

# CONTRACT

## A Contract for Professional Services

THIS CONTRACT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the CITY OF FERNLEY, a municipal corporation within the State of Nevada whose address is 595 Silver Lace Blvd, Fernley, Nevada 89408 (the "City"), and Farr West Engineering, whose address is 5510 Longley Lane, Reno, NV 89511 ("Consultant").

WHEREAS, Nevada Revised Statutes ("NRS") Chapter 266 authorizes the City to engage the services of independent consultants; and

WHEREAS, the services of Consultant are deemed to be both necessary and in the best interests of the City; and

WHEREAS, the City desires to retain the services of Consultant on the terms and conditions set forth in this Contract;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **CONTRACT TERM:** This Contract shall be effective from the day it is approved by the City Council (which date shall be inserted into the introductory paragraph of this Contract) and, subject to appropriation, shall remain in full force and effect until the services are completed unless terminated earlier pursuant to Section 6.

2. **CONSULTANT'S SERVICES:**

a. **Description of Services.**

i. **Attachments:**

1. **Attachment A.** Scope of Work. Consultant hereby agrees to provide the services set forth in the Scope of Work attached hereto as Attachment A and incorporated herein by this reference.
2. **Attachment B.** Budget and Fee Schedule.

ii. **Standard Of Care.** Notwithstanding anything to the contrary in this agreement or in any other contract document relating to the project, in performing its work under this agreement Consultant shall perform its services to the standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions faced by Consultant Cooperation with City. Consultant agrees that its officers, associates, employees and subconsultants will cooperate with the City in providing the services under this Contract and will be, with advance

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notice, available for consultation with the City at such reasonable times as to not conflict with the City's other responsibilities.

- iii. **General Representation.** Consultant represents that all services, deliverables, and/or work product under this Contract shall be completed in a manner consistent with standards in the trade, profession, or industry; shall conform to the specifications set forth in the incorporated attachments; and shall be fit for ordinary use.

### 3. REQUIRED APPROVAL COMPENSATION AND TERMS OF PAYMENT:

- a. **Compensation.** The City agrees to pay Consultant for the services set forth in the Scope of Work either a lump sum fee or an hourly fee based on the Fee Schedule attached hereto as Attachment B and incorporated herein by this reference.
  - b. **Reimbursable Expenses.** Consultant agrees that all of its direct and indirect expenses are included in the lump sum or hourly fee set forth in the Fee Schedule, unless the Fee Schedule specifically provides otherwise.
  - c. **Payment Invoicing.** Consultant shall submit an invoice for payment for the services provided by Consultant based on the manner or method of payment set forth in Attachment A (Scope of Work) and Attachment B (Fee Schedule).
  - d. **Timeliness of Billing.** Consultant acknowledges and agrees that timeliness of billing is of the essence to this Contract and recognizes that the City is on a fiscal year ending on June 30. All invoices for services rendered prior to July 1 must be submitted to the City no later than 30 days after the end of the fiscal year. If Consultant submits billing in a timely fashion, the City agrees to pay the Consultant within 30 days of receipt of the invoice. Should City not pay within this agreed upon time frame, the City agrees to pay a ten dollar per month fee until such time as the unresolved invoice becomes paid in full. Any dispute regarding payment must be raised in writing to the City within 30 days.
4. **NOTICE:** All notices or other communications required or permitted to be given hereunder shall be deemed delivered: (i) when written notice is received by the party to whom it is directed, if delivered personally, or by email; or (ii) three (3) days after deposit with the United States Post Office, if mailed by certified mail, return receipt requested, postage prepaid and addressed to the party to be notified. Notices shall be addressed as follows:

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If to the City:           City Manager  
                                  City of Fernley  
                                  595 Silverlace Blvd.  
                                  Fernley, NV 89408

If to Consultant:        Consultant  
                                  Address  
                                  City State

### 5. INSPECTION & AUDIT:

- a. **Books and Records.** Consultant agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the City, the State of Nevada or the United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.
- b. **Inspection & Audit.** Consultant agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Consultant or its subconsultants, financial statements and supporting documentation, and documentation related to the performance of this Contract shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Consultant where such records may be found, with or without notice by the City, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect the requirements of this paragraph.
- c. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used under this Contract. The retention period runs from the date of payment for the relevant services by the City, or from the date of termination of this Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

### 6. TERMINATION OR SUSPENSION:

- a. **Suspension.** The City may suspend, without cause, the performance by Contract under this Contract for such period of time as the City, in its sole

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discretion, may prescribe by providing written notice to Consultant. The suspension shall be effective as of the date set forth in the written notice. With such suspension, the City agrees to pay Consultant the amount of compensation earned as of the effective date of the suspension.

