



**MATERIALS TESTING-5 RIDGES SUBDIVISION
CITY OF SPARKS, NEVADA**

THIS CONTRACT made and entered into on this 12th day of April, 2021, by and between the City of Sparks, Nevada, a municipal corporation, existing under and by virtue of the laws of the State of Nevada, hereinafter called "City", and **Black Eagle Consulting, Inc.**, a qualified consultant in the class of work required, hereinafter called "Consultant".

W I T N E S E T H

WHEREAS, the City desires to engage Consultant in the performance of providing Professional Services which are more fully described in Consultant's Proposal dated January 22, 2021, attached hereto and incorporated herein by reference. (Hereinafter referenced to as "Proposal");

WHEREAS, Consultant's legal status is an Independent Contractor and Consultant is in good standing in the State of Nevada;

WHEREAS, Consultant desires to perform the Program under the terms and conditions set forth herein;

NOW, THEREFORE, IT IS AGREED as follows:

1. Scope of Work:

The scope of work for this contract is generally defined as **Materials Testing-5 Ridges Subdivision**. The City's Contract Documents and Consultant's Entire Proposal are on file with the City of Sparks and may be located within "Attachment A." All terms, conditions and requirements contained in these Documents, including any and all addenda issued by the City, are hereby incorporated into this Contract. The work scope will include, but not be limited to the tasks outlined in Attachment A.

The Consultant shall perform within the time stipulated, the Contract as herein defined and shall provide and furnish any and all of the labor, materials, methods or processes, equipment implements, tools, machinery and equipment, and all utility, transportation and other services required to complete all of the work covered by the Contract in connection with strict accordance with the plans, specifications or proposals, which were approved by said City and are on file with the City, including any and all addenda issued by the City, and with the other contract documents hereinafter enumerated. Consultant will have the right to control or direct the manner and the order in which it provides the services contemplated under this Agreement.

Consultant represents and warrants that Consultant is engaged in an independent calling and has complied and will continue to comply with all local, state and federal laws regarding business permits and licenses that may be required to carry out the independent calling and to perform the services to be performed under this Agreement.

Consultant understands that the services it has been retained to perform may be dangerous or may entail a peculiar unreasonable risk of harm to others unless special precautions are taken and Consultant agrees to exercise reasonable care to take such precautions.



2. Payment for Project Services

As full consideration for the Professional Services to be performed by Consultant, City agrees to pay Consultant as set forth in accordance with the Fee Schedule set forth in the proposal and not to exceed fee of **\$114,100.00** for the project. The City will not hire or directly compensate the Consultant's employees, assistants or subcontractors, if any. It is expressly understood and agreed that all work done by Consultant shall be subject to review as to its result by the City at the City's discretion. Payment of any invoice shall not be taken to mean that the City is satisfied with Consultant's services to the date of payment and shall not forfeit City's right to require the correction of any service deficiencies.

3. Term

This Agreement shall become effective upon contract execution and will continue in effect until

MO/DY/YR, or

The Project is completed (Approximately _____), or unless earlier terminated as provided herein.

4. Time Devoted to Work:

In performing the services contemplated under this Agreement, the services and the hours Consultant is to work on any given day will be on a mutually agreed upon basis, except for attendance at scheduled meetings, and City will rely upon Consultant to put in such number of hours as is reasonably necessary to fulfill the spirit and purpose of this Agreement.

City understands that Consultant is engaged in the same or similar activities for others and that City may not be Consultant's sole client or customer. However, Consultant represents and warrants that it is under no obligation or restriction, nor will it assume any such obligation or restriction, that would in any way interfere or be inconsistent with the services to be performed under this Agreement.

5. No Unfair Employment Practices:

In connection with the performance of work under this Agreement, Consultant agrees not to discriminate against any employee or applicant because of race, creed, color, national origin, sex, sexual orientation, disability or age. Any violation of these provisions by Consultant shall constitute a material breach of this contract.

