twenty (120) calendar days from the day it is submitted to Owner. The proposed GMP shall include all allowable costs required to complete the construction of the project in accordance with the designs and specifications. Contractor shall include in the GMP proposal, for Owner's approval, the design completion schedule and construction schedule for the work, including the dates for Substantial and Final Completion of the work. The GMP shall include all of the Contractor's and all of the subcontractor's costs necessary to accomplish the scope, systems, kinds and quality of materials, finishes, equipment and other items defined in the drawings and specifications, including those that may not be fully and/or technically represented in the final drawings and specifications, to deliver a fully functional, constructible and code compliant facility. The GMP shall include a statement of the estimated costs that is organized by trade categories, allowances, contingency, and other items and the Fee that comprise the GMP, in a 16 Division Construction Specifications Institute (CSI) format. Attached to this statement must be a proposed Schedule of Values.

Prior to execution of the Construction Contract, Contractor shall submit a list (substantially in the form of Exhibit B) of all first tier Subcontractors who will provide labor or a portion of the work to the Contractor for which such subcontractor will be paid an amount equal to one percent (1%) or more of the GMP or fifty thousand (\$50,000.00) dollars, whichever is greater. Such list shall set forth the name of the subcontractor, a description of the portion of work to be performed, and the subcontractor's Nevada State Contractors Board license number. The Contractor shall also list any portion of the work which is one percent (1%) or more of the GMP or fifty thousand (\$50,000.00) dollars, whichever is greater, that the Contractor intends to self-perform.

Concurrent with the Proposed GMP submittal, Contractor shall submit a list (substantially in the form of Exhibit B and Exhibit C) of all classes of mechanics and workers necessary to complete the work and shall set forth the hourly and daily wage rates of each class. The rate for each class shall not be less than the current Office of the Nevada Labor Commissioner prevailing wage rate for such class. Such list shall be incorporated into any final negotiated Construction Contract in accordance with the requirements of NRS §338.020.

Subcontractors

Contractor may enter into a contract with a subcontractor to perform Preconstruction Services permitted by NRS §338.16935 in accordance with the requirements thereof.

As part of the Preconstruction Services, Contractor shall advertise for and select, in accordance with the applicable provisions of NRS Chapter 338 and NAC Chapter 338, the subcontractors required to complete the construction of the Project. Contractor acknowledges that it must comply

with all of the requirements of NRS §338.16991 and NRS §338.1695 as well as the requirements of the NAC.

Contractor shall advise UNLV and designer of all planned pre-bid, bid, and solicitations, including terms, conditions, contract forms, schedules, bid packages, and other items for Owner's review and comment. Owner will ensure (1) determination of qualifications is made subject to the provisions of NRS §338.16991 and (2) evaluation of proposals and selection of subcontractors are done pursuant to the provisions of NRS §338.16995 and the regulations adopted by the State Public Works Board. Contractor shall confer with UNLV to establish potential bidder lists to be included in the advertised solicitation.

All bids shall be received by the Contractor and shall be reviewed privately with the Owner and architect present. Contractor shall utilize an electronic bid system that ensures parity, consistency of bids, and documentation of date and time bids are received to show compliance with advertisement for bids.

Contractor shall ensure that all proposed subcontractors are properly qualified to perform their portion of work.

Prior to receiving or accepting any payment, each subcontractor must have a valid Nevada business license, pursuant to NRS 338.072.

Contractor shall comply with all of the provisions of NRS §§338.020-338.090, inclusive.

Within ten (10) days of opening the subcontractor proposals, Contractor shall provide UNLV with a list of the selected subcontractors. Contractor shall not substitute any person for itself or a subcontractor who is named on the required list(s) except as provided pursuant to NRS §338.16995.

Additional Scope

UNLV may, at its sole option, develop additional job-specific scopes of work ("**Scopes of Work**" or "**SOW**"). In the event that UNLV elects to request additional services from Contractor, additional scope, schedule, and compensation based on the hourly rates set forth in Exhibit C will be negotiated with Contractor. Nothing in this Contract shall be construed as guaranteeing Contractor that any additional Scopes of work will be actually requested.

ARTICLE III CONSIDERATION

The amount to be paid to Contractor for work performed under this Contract shall not exceed [**\$X,000,000.00**], inclusive of all Contractor prices and expenses. Attached as Exhibit B and Exhibit C is a list of the personnel by class/title who will perform the Services, the anticipated hours of involvement, and the billable hourly rate.

The amounts shown above are fixed and shall not be exceeded unless mutually agreed upon through a change order and revision of the purchase order.

All payments shall be made within thirty (30) days of acceptance of the related invoice. Should the acceptance of such invoices be in doubt, Contractor shall not be due any interest or penalty on any unpaid amounts.