- b. **Termination Without Cause.** The City and Farr West reserve the right to terminate this Contract without cause or default on the part of Consultant with ten (10) days' prior written notice to Consultant. In the event of termination, without cause or default, the City agrees to pay Consultant for the services performed before the date that notice of termination is received by Consultant.
- c. **Termination for Non-Appropriation.** Consultant acknowledges that the City is a governmental entity and the Contract's validity is based upon the availability of public funding under its authority. The City reserves the right to reduce estimated or actual quantities, in whatever amount necessary, without prejudice or liability to the City, if funding is not available or if legal restrictions are placed upon the expenditure of monies for the services required under this Contract. In addition, without prejudice or liability to the City, if funding is not appropriated or otherwise made available to support the continuation of this Contract in any fiscal year succeeding the first fiscal year, this Contract will be deemed to have been terminated automatically when appropriated funds expire and are not available.
- d. **Default or Breach.** A default or breach (an "Event of Default") may be declared with or without termination. Each of the following shall constitute an Event of Default:
  - i. If Consultant fails, in the judgment of the City, to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract, and such failure continues for more than fifteen (15) days after written notice is delivered to Consultant provided that if the nature of such breach is such that although curable, the breach cannot reasonably be cured within a fifteen (15) day period, an Event of Default shall not exist if Consultant shall commence to cure such breach and thereafter rectifies and cures such breach with due diligence, but in no event later than sixty (60) days after the written notice;
  - ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Consultant to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed;  
or

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iii. If Consultant: (i) becomes insolvent, subject to receivership, or voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; (ii) makes a general assignment for the benefit of creditors; (iii) admits in writing to the inability to pay its debts as they become due; or (iv) takes any action for the purpose of effecting any of the foregoing.

e. **For Cause Termination and Time to Correct. For Cause Termination and Time to Correct.** This Contract may be terminated by the non-defaulting party upon a declared default or breach only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within a reasonable time of receipt of that notice to provide evidence, satisfactory to the non-defaulting party, showing that the declared default or breach has been corrected or is being corrected as expeditiously as is prudent and practicable.

f. **Winding Up Affairs upon Termination.** If this Contract is terminated for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination.

ii. Consultant shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if requested by the City.

iii. Consultant shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if requested by the City; and

iv. Consultant shall preserve, protect, and promptly deliver possession to the City of all proprietary information in accordance with Section 18.

v. If dispute(s) arise during the winding up of affairs upon termination, the parties agree to meet and negotiate in good faith to resolve any such disputes(s).

7. **REMEDIES:** Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages exclusive of lost profits.

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8. **ATTORNEYS' FEES, COSTS, AND EXPENSES:** Unless otherwise stated herein, the parties will bear their own attorneys' fees, costs, and expenses in connection with the negotiation, execution, and performance of this Contract.
9. **LIMITED LIABILITY:** Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the Attachments. Damages for any default or breach by the City shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Consultant, for the fiscal year budget in existence at the time of the default or breach.
10. **FORCE MAJEURE:** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.
11. **INDEMNIFICATION:** Consultant shall indemnify, defend, and hold harmless the City, its elected officials, officers, employees, agents, and consultants (collectively, the "City party") from and against any and all claims, liabilities, damages, losses, suits, actions, decrees, arbitration awards, judgments, and any other costs or expenses, including reasonable attorney fees (collectively, "Liabilities"), which may be recovered from or sought against the City party as a result of, by reason of, or as a consequence of: (i) any act or omission, negligent or otherwise, on the part of Consultant, its officers, employees, independent consultants, sub-consultants, vendors, suppliers, consultants, or agents; or (ii) any default in the performance of any obligation of Consultant to be performed under the terms of this Contract, regardless of whether such default is an Event of Default hereunder. In no event shall the language of this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections provided by the Federal and State constitutions or by law. It is expressly agreed that Consultant shall defend the City party at Consultant's expense, by legal counsel reasonably satisfactory to the City, against the Liabilities and in the event that Consultant fails to do so, the City shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to Consultant. Consultant's indemnity obligations herein are not intended to nor shall they relieve any insurance carrier of its obligations under policies required to be carried by Consultant pursuant to the provisions of this Contract. Consultant's obligations under this Section 11 shall survive any termination of this Contract.
12. **INDEPENDENT CONSULTANT:** Consultant is associated with the City only for the purposes and to the extent specified in this Contract, and in respect to performance