6. No Illegal Harassment:

Violation of the City's harassment policy, which is incorporated by reference and available from the Human Resources Division, by the Consultant, its officers, employees, agents, consultants, subcontractors and anyone for whom it is legally liable, while performing or failing to perform Consultant's duties under this Contract shall be considered a material breach of this contract.

7. Lawful Performance:

Vendor shall abide by all Federal, State and Local Laws, Ordinances, Regulations, and Statutes as may be related to the performance of duties under this agreement. In addition, all applicable permits and licenses required shall be obtained by the vendor, at vendor's sole expense.

8. Status of Consultant:

It is the intent of the parties that Consultant shall be considered an independent contractor and that Consultant, and anyone else for whom it is legally liable, shall not be considered employees, servants or



agents of the City for any purpose. Furthermore, this Agreement shall not be construed to create a partnership or joint venture between the Consultant and the City.

Neither Consultant nor any of its employees or contractors shall be eligible to participate in City's industrial insurance, unemployment, disability, medical, dental, life or other insurance programs, or any other benefit or program that is sponsored, financed or provided by City for its employees.

Consultant agrees that it shall be Consultant's exclusive responsibility to pay all federal, state, or local payroll, social security, disability, industrial insurance, self-employment insurance, income and other taxes and assessments related to this Agreement. Neither FICA (Social Security), FUTA (Federal Employment), nor local, state or federal income taxes will be withheld from payments to Consultant. Consultant shall at Consultant's expense pay and be fully liable and responsible for, and indemnify and hold harmless City from, any assessments, fines or penalties relating to Consultant's failure to uphold any of these responsibilities.

9. City Ownership of Proprietary Information:

All reports, drawings, plans, specifications, and other documents prepared by Consultant as products of service under this Agreement shall be the exclusive property of the City and all such materials shall be remitted to the City by Consultant in a timely manner upon completion, termination or cancellation of this Agreement. 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 Agreement without the prior written consent of the City.

10. Public Records:

Consultant understands that City is subject to the provisions of NRS 239.010. As such, the City may have the duty to disclose the Consultant's reports or recommendations.

11. Insurance:

CONSULTANT'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT CONSULTANTS CONFER WITH THEIR RESPECTIVE INSURANCE CARRIERS OR BROKERS TO DETERMINE IN ADVANCE OF PROPOSAL SUBMISSION THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS AS PRESCRIBED AND PROVIDED HEREIN.

The City may, unless otherwise required by law, waive or reduce the insurance requirements itemized here, at the discretion of the city's Contracts and Risk Manager.

Should work be required on City premises or within the public right-of-way, upon award of the contract, the bidder shall provide proof of insurance for the types of coverage, limits of insurance and other terms specified herein, prior to initiation of any services under City, Bid, Proposal or Contract. Coverage shall be from a company authorized to transact business in the State of Nevada and the City of Sparks and shall meet the following minimum specifications:

Contractor shall at its own expense carry and maintain at all times the following insurance coverage and limits of insurance no less than the following or the amount customarily carried by Contractor or any of its subcontractors, whichever is greater. Contractor shall also cause each subcontractor employed by



Contractor to purchase and maintain insurance of the type specified herein. All insurers must have AM Best rating not less than A-VII, and be acceptable to the City. Contractor shall furnish copies of certificates of insurance evidencing coverage for itself and for each subcontractor. Failure to maintain the required insurance may result in termination of this contract at City's option. If Contractor fails to maintain the insurance as set forth herein, City shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

Contractor shall provide proof of insurance for the lines of coverage, limits of insurance and other terms specified below prior to initiation of any services. Coverage shall be from a company authorized to transact business in the State of Nevada and the City of Sparks. Contractor and any of its subcontractors shall carry and maintain coverage and limits no less than the following or the amount customarily carried by Contractor or any of its subcontractors, whichever is greater.