Pursuant to NRS, any contract for construction work for which the estimated cost exceeds one hundred thousand dollars (\$100,000) shall be subject to the provisions of the Prevailing Wage Act, including but not limited to payment of prevailing wages, regardless of whether the construction work qualifies as a "public work" as defined by NRS. In accordance with NRS, Contractor agrees that if the Contract Sum at any time equals or exceeds one hundred thousand dollars (\$100,000), the Project is subject to the prevailing wage requirements under Nevada Law and the requirements of this Section 3. If one (1) or more Change Order(s) causes the Contract Amount to exceed one hundred thousand dollars (\$100,000), the Contractor and each subcontractor shall be obligated to pay prevailing wages retroactive to the commencement of work on the Project. Contractor is solely responsible for any retroactive payments of prevailing wage and shall not pass the cost on to Owner. Contractor agrees to comply with the Prevailing Wage Act and all other provisions of NRS that are applicable to the Project.

A. **Rates.** Contractor shall ensure that all employees on the Project are paid, at minimum, the prevailing wages established by the State Labor Commissioner. Prevailing Wages Rates for Clark County must be used. See Office of the Labor Commissioner Website at www.labor.nv.gov. Click on Prevailing Wage, then Prevailing Wage Rates by County, and then click on Clark to view or print the Prevailing Wage rates for this Project.

B. **Contractual Provisions.** Contractor shall include the substance of the prevailing wages requirement of this Section 3 as contractual language in all contracts and lower tier subcontracts. In addition, all solicitations and contracts shall contain the applicable prevailing wage rates.

C. **Records.** Contractor shall keep accurate records showing the name, occupation and actual per diem wages paid to each employee used in connection with construction of the improvements. Such records shall be open to inspection and reproduction by the Owner during normal business hours. Contractor will send one (1) electronic copy of each wage report to Owner's Project Manager using LCPTTracker. Contractor shall, and shall ensure that each subcontractor does, timely submit to OWNER the electronic reports required under NRS 338.070(6) using LCPTTracker.

D. **Subcontractors.** Contractor shall report to the Labor Commissioner and the Owner the name and address of each subcontractor performing work on the Project within ten (10) days after the subcontractor commences work on the Project and the identifying (PWP) number for the public work.

E. **Penalties.** Contractor shall monitor and ensure compliance to the payment of prevailing wages and submission of reports. Failure to comply with the requirements shall result in the penalties set forth in NRS and the NAC.

1. Contractor shall forfeit as a penalty to the Owner, amounts required by NRS 338.060, for each Calendar Day or portion thereof that each worker employed on the Owner's Project is paid less than the designated rate for any work done under the contract by the Contractor or any subcontractor under it.
2. Contractor shall forfeit as a penalty to the Owner, amounts required by NRS 338.060, for each calendar day or portion thereof for each worker employed on the Owner's Project for which the Contractor or subcontractor willfully included inaccurate or incomplete information

in the monthly record required to be submitted to the public body pursuant to subsection 6 of NRS 338.060.

3. Contractor shall forfeit as a penalty to the Owner, amounts required by NRS 338.060, for each calendar day or portion thereof that each worker employed on the Owner's Project is not reported to the public body awarding the contract by the contractor or any subcontractor engaged on the public work as required pursuant to subsection 6 of NRS 338.060.

4. If a violation of more than one (1) provision of Sections 1, 2 or 3 of this Contract involves the same worker, the Contractor shall forfeit the penalty set forth in each Section that was violated.

5. Posting. Pursuant to NRS 338.20(1)(b), Contractor shall post the hourly and daily wages in a generally visible place to the workers.

6. Changes in law. This Section 3 shall be deemed to incorporate any future modifications to the NRS or NAC with respect to prevailing wage requirements that are applicable to the Nevada System of Higher Education.

ARTICLE IV DEFAULT

A. DEFAULT BY CONTRACTOR

UNLV shall provide Contractor written notice of any material breach of this Contract. Should Contractor fail to cure such material breach within ten (10) business days following receipt of written notice, UNLV shall have the right at its sole discretion, in addition to all other applicable remedies at law or in equity, to terminate further performance of this Contract. On the effective date of the termination, Contractor shall terminate all work and take all reasonable actions to mitigate expenses, and Contractor shall immediately refund UNLV a pro-rata amount of any advance or prepaid unearned monies. In case of default by Contractor, the UNLV reserves the right to hold Contractor responsible for any actual or incidental damages.