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of the contracted services pursuant to this Contract, Consultant is and shall be an independent consultant and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the City whatsoever with respect to the indebtedness, liabilities, and obligations of Consultant or any other party. Consultant shall be solely responsible for, and the City shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the City; (4) participation or contributions by either Consultant or the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the City. Consultant shall indemnify and hold the City harmless from, and defend the City against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Consultant nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the City.

- 13. INSURANCE:** Unless expressly waived in writing by the City, Consultant shall, at Consultant's sole expense, procure, maintain and keep in force during the entire term of this Contract those policies of insurance which have been agreed to by the parties as evidenced by the parties initials in the signature spaces provided below. The City shall have no liability except as specifically provided in this Contract. Consultant shall not commence work before Consultant has provided the required evidence of insurance to the City. Any insurance or self-insurance available to the City shall be in excess of, and non-contributing with, any insurance required from Consultant. Consultant's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the City, Consultant shall provide the City with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. 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 Consultant has knowledge of any such failure, Consultant shall immediately notify the City and immediately replace such insurance or bond with an insurer meeting the requirements.

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- a. **Workers' Compensation and Employer's Liability Insurance.** Industrial insurance protecting Consultant and the City from potential employee claims based upon job-related sickness, injury, or accident, during the performance of this Contract. Consultant shall provide a work certificate issued by a qualified insurer in accordance with NRS 616B.627. Prior to commencing any work, Consultant shall complete and provide the following written request to a qualified insurer:

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CONTACTOR NAME has entered into a contract with Owner to perform work from THE \_\_\_ DAY OF \_\_\_\_\_, 20\_\_ to THE \_\_\_ DAY OF \_\_\_\_\_, 20\_\_ and requests that an industrial insurance provider qualified and licensed to offer such insurance within the State of Nevada, provide to The City of Fernley, Nevada 1) a certificate of coverage issued pursuant to NRS 616B.627 and 2) notice of any lapse in coverage or nonpayment of coverage that Consultant is required to maintain. The certificate and notice should be mailed to:

City of Fernley  
595 Silver Lace Blvd  
Fernley, NV 89408

Consultant may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that Consultant is a sole proprietor and that: (1) In accordance with the provisions of NRS 616B.659, Consultant has not elected to be included within the terms, conditions, and provisions of NRS chapters 616A to 616D, inclusive; and (2) Consultant is otherwise in compliance with those terms, conditions and provisions.

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b. **Professional Liability Insurance.**

- i. Minimum Coverage Limit required (not deductible amount): \$1,000,000 Each Claim, \$2,000,000 Aggregate.
- ii. Retroactive date: Prior to commencement of the performance of this Contract
- iii. Discovery period: Three (3) years after the termination date of this Contract.

c. **General Requirements.**

- i. Additional Insured: By endorsement to the general liability insurance policy evidenced by Consultant, ***the City of Fernley, its officers, employees, and immune consultants*** shall be named as additional insureds for all liability arising from this Contract.
- ii. Waiver of Subrogation: Each insurance policy shall provide for a waiver of subrogation in favor of the City.
- iii. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.



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- iv. Deductibles and Self-Insured Retentions: Insurance maintained by Consultant shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the City. Such approval shall not relieve Consultant from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the City.
  - v. Policy Cancellation: Except for ten days' notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the City, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address shown below.
  - vi. Approved Insurer: Each insurance policy shall be issued by insurance companies: (a) authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the City and having agents in the State of Nevada upon whom service of process may be made; and (b) currently rated by A.M. Best as "A-VII" or better.
- d. **Evidence of Insurance.** Prior to the start of any work, Consultant must provide the following documents to the City:
- i. Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the City to evidence the insurance policies and coverages required of Consultant.
  - ii. Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, **must** be submitted to the City to evidence the endorsement of the City as an additional insured per General Requirements, Subsection 1) above.
  - iii. Schedule of Underlying Insurance Policies: If an Umbrella or Excess insurance policy is evidenced to comply with minimum limits, a copy of the underlying schedule from the Umbrella or Excess insurance policy may be required.
  - iv. Review and Approval: Documents specified above must be submitted for review and approval by the City prior to the commencement of work by Consultant. Neither approval by the City nor failure to disapprove the insurance furnished by Consultant shall relieve Consultant of Consultant's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Consultant or its sub-consultants, employees or agents to