Applicable to this Contract	Insurance Type	Minimum Limit	Insurance Certificate	Additional Insured	Waiver of Subrogation
Yes	General Liability/Umbrella (Excess) Liability	\$2,000,000	✓	✓	✓
Yes	Automobile Liability	\$1,000,000	✓	✓	
Yes	Workers' Compensation	Statutory	✓	N/A	✓
Yes	Employer's Liability	\$1,000,000	✓	N/A	
Yes	Professional Liability	\$1,000,000	✓	N/A	N/A
No	Pollution Legal Liability	\$1,000,000	✓	N/A	N/A

Commercial General Liability

Contractor shall carry and maintain Commercial General Liability (CGL) and, if necessary to meet required limits of insurance, commercial umbrella/excess liability insurance with a total limit of not less than the limits specified herein.

For contracts that are for the construction or improvement of public facilities, the Contractor shall obtain and maintain products and completed operations liability coverage through the statute of repose after completion of the project. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or damage to the named insured's work unless Subcontractor carries and maintains separate policies providing such coverage and provides Contractor evidence of insurance confirming the coverage.

Minimum Limits of Insurance

\$2,000,000 Each Occurrence Limit for bodily injury and property damage



\$2,000,000 General Aggregate Limit
\$2,000,000 Products and Completed Operations Aggregate Limit
\$10,000 Medical Expense Limit

If Commercial General Liability Insurance or other form with a general aggregate limit is used, it shall be revised to apply separately to this PROJECT or LOCATION.

Coverage Form

Coverage shall be at least as broad as the unmodified Insurance Services Office (ISO) Commercial General Liability (CGL) "Occurrence" form CG 00 01 04/13 or substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Additional Insured

City, its officers, agents, employees, and volunteers are to be included as insureds using the applicable ISO additional insured endorsement(s) or substitute forms providing equivalent coverage, in respects to damages and defense arising from: activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, or volunteers. Additional insured status for City shall apply until the expiration of time within which a claimant can bring suit per applicable state law.

Primary and Non-Contributory

Contractor's insurance coverage shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to City, its officers, agents, employees, and volunteers. There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured. Any insurance or self-insurance maintained by City, its officers, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it in any way.

Waiver of Subrogation

Contractor waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement. Insurer shall endorse CGL policy as required to waive subrogation against the City with respect to any loss paid under the policy.

Endorsements

Policy forms or endorsements are required confirming coverage for all required additional insureds. The forms or endorsements for CGL shall be at least as broad as the unmodified ISO additional insured endorsement CGO 20 10 07/04 and CG 20 37 07/04 or substitute forms providing additional insured coverage for products and completed operations.

A waiver of subrogation in favor of City shall be endorsed to the policy using an unmodified Waiver of



Transfer of Rights of Recovery of Others to Us ISO CG 24 04 05 09, or a substitute form providing equivalent coverage.

Business Automobile Liability

Minimum Limits of Insurance

\$1,000,000 Combined Single Limit per accident for bodily injury and property damage or the limit customarily carried by Contractor, whichever is greater. No aggregate limit may apply. Coverage may be combined with Excess/Umbrella Liability coverage to meet the required limit.

Coverage Form

Coverage shall be at least as broad as the unmodified Insurance Services Office (ISO) Business Automobile Coverage form CA 00 01 10/13, CA 00 25 10/13, CA 00 20 10/13 or substitute form providing equivalent coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

Additional Insured

City, its officers, agents, employees, and volunteers are to be included as insureds with respect to damages and defense arising from the ownership, maintenance or use of automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, or volunteers. Additional insured status for City shall apply until the expiration of time within which a claimant can bring suit per applicable state law.

Endorsements

A policy endorsement is required listing all required additional insureds. The endorsement for Business Automobile Liability shall be at least as broad as the unmodified ISO CA 20 48 10/13 or a substitute form confirming City's insured status for Liability Coverage under the Who Is An Insured Provision contained in Section II of the coverage form ISO CA 00 01 10/13.

Waiver of Subrogation.

Contractor waives all rights against City, its officers, agents, employees, and volunteers for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement. Contractor's insurer shall endorse policy to waive subrogation against City with respect to any loss paid under the policy.