B. DEFAULT BY UNLV

Contractor shall provide UNLV written notice of any material breach of this Contract. Should UNLV fail to cure such material breach within ten (10) business days following receipt of written notice, Contractor shall have the right, in addition to all other applicable remedies at law or in equity, to terminate further performance of this Contract. Notwithstanding the foregoing, on the date of termination for a material breach by UNLV, Contractor shall terminate all work and take all reasonable actions to mitigate expenses. Notwithstanding anything to the contrary herein and regardless of choice of law, UNLV hereby asserts and shall be entitled to claim sovereign immunity and be entitled to all applicable liability limits and statutory protections, including, but not limited to those set forth in NRS Chapter 41.

ARTICLE V INSURANCE, LIABILITY & INDEMNIFICATION

A. INSURANCE

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor as primary insured shall, at Contractor's sole expense procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by the Owner the required insurance shall be submitted to the Owner and accepted prior to the execution of this Contract or any work being completed by Contractor, whichever occurs first. Such insurances must remain in force and effect until the later of: (1) final acceptance by the Owner of the completion of the work in this Contract, or (2) such time as the insurance is no longer required by the Owner under the terms of the Contract.

1. **Commercial General Liability Insurance.** Coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 10 01 and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract. Explosion, collapse and underground coverage shall not be excluded.

2. **Umbrella/Excess Liability Insurance.** Coverage shall be in the amounts as follows:

\$5,000,000 each occurrence/aggregate and must be Project specific/dedicated limit for construction contracts between \$1,000,001 and \$5,000,000 or:

\$10,000,000 each occurrence/aggregate and must be Project specific/dedicated limit for construction contracts over \$5,000,000.

May be used to achieve the above minimum liability limits.

Shall be endorsed to state it is as broad as primary policies.

3. **Automobile Liability Insurance.** Coverage in the amount of \$1,000,000 Combined Single Limit per occurrence. Coverage shall include owned, non-owned, and hired vehicles and be written on ISO form CA 00 01 10 01 or a substitute providing equal or broader liability coverage.

4. **Employers Liability.** Limits shall be at least \$100,000 per occurrence and for occupational disease. workers' Compensation is required by law for anyone with employees. Sole proprietors and corporate officers can waive coverage with mandatory affidavit available from Owner. Contractor providing services shall provide proof of workers' Compensation insurance as required by NRS §616B.627 or proof that compliance with the provisions of NRS Chapter 616A-D and all other related chapters, is not required.

5. **Pollution Liability.** If applicable, the minimum limit of liability required will be \$5,000,000 per occurrence/aggregate if this coverage is required.

6. **Builders Risk. Intentionally Omitted**

7. **Hazards.** The Contractor shall purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

General Requirements. Each insurance policy shall conform to the below listed requirements:

1. Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
2. Currently rated by A.M. Best as A - IX or better.
3. Be endorsed to provide ten (10) days' notice for non-payment of premium

Additional Insured. The Board of Regents of the Nevada System of Higher Education must be named as an Additional Insured on all primary and excess / umbrella liability policies (excluding professional liability) affording the broadest possible coverage. Endorsements shall be submitted to allow blanket addition as required by contract or individualized endorsement naming the Owner as an additional insured.

Primary Policy. Parties contracting directly with the Owner must have their policy endorsed to reflect that their insurance coverage is primary over any other applicable insurance coverage available. Any insurance or self-insurance available to the Owner shall be in excess of and non-contributing with any insurance required.

Loss Payee: The Board of Regents of the Nevada System of Higher Education on behalf of Owner shall be named as loss payee as respects their interest in any property that the Contractor has an obligation to insure on behalf of Owner.

Evidence of Insurance. Prior to the start of any work, the Contractor must provide the below listed documents to Owner:

1. Certificate of Insurance: The ACORD 25 Certificate of Insurance form or a form substantially similar must be submitted to the Owner to show evidence the insurance policies and coverage required of the Contractor.
2. Additional Insured Endorsement: Original Additional Insured Endorsement(s) signed by an authorized insurance company representative(s).
3. Endorsement reflecting Contractor insurance policies are primary over any other applicable insurance.
4. Loss Payee Endorsement

Obligations. Contractor shall do the following;

1. Have each of their insurance policies endorsed to provide ten (10) days' notice for non-payment of premium;
2. Specify that the policies cannot be cancelled, non-renewed, coverage and/or limits reduced or coverage materially altered that can effect Owner without sixty (60) days prior written notice to Owner and the notices required by this paragraph shall be sent by certified mail to Owner;
3. Send to the Owner a facsimile copy of the policy cancellation and/or change of policy and conditions notice in this paragraph to the Owner within three (3) business days upon their receipt;
4. Provide a copy of each policy and the loss history therefor upon request of Owner.
5. Until such time as the insurance is no longer required by the Owner, Contractor shall provide Owner with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance.
6. If at any time during the period when insurance is required by this contract, an insurer or surety shall fail to comply with the requirements of this contract, as soon

as Contractor has knowledge of any such failure Contractor shall immediately notify Owner and immediately replace such insurance or bond with insurance or bond meeting the contract's requirements.