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the City or others, and shall be in addition to and not in lieu of any other remedy available to the City under this Contract or otherwise. The City reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements. Consultant will mail all required insurance documents to the City at the address identified in section 4 of this Contract.

- e. **Failure to Maintain Required Coverages.** If Consultant fails to carry the required insurance, the City may: (i) order Consultant to stop further performance of the Contract, and declare consultant in breach, terminate the Contract if such breach is not remedied; or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to Consultant or charge the replacement insurance costs back to Consultant.

- 14. **COMPLIANCE WITH LEGAL OBLIGATIONS:** Consultant shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Consultant to provide the goods or services required by this Contract. Consultant will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Consultant in accordance with NRS 361.157 and 361.159. Consultant agrees to be responsible for payment of any such government obligations not paid by its subconsultants during performance of this Contract.
- 15. **WAIVER OF BREACH:** Failure to declare a breach or the actual waiver of any particular breach of this Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other default or breach.
- 16. **SEVERABILITY:** If any portion, provision, or part of this Contract is held, determined, or adjudicated by any court of competent jurisdiction to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Contract, and such determination or adjudication shall not affect the validity or enforceability of such remaining portions, provisions, or parts.
- 17. **ASSIGNMENT/DELEGATION:** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by the City, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Consultant shall neither assign, transfer nor delegate any

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rights, obligations, or duties under this Contract without the prior written consent of the City.

- 18. PROPRIETARY INFORMATION:** Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by Consultant (or its subconsultants) in performance of its obligations under this Contract shall be the exclusive property of the City and all such materials shall be delivered into the possession of the City by Consultant upon completion, termination, or cancellation of this Contract. Consultant shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Consultant's obligations under this Contract without the prior written consent of the City. Notwithstanding the foregoing, the City shall have no proprietary interest in any materials licensed for use by the City that are subject to patent, trademark, or copyright protection.
- 19. PUBLIC RECORDS:** Pursuant to NRS 239.010, information or documents received from Consultant may be open to public inspection and copying. The City will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Consultant may label specific parts of an individual document as a "trade secret" or "confidential," provided that Consultant thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any document that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.
- 20. FEDERAL FUNDING:** In the event federal funds are used for payment of all or part of this Contract:

  - a. Consultant certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subconsultant receiving any payment in whole or in part from federal funds.
  - b. Consultant and its subconsultants shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

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- c. Consultant and its subconsultants shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
- 21. LOBBYING:** The parties agree, whether expressly prohibited by federal, state or local law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence any of the following: (a) any federal, state, county or local agency, legislature, commission, council or board; (b) any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or (c) any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.
- 22. CERTIFICATION REQUIRED BY NEVADA SENATE BILL 26 (2017):** By signing this Agreement, the CONSULTANT provides a written certification, as a material part of this Agreement, that the CONSULTANT 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 CONSULTANT 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 CONSULTANT's non-compliance with this Section. If, at any time during the formation or duration of this Agreement, CONSUTLANT is engaged or engages in a boycott of Israel, it will constitute a material breach of this Agreement.
- 23. PROPER AUTHORITY:** Consultant represents and warrants Consultant has full power and authority to enter into this Contract. Any services performed by Consultant before this Contract is effective or after it ceases to be effective are performed at the sole risk of Consultant.
- 24. GOVERNING LAW; VENUE:** This Contract will be interpreted, and the rights and liabilities of the parties determined, in accordance with the laws of the State of Nevada, excluding its conflict of laws rules. In any action or proceeding arising under this Contract, each party (a) consents to the jurisdiction of Nevada Courts, and of the pertinent appellate courts, and consents to the venue of such action or proceeding in Lyon County, Nevada courts, (b) irrevocably agrees that all actions or proceedings arising out of or relating to this Contract shall be litigated in such courts, and (c) consents to personal jurisdiction within Lyon County, Nevada. Each party accepts for itself, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waives any defense of lack of personal jurisdiction, improper venue, inconvenient forum or any similar defense, and irrevocably agrees to be bound by any non-appealable judgment rendered thereby in connection with this Contract.