Workers' Compensation and Employer's Liability

Contractor shall carry and maintain workers' compensation and employer's liability insurance meeting the statutory requirements of the State of Nevada, including but not limited to NRS 616B.627 and NRS 617.210 or provide proof that compliance with the provisions of Nevada Revised Statutes Chapters 616A-D and all other related chapters is not required. It is understood and agreed that there shall be no coverage provided for Contractor or any Subcontractor of the Contractor by the City. Contractor agrees, as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the City to make any payment under this Agreement to provide City with a certificate issued by an insurer in accordance with NRS 616B.627 and with a certificate of an insurer showing coverage pursuant to NRS 617.210.



It is further understood and agreed by and between City and Contractor that Contractor shall procure, pay for and maintain the above-mentioned coverage at Contractor's sole cost and expense.

Should Contractor be self-funded for workers' compensation and employer's liability insurance, Contractor shall so notify City in writing prior to the signing of this Contract. City reserves the right to approve said retentions, and may request additional documentation, financial or otherwise, for review prior to the signing of this Contract.

Upon completion of the project, Contractor shall, if requested by City, provide a Final Certificate for itself and each Subcontractor showing that Contractor and each Subcontractor had maintained the required Workers Compensation and Employer's Liability by paying all premiums due throughout the entire course of the project.

Nevada law allows the following to reject workers' compensation coverage if they do not use employees or subcontractors in the performance of work under the contract:

- Sole proprietors (NRS 616B.627 and NRS 617.210)
- Unpaid officers of quasi-public, private or nonprofit corporations (NRS 616B.624 and NRS 617.207)
- Unpaid managers of limited liability companies (NRS 616B.624 and NRS 617.207)
- An officer or manager of a corporation or limited liability company who owns the corporation or company (NRS 616B.624 and NRS 617.207)

If a contractor has rejected workers' compensation coverage under applicable Nevada law, the contractor must indicate the basis for the rejection of coverage and complete, sign and have notarized an Affidavit of Rejection of Coverage. The Affidavit must be completed, signed and notarized prior to performance of any work.

Minimum Limits of Insurance

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

Coverage Form

Coverage shall be at least as broad as the unmodified National Council on Compensation Insurance (NCCI) Workers Compensation and Employer's Liability coverage form WC 00 00 07/11 or substitute form providing equivalent coverage.

OTHER INSURANCE COVERAGES (IF APPLICABLE)

Professional Liability Insurance (if Applicable) \$1,000,000 each claim limits of liability or whatever limit is customarily carried by the Contractor, whichever is greater, for design, design-build or any type of professional services. If coverage is required on a claims-made or claims-made and reported basis, any applicable retroactive or pending & prior litigation dates must precede the effective date of this contract. Continuous coverage shall be maintained, or an extended reporting period shall be obtained for a period of at least three (3) years following completion of the project.



ALL COVERAGES

Coverage shall not be suspended, voided, canceled, or non-renewed by either CONTRACTOR or by the insurer, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to CITY except for ten (10) days' notice for nonpayment of premium.

DEDUCTIBLES AND RETENTIONS

Any deductibles or self-insured retentions that exceed \$100,000.00 per occurrence or claim must be declared to and approved by the City's Contracts and Risk Manager and prior to signing this Contract. City is entitled to request and receive additional documentation, financial or otherwise, prior to giving its approval of the deductibles and self-insured retentions. Any changes to the deductibles or self-insured retentions made during the term of this Contract or during the term of any policy must be approved by City's Contracts and Purchasing Manager prior to the change taking effect. Contractor is responsible for any losses within deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS

Should City and Contractor agree that higher coverage limits are needed warranting a project policy, project coverage shall be purchased and the premium for limits exceeding the above amount may be borne by City. City retains the option to purchase project insurance through Contractor's insurer or its own source.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officers, agents, employees, or volunteers.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A-VII and acceptable to the City. City, with the approval of the Risk Manager, may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Contractor and insurance carrier. City reserves the right to require that Contractor's insurer be a licensed and admitted insurer in the State of Nevada, or meet any applicable state and federal laws and regulations for non-admitted insurance placement.