B. OFFICIALS, OFFICERS, AGENTS, REGENTS AND EMPLOYEES OF NSHE/UNLV NOT PERSONALLY LIABLE

In no event shall any official, officer, regent, employee, or agent of NSHE/UNLV in any way be personally liable or responsible for any obligation contained in this Contract, whether expressed or implied, nor for any statement, representation or warranty made or in connection with this Contract.

C. INDEMNIFICATION; DISPUTE RESOLUTION

Contractor shall indemnify, defend and hold harmless NSHE/UNLV, its officers, regents, employees, and agents from and against any and all liabilities, claims, losses, demands, actions, causes of actions, fines, penalties, debts, lawsuits, judgments, costs and/or expenses, arising either directly or indirectly from any act or failure to act by Contractor or any of its officers, employees, agents, or Subcontractors, which may occur during or which may arise out of the performance of this Contract (collectively, "Claim(s)"). NSHE/UNLV will be entitled to employ separate counsel and to participate in the defense of any Claim at its sole discretion and expense. Contractor shall not settle any Claim or threat thereof without the prior written approval of NSHE/UNLV, whose consent shall not be unreasonably withheld, where the settlement would require payment of funds by NSHE/UNLV or admit or attribute to NSHE/UNLV any fault or misconduct.

In any and all claims against Owner, or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under workers' Compensation Acts, disability benefit acts, or other employee benefit acts.

Obligations of the Contractor shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist. This indemnification obligation shall not be diminished or limited in any way to the total limits of insurance required in this Contract or otherwise available to the Contractor or Subcontractors.

Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to initiation of judicial action. If a demand for mediation is made and the party receiving the demand fails to file for mediation within thirty (30) days, then both parties waive their rights to mediate. Any applicable statutes of limitation or repose, and any time limits imposed by this provision, shall be tolled from the time notice of any claim is given, until thirty (30) days after mediation is concluded or waived in writing. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE VI MISCELLANEOUS PROVISIONS

A. APPROPRIATIONS

The terms of this Contract are contingent upon sufficient appropriations and authorizations being made by UNLV for the performance of this Contract. If sufficient appropriations and authorizations are not made by UNLV, this Contract shall terminate, without penalty, upon thirty (30) calendar days' written notice being given by UNLV to Contractor, and Contractor shall immediately refund UNLV any pre-paid or advance unearned payments it made to Contractor.

B. ASSIGNS AND SUCCESSORS

Contractor shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the prior written consent of UNLV. Notwithstanding the foregoing, Contractor shall be fully responsible to UNLV and shall indemnify UNLV for any acts or omissions of any Subcontractors hired by Contractor, regardless of whether UNLV consented to the use of any such Subcontractors.

C. LEGAL COMPLIANCE

Contractor warrants and agrees that it will at all times during the Term(s), comply with all applicable local, state and federal standards, codes, statutes and regulations, including, but not limited to, OSHA, EPA, ADA, HIPAA, and provide upon request, proof of compliance with the foregoing.

Each contractor, subcontractor and other person who provides labor, equipment, materials, supplies or services for the public work shall comply with the requirements of all applicable state and local laws, including, without limitation, any applicable licensing requirements and requirements for the payment of sales and use taxes on equipment, materials and supplies provided for the public work. Contractor agrees to insert this provision in contracts it may have with any subcontractor or other person who provides labor, equipment, materials, supplies or services for the Project.

Contractor and each subcontractor must comply with the applicable requirements of NRS Chapter 338 and NAC Chapter 338. To the extent a provision of this Contract is prohibited by NRS Chapter 338 and/or NAC Chapter 338, it is hereby deemed modified to the extent necessary to comply with the provisions of NRS Chapter 338 and/or NAC Chapter 338. To the extent a provision is required to be inserted into this Contract by NRS Chapter 338 and/or NAC Chapter 338, it is deemed inserted.

D. CONFIDENTIALITY

Contractor acknowledges and agrees that it is to keep all confidential information secure and is not to disseminate or use any materials and/or data that belongs to UNLV, whether originals or copies. Contractor acknowledges that UNLV would be materially harmed if such confidentiality is not maintained and any referenced material and/or data was disseminated in any form without UNLV's prior written approval.