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- 25. INTEGRATED CONTRACT:** This Contract (including any addenda, exhibits, or attachments incorporated into and made a part of this contract) constitutes the entire agreement and understanding among the parties regarding the matters set forth herein and supersedes all previous negotiations, discussions, and understandings regarding such matters. The parties acknowledge and represent that they have not relied on any promise, inducement, representation, or other statement made in connection with this Contract that is not expressly contained herein. The terms of this Contract are contractual and not a mere recital.
- 26. COUNTERPARTS:** This Contract may be executed in multiple counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.
- 27. ADVICE OF COUNSEL:** Each party hereto represents and agrees that it has had the opportunity to seek and has sought from attorneys any such advice as it deems appropriate with respect to signing this Contract or the meaning of it. Each party has undertaken such independent investigation and evaluation as it deems appropriate and is entering into this Contract in reliance on that and not in reliance on any advice, disclosure, representation or information provided by or expected from any other party or such party's attorneys. This is an agreement of settlement and compromise, made in recognition that the parties may have different, disputed or incorrect understandings, information and contentions, as to facts and law, and with each party compromising and settling any potential correctness or incorrectness of its understandings, information and contentions as to the facts, law, claims, duties, disclosures and conduct occurring before or during the entry into this Contract. No conduct, failure, misunderstanding or misinformation and no claim of fraud or fraudulent inducement occurring prior to or in connection with the execution hereof shall be a ground for rescission hereof or for recovery of damages, except as otherwise expressly provided herein.
- 28. MODIFICATION; NO WAIVER:** The provisions of this Contract, including this paragraph, may be modified or waived only in writing signed by both parties. No waiver with respect to any portion of this Contract shall apply to any other portion of the Contract, and a waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. No course of dealing by any party, and no failure, omission, delay, or forbearance by any party in exercising such party's rights or remedies shall be deemed a waiver of any such rights or remedies or a modification of this Contract.
- 29. INTERPRETATION OF AGREEMENT:** This Contract shall be construed without regard to the party or parties responsible for its preparation and shall be deemed to have been prepared collectively by the parties. Any ambiguity or uncertainty arising herein shall not be interpreted or construed against any party hereto on the basis that a party prepared or drafted a particular provision of this Contract.

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30. **COOPERATION OF PARTIES:** The parties agree to cooperate to accomplish the purpose of this Contract and to execute any and all supplementary documents and to take all additional actions not inconsistent with the terms set forth in this Contract that are necessary and appropriate to give full force and effect to the terms and intent of this Contract.
31. **NON-DISCRIMINATION:** In connection with the performance of work under this Contract, Consultant agrees not to discriminate against any employee or applicant for employment 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. Consultant further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

***REMAINDER OF PAGE INTENTIONALLY LEFT BLANK***

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In witness whereof, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby:

### CITY OF FERNLEY

\_\_\_\_\_  
City Manager, City of Fernley      Date

\_\_\_\_\_  
Mayor, City of Fernley      Date

\_\_\_\_\_  
City Clerk, City of Fernley      Date

*Approved as to form:*

\_\_\_\_\_  
City Attorney, City of Fernley      Date

*Originating Department:*

\_\_\_\_\_  
Deputy City Manager      Date

**CONTRACT**

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CONSULTANT, being first duly sworn, deposes and says: That CONSULTANT. is the Consultant; that NAME OF PERSON REPRESENTING CONSULTANT has read the foregoing Contract; and that he understands the terms, conditions, and requirements thereof.

CONSULTANT

BY:

TITLE:

FIRM:

BUSINESS LICENSE #:

Address: 3

City: C State: Zip Code:

Telephone: Fax #:

E-mail Address:

\_\_\_\_\_  
(Signature of Consultant)

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

STATE OF \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of , in the year 20\_\_, before me, \_\_\_\_\_ / Notary Public, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary's Signature

My Commission Expires: \_\_\_\_\_