VERIFICATION OF COVERAGE

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Prior to the start of any Work, Contractor must provide the following documents to City of Sparks, Attention: Purchasing Division, P.O. Box 857, Sparks, NV 89432-0857:

- A. **Certificate of Insurance.** Contractor must provide a Certificate of Insurance form to the City of Sparks to evidence the insurance policies and coverage required of Contractor.
- B. **Additional Insured Endorsements.** An original Additional Insured Endorsement, signed by an authorized insurance company representative, must be submitted to the City of Sparks, by attachment to the Certificate of Insurance, to evidence the endorsement of the City of Sparks as additional insured.



C. Policy Cancellation Endorsement. Except for ten (10) days' notice for non-payment of premium, each insurance policy shall be endorsed to specify that without thirty (30) days prior written notice to the City of Sparks, the policy shall not be suspended, voided, cancelled or non-renewed, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address specified above. A copy of this signed endorsement must be attached to the Certificate of Insurance. If endorsements are not available, Contractor shall be responsible to provide prior written notice to City as soon as practicable upon receipt of any notice of cancellation, non-renewal, reduction in required limits or other material change in the insurance required under this Agreement.

D. Bonds (as Applicable). Bonds as required and/or defined in the original bid documents.

All certificates and endorsements are to be addressed to the City of Sparks, Purchasing Division and be received and approved by City before work commences. The City reserves the right to require complete certified copies of all required insurance policies at any time.

SUBCONTRACTORS

Contractor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all the requirements stated herein.

MISCELLANEOUS CONDITIONS

1. Contractor shall be responsible for and remedy all damage or loss to any property, including property of City, caused in whole or in part by Contractor, any Subcontractor, or anyone employed, directed, or supervised by Contractor.
2. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any Subcontractors under it, and such coverage and limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to City in this contract.
3. In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
 - a. Purchase such insurance to cover any risk for which City may be liable through the operations of Contractor under this Agreement and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement;
 - b. Order Contractor to stop work under this Agreement and/or withhold any payments which become due Contractor here under until Contractor demonstrates compliance with the requirements hereof; or,
 - c. Terminate the Agreement.
4. If Contractor's liability policies do not contain the standard ISO separation of insureds condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.



12. Indemnity:

To the fullest extent permitted by law, upon award, Contractor shall hold harmless and indemnify, City, its affiliates, officers, agents, employees, volunteers, successors and assigns ("Indemnified Parties"), and each of them from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever ("Claims") to the extent that such Claims are caused by the negligence, errors, omissions, recklessness, or intentional misconduct of Contractor, its employees, agents, representatives, or Subcontractors in any way related to the performance of work under this Agreement by Contractor, or to work performed by others under the direction or supervision of Contractor, including but not limited to:

1. Personal injury, including but not limited to bodily injury, emotional injury, sickness or disease, or death to persons;
2. Damage to property of anyone, including loss of use thereof;
3. Penalties from violation of any law or regulation caused by Contractor's action or inaction;
4. Failure of Contractor to comply with the Insurance requirements established under this Agreement;
5. Any violation by Contractor of any law or regulation in any way related to the occupational safety and health of employees.

In determining the nature of the claim against City, the incident underlying the claim shall determine the nature of the claim, notwithstanding the form of the allegations against City.

In addition to Contractor's duty to hold harmless and indemnify the Indemnified Parties above, Contractor shall also defend the Indemnified Parties with respect to any Claims caused by the negligence, errors, omissions, recklessness or intentional misconduct of Contractor, its employees, agents, representatives, or Subcontractors which are not based upon or arising out of the professional services of Contractor. However, Contractor shall not be required to defend the Indemnified Parties with respect to Claims caused by the negligence, errors omissions, recklessness or intentional misconduct of Contractor, its employees, agents, representatives, or Subcontractors which are based upon or arising out of the professional services of Contractor. In such an event, if Contractor is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid by Contractor to the Indemnified Parties, as reimbursement for the attorney's fees and costs incurred by the Indemnified Parties in defending against such Claims, in an amount which is proportionate to the liability of Contractor.