E. DEBARMENT/SUSPENSION STATUS

By signing the Contract, Contractor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice of proposed debarment from any state agency or local public body. Contractor agrees to

provide immediate notice to UNLV in the event of being suspended, debarred or declared ineligible by any state or federal department or agency, or upon receipt of a notice of proposed debarment during the Term of this Contract.

1. EQUAL EMPLOYMENT OPPORTUNITY

UNLV is an Equal Opportunity/Affirmative Action educator and employer committed to achieving excellence through diversity. By signing this Contract, Contractor certifies that it and its Subcontractors do not discriminate against any employee or applicant for employment or person to whom it provides services because of race, sex, color, creed, ethnicity, religion, age, marital status, pregnancy, gender, gender identity, gender expression, genetic information, veteran's status, national origin, physical or mental disability, or any other factor protected by anti-discrimination laws, and that it complies with all applicable federal, state and local laws and executive orders regarding employment. In the event Contractor or its Subcontractors are found guilty by an appropriate authority to be in violation of any such federal, state, or local law, UNLV may declare Contractor in breach of this Contract and immediately terminate this Contract, and Contractor shall immediately refund UNLV any prepaid or advance unearned monies that UNLV paid to Contractor.

In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, 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 Contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

F. GOVERNING LAW

The parties agree that the laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this Contract, excluding any laws or principals regarding the conflict or choice of laws. Any and all disputes arising out of or in connection with this Contract shall be litigated in a court of competent jurisdiction in Clark County, State of Nevada, and Contractor expressly consents to the jurisdiction of said court.

Contractor and each subcontractor must comply with the applicable requirements of Nevada Revised Statutes ("NRS") and Chapter 338 and Nevada Administrative Code ("NAC") Chapter 338. To the extent a provision of this Contract is prohibited by NRS or NAC Chapter 338 it is hereby deemed modified to the extent necessary to comply with the provisions of NRS or NAC Chapter 338. To the extent a provision is required to be inserted into this Contract by NRS or NAC Chapter 338 it is deemed inserted.

G. HEADINGS AND INTERPRETATION

The headings in this Contract are for purposes of convenience and reference only and shall not in any way define, limit, extend or otherwise affect the meaning or interpretation of any of the terms hereof. The words "will" and "shall" denote a mandatory requirement or obligation. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Contract shall refer to this Contract as a whole and not to any particular. The words "including," "including

without limitation,” and words of similar import shall not be deemed restrictive but rather shall be deemed illustrative examples.

H. INDEPENDENT CONTRACTOR

The Parties agree that the Contractor is an independent contractor and that this Contract is entered into in accordance with NRS §333.700, which statute provides in pertinent part that the Contractor is not an employee of Owner and that there shall be no: withholding of income taxes by Owner; industrial insurance coverage provided by Owner; participation in group insurance plans which may be available to employees of Owner; participation or contribution by either the independent contractor or Owner to the Public Employees Retirement System; accumulation of vacation leave or sick leave; or unemployment compensation coverage provided by Owner if the requirements of NRS §612.085 for independent contractors are met. It is further agreed that Contractor is not an employee of Owner and is not entitled to any of the compensation, benefits, rights, or privileges of employees of Owner.

Contractor covenants and agrees to save and hold harmless UNLV from and against any and all damages, claims, costs or expenses whatsoever, due to the existence of any applicable labor/employment codes, ordinances, and of any and all claims, costs and expenses in connection therewith under any claim or subrogation provided by said applicable codes, ordinances or otherwise.

I. MODIFICATION

No alteration, modification, amendment, or supplement to this Contract or any of its provisions shall be effective, enforceable or binding unless made in writing and duly signed by the parties.

J. NOTICES

Written notices required under this Contract shall be sent certified mail, return receipt requested, to:

UNLV as follows: Director of Purchasing and Contracts
University of Nevada, Las Vegas
4505 S. Maryland Parkway
Las Vegas NV 89154-1033

Contractor as follows:

(INSERT NAME AND ADDRESS OF CONTRACTOR)

K. OWNERSHIP OF MATERIALS

By signing this Contract, Contractor acknowledges that any materials and/or UNLV customer/user data that may result from its efforts, as related to this Contract, are the property of UNLV and, as such, may not be disseminated in any form whatsoever to any person, group or organization without the prior written authorization of UNLV. As applicable, Contractor shall provide good title

to any applicable Deliverable(s), and Contractor shall execute any additional documents necessary to secure or renew UNLV's rights in and to any applicable Deliverable(s). Contractor warrants that it is either the owner of all methodologies used and/or Deliverable(s) transferred/licensed (as applicable) hereunder or that it has all appropriate licenses or permissions necessary to perform the Services and/or transfer/license the Deliverable(s) (as applicable).

Contractor acknowledges and agrees that the Deliverable(s), for purposes of copyright law, are deemed a "work made for hire" basis as so defined within the meaning of the Copyright Act (Title 17 of the United States Code) and that, as between Contractor and UNLV, the Deliverable(s) and all reproductions thereof shall be the sole and exclusive property of UNLV free from any claims by Contractor or anyone deriving rights through them. Contractor hereby grants, sells, assigns, and transfers unto UNLV, its successors, and assigns all and any of Contractor's interest, right, title, and other intellectual property rights without limitation in and to the Deliverable(s), as well as the right to secure and renew any applicable copyrights in the original and in all derivative works in the United States and all other countries of the world, the right to redistribute the Deliverable(s) in any form and the right to sue for past, present, and future infringement of such rights, in the name of UNLV. If, for any reason, the Deliverable(s) are not deemed to be a "work made for hire," this Contract shall operate as an irrevocable assignment of all rights thereto to UNLV, its successors, and assigns. And if for any reason the Deliverables are not designated as an assignment or a "work made for hire" then Contractor grants to UNLV, its successors, and assigns, a perpetual, exclusive, royalty-free, license to use, copy, make and redistribute the Deliverable(s) throughout the universe.

L. TAXES, LICENSES AND PERMITS

It is the Contractor's responsibility to secure all required licenses, permits, franchises, lawful authority and insurance necessary for the proper execution and completion of the Services to be performed hereunder. Contractor warrants and agrees that it is, and shall remain for the duration of this Contract, a duly organized, validly existing entity, in good standing, with all the requisite power, permissions, licenses, permits, franchise, insurance and authorities necessary to provide the goods and/or Services.

Contractor shall pay all taxes, levies, duties and assessments of every nature, which may be applicable to any work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Contractor shall make any and all payroll deductions required by law. Contractor herein indemnifies and holds Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

Companies conducting business for profit in Nevada are required to have a current Nevada business license pursuant to NRS 76.100(1) unless the entity is either a) a non-profit corporation or b) meets the requirements for an exemption and has filed the appropriate notice of exemption with the Nevada Secretary of State. Contractor certifies that it has a current Nevada business license or it is exempt and agrees to provide immediate notice to UNLV in the event the license is no longer valid.

M. PATENTS AND ROYALTIES

The Contractor shall hold and save Owner and his officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance

of the Contract, including its use by Owner, unless otherwise specifically stipulated in the Contract Documents. If the Contractor uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that without exception, the Contract Amount shall include all royalties or costs arising from and the use of such design device or materials, in any way involved in the work.

N. PUBLIC RECORDS

This Contract is a public record and is subject to disclosure without notification pursuant to a valid Nevada Public Records request.

O. TERMINATION FOR CONVENIENCE

UNLV shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason by providing Contractor with thirty (30) calendar days' written notice. Such termination shall be effected by written notice from UNLV to Contractor, specifying the extent and effective date of the termination. On the effective date of the termination, Contractor shall terminate all work and take all reasonable actions to mitigate expenses. Contractor shall submit a written request for incurred costs performed through the date of termination, and shall provide any substantiating documentation requested by UNLV. In the event of such termination, UNLV agrees to pay Contractor within thirty (30) calendar days after acceptance of invoice.

P. SEVERABILITY

In the event any one or more of the provisions of this Contract shall for any reason be held to be invalid, illegal, or unenforceable, such provision(s) shall be treated as severable, leaving the remaining provisions of this Contract unimpaired, and the Contract shall be construed as if such invalid, illegal or unenforceable provision(s) were not present.

Q. USE OF UNIVERSITY NAME AND/OR LOGO IN ADVERTISING

Contractor acknowledges and agrees that it shall not use the name of the Board of Regents of the Nevada System of Higher Education; University of Nevada, Las Vegas; Nevada State College; or any other NSHE logos, marks, trademarks, trade names, trade dress, slogans, or other indicia of ownership of the foregoing (collectively, "**Marks**"). Contractor further acknowledges and agrees that the Marks are the sole property of NSHE and that it shall not use any of the Marks in its advertising, or in the production of any materials related to this Contract, without the prior written approval of UNLV.

R. WAIVER

A failure or delay of either party to enforce at any time any of the provisions of this Contract shall not be construed to be a waiver of a party's right to enforce strict compliance of such provisions(s) of this Contract.

S. SMALL AND LOCAL BUSINESS CONCERNS REPORTING REQUIREMENTS

- 1) UNLV supports equal opportunity for minority owned, women-owned, and other small disadvantaged business concerns ("MWDBE") to compete for contracts awarded by UNLV. UNLV also supports efforts to encourage local businesses to compete for UNLV contracts. In some situations, MWDBE and local business concerns may not have the depth or full capability to meet all the requirements of large contracts. Nevertheless, UNLV supports finding opportunities for such MWDBE and local business concerns to participate as Subcontractors or Tier 2 suppliers in large contracts.
- 2) If the purchase of goods or Services is **anticipated to exceed One Million (\$1,000,000) at any time during the life of the Contract**, Contractor must provide, at a minimum, annual reports listing expenditures with MWDBE and Local Business Enterprises (as defined below). These reports pertain only to expenditures that are directly attributable to the UNLV prime Contract. The report must be available to UNLV by September 15th of the applicable Contract year, and should contain the following information:
 - a) The name, city and state; type of Tier 2 status (local, women owned, minority/and or disadvantaged or Local Business Enterprise); and any certification of such status including the entity granting the certification if applicable. If a business concern meets more than one definition (e.g. local and women-owned, or minority and women owned), that should be identified;
 - b) A description of the goods or services purchased; and
 - c) The amount of expenditures with the subcontractor attributed to the prime Contract for the most recent completed fiscal year (July 1 through June 30).
- 3) Definitions:

Definition of Local Business Enterprise. "Local Business Enterprise" is intended to mean a business concern that is a) owned fifty-one percent (51%) or more by Nevada residents, b) is headquartered in Nevada, or c) a majority of employees of the business are Nevada residents.

Definition of Disadvantaged Business Enterprise (DBE). "Disadvantaged Business Enterprise" is intended to mean a business concern owned by a minority or woman that is at least fifty-one percent (51%) unconditionally owned by one or more minority or women individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

Definition of Minority Business Enterprise (MBE). "Minority Business Enterprise" is intended to mean a business concern owned by one or more minority individuals that is

at least fifty-one percent (51%) unconditionally owned by one or more minority individuals, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

Definition of Women-Owned Business Enterprise (WBE). "Women-Owned Business Enterprise" is intended to mean a business concern owned by one or more women that is at least fifty-one percent (51%) unconditionally owned by one or more women, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals.

Definition of Disabled Veteran Business Enterprise (DBE). "Disabled Veteran Business Enterprise" is intended to mean a business concern of which at least fifty-one percent (51%) of the ownership interest is held by one or more veterans with service-connected disabilities; that is organized to engage in commercial transactions; and that is managed and operated on a day-to-day basis by one or more veterans with service-connected disabilities. This includes a business which meets the above requirements that is transferred to the spouse of a veteran with a service-connected disability upon the death of the veteran, as determined by the United States Department of Veterans Affairs.

Definition of Small Business Enterprise (SBE). "Small Business Enterprise" is intended to mean a business concern which performs a commercially useful function, is not owned and controlled by individuals designated as minority, women, veterans, or physically-challenged, and where gross annual sales does not exceed Two Million (\$2,000,000) dollars.

T. JOINDER

Any governmental, state, or public entity within the State of Nevada may utilize this Contract at its option to obtain goods or services at the agreed upon price(s) throughout the term of the resulting contract with the authorization of Contractor. NSHE/UNLV is not liable for the obligations of the governmental entity which joins or uses the resulting contract.

U. INFORMATION ACCESS AND AUDIT

The books, records, documents and accounting procedures and practices of the Contractor relevant to this Contract shall be subject to inspection, examination and audit by Owner, including legal counsel, during the course of this Project and for three (3) years after its completion.

Furthermore, Contractor agrees to maintain and preserve its books and records in accordance with generally accepted accounting procedures for a minimum of three (3) years, or longer if required by an applicable law or regulation. Upon UNLV's request, during the Term or for a period of two (2) years thereafter, Contractor shall in a timely manner, allow UNLV, UNLV's internal auditor or a third-party auditor retained by UNLV to audit and analyze Contractor's compliance with the provisions of this Contract, and shall cooperate with any competent regulatory body and

shall allow such other access to Contractor's premises and relevant records where required by legal processes or applicable laws or regulations.

V. FITNESS FOR DUTY, INSPECTION, AND LOANED ITEMS OR FACILITIES

Contractor shall ensure that it has engaged sufficient personnel with the expertise required for the successful provision of Services to comply with all the requirements set forth in the Contract or any applicable Scopes of Work or SOW. Contractor shall ensure that all Contractor personnel providing the Services (which shall include Contractor principals and Subcontractors) shall: i) report for work in a manner fit to do their job when providing Services for UNLV or on UNLV owned, leased, or operated property ("Premises") and ii) shall not be under the influence of or in possession of any alcoholic beverages or of any controlled substances (as defined by NRS 453.146 or any applicable federal law or statute) when providing Services for UNLV or on UNLV Premises (except as properly prescribed to them by a physician and provided that it does not affect their ability to safely and proficiently provide the Services). Searches by UNLV representatives may be made of persons, personal effects, lockers, or other storage areas on UNLV Premises to detect evidence of unlawful substances or prohibited items which must not be brought onto UNLV Premises. Any supplies, equipment, tools, items, vehicles, carts, or facilities shall be loaned solely as a convenience to Contractor and are provided "as is" without any representations as to the condition, suitability for use, freedom from defect, or hazards.

W. SUSTAINABILITY

- a) A key focus of UNLV is to minimize the impact the procurement of goods and services has on the local environment. UNLV is committed to sustainable economic, social, and environmental practices in all operations involving UNLV. It is important that Contractor share this commitment as well. Therefore, sustainable goods and services should be offered whenever available or specifically when required in the Contract.
- b) UNLV may request Contractor to provide reports related to sustainability on all goods and services provided. Reports may include, but are not limited to: sustainable attributes of each product or service, the dollar and percentage amount spent on sustainable or environmentally preferred products and services, and the total amount spent by UNLV.
- c) All electronic equipment UNLV purchases must be Energy Star rated (or, if there is no Energy Star rating for the desired equipment, energy efficient models or substitutes are preferred). The requirement to purchase Energy Star rated equipment will improve UNLV's energy and financial performance while distinguishing our institution as an environmental leader.

X. PREFERENTIAL EMPLOYMENT.

All contractors shall comply with the preferential employment provisions of NRS 338.130 for public works contracts. This law requires that, when the qualifications of applicants are equal, that preference be given: First, to honorably discharged soldiers, sailors, and marines of the United States who are citizens of the State of Nevada; second, to other citizens of the State of Nevada. If the provisions of NRS 338.130 are not complied with by the Contractor, this Contract is void,

and any failure or refusal to comply with any of the provisions of NRS 338.130 renders this contract void.

Y. NEVADA PREFERENCE

If applicable, the provisions of the Affidavit Pertaining to Preference Eligibility executed by Contractor (the "Affidavit") are deemed incorporated into the Contract and any failure to comply with the provisions of the Affidavit entitles UNLV to a penalty in accordance with NRS 338.0117. The following provisions apply if Contractor received a preference:

1. If a party to the contract causes the contractor, applicant or design team to fail to comply with a requirement of paragraphs (a)-(d), inclusive, of subsection 1 of NRS 338.0117, the party is liable to the Owner for a penalty in the amount of one percent (1%) of the cost of the largest contract to which he or she is a party;
2. The right to recover the amount determined pursuant to §2.1.9.4.1 by Owner pursuant to subsection 5 of NRS 338.0117 may be enforced by Owner directly against the party that caused the failure to comply with a requirement of paragraphs (a)-(d), inclusive, of subsection 1 of NRS 338.0117; and
3. No other party to the contract is liable to Owner for a penalty; and
4. Contractor shall include this provision in all subcontracts and require it to be included in all lower tier subcontracts.

AA. APPRENTICESHIP UTILIZATION ACT

Contractor shall, and shall ensure each subcontractor shall, comply with the apprentice employment requirements contained in the Apprenticeship Utilization Act.

1. For vertical construction, Contractor and each subcontractor who employs a worker on a public work pursuant to NRS 338.040 shall use one or more Apprentices for at least ten percent (10%) of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.
2. For horizontal construction, Contractor and each subcontractor who employs a worker on a public work pursuant to NRS 338.040 shall use one or more Apprentices for at least three percent (3%) of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three (3) workers are employed.
3. If at any time during the Project, Contractor requires an Apprentice Waiver, Contractor shall submit a request for waiver utilizing the form attached as Exhibit B. If Contractor has demonstrated Good Cause, Owner will submit the request to the Labor Commissioner for approval. If a request for an Apprentice Waiver is denied, Contractor must comply with the requirements of the Apprenticeship Utilization Act.
4. Contractor's failure to comply with the Apprenticeship Utilization Act shall constitute a material breach of this Contract.

Signatures on following page.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the Effective Date.

[CONTRACTOR] **APPROVED:**

BY:

(TYPE IN NAME OF APPROVER) Date

**THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON
BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS**

RECOMMENDED:

BY:

David Frommer, AIA, AVP, Planning & Construction and Real Estate Date

BY:

Chris Viton, Vice President, Business Affairs and CFO Date

BY:

Christopher L. Heavey, President Date

APPROVED AS TO LEGAL FORM:

BY:

Elda Luna Sidhu, Vice President and General Counsel