In cases of professional service agreements, requiring professional liability coverage:

If the insurer by which a Consultant is insured against professional liability does not so defend the City and applicable agents and/or staff, and the Consultant is adjudicated to be liable by a trier of fact, the City shall be entitled to reasonable attorney's fees and costs to be paid to the City by the Consultant in an amount which is proportionate to the liability of the of the Consultant.

Nothing in this contract shall be interpreted to waive nor does the City, by entering into this contract, waive any of the provisions found in Chapter 41 of the Nevada Revised Statutes.



13. Material Breach of Contract:

In the event Consultant fails to deliver the product and services as contracted for herein, to the satisfaction of the City of Sparks or otherwise fails to perform any provisions of this Contract, the City, after providing five (5) days written notice and consultant's failure to cure such breach, may without waiving any other remedy, make good the deficiencies and deduct the actual cost of providing alternative products and/or services from payment due the Consultant. Non-performance after the first notice of non-performance shall be considered a material breach of contract.

14. Termination:

The City may terminate the Contract for material breach of contract upon ten (10) days written notice and recover all damages, deducting any amount still due the Consultant from damages owed to the City, or seek other remedy including action against all bonds. The Consultant may terminate the Contract for material breach of contract upon thirty (30) days written notice to the City.

Notwithstanding the preceding paragraph, the City may immediately terminate the Agreement, and Consultant waives any and all claim(s) for damages, upon the Consultant's receipt of notice under the following conditions:

- a) If funding is not obtained, continued, or budgeted at levels sufficient to allow for purchase of the services contemplated under this Agreement per Section 23 of this Agreement;
- b) If any federal, state or local law, including but not limited to, statutes, regulations, ordinances and resolutions, is interpreted by a third party judicial, legislative or administrative authority in such a way that the services contemplated under this Agreement are no longer authorized for purchase or appropriate for City financial participation;
- c) If Consultant fails to comply with any local, state or federal law regarding business permits and licenses required to perform the services to be performed under this Agreement or
- d) If it is found that any quid pro quo or gratuities were offered or given by the Consultant to any officer or employee of the City with a view towards securing favorable treatment with respect to awarding, extending, amending or making any determination with respect to the performance of this Agreement.

The indemnity and conflict resolution obligations of this Agreement shall survive the termination of this Agreement and shall be binding upon the parties' and the parties' legal representatives, heirs, successors and assigns.

The City may terminate this agreement for any reason without penalty upon giving thirty (30) days written notice to the Consultant. In the event of termination, the full extent of City liability shall be limited to an equitable adjustment and payment for materials and/or services authorized by and received to the satisfaction of the City prior to termination.

15. Licenses and Permits:

The Consultant shall procure at his own expense all necessary licenses and permits and shall adhere to all



the laws, regulations and ordinances applicable to the performance of this Contract.

All consultants doing business within the City of Sparks are required to obtain and maintain a current business license from the City of Sparks prior to commencement of this contract. Per Sparks Municipal Code Section 5.08.020A: "It is unlawful for any person to transact business in the City without first having obtained a license from the City to do so and without complying with all applicable provisions of this title and paying the fee therefore."

16. Boycott of Israel (NRS 332.065) (This Section IS IS NOT Applicable to this bid):

Pursuant to NRS 332.065 any Contract entered into under NRS Chapter 332 in which the estimated annual dollar amount exceeds \$100,000 will require written certification that the bidder is not, and will not be, engaged in a Boycott of Israel throughout the duration of the Contract. The term "Boycott of Israel" has the meaning ascribed in NRS 332.065(5). Bidder certifies that it is not, and will not be, engaged in a Boycott of Israel throughout the duration of the Contract.

17. Drafting Presumption:

The parties acknowledge that this Agreement has been agreed to by both parties, that both parties have consulted or have had the opportunity to consult with attorneys with respect to the terms, and that no presumption shall be created against the City as the drafter of the Agreement.

18. Governing Law:

The laws of the State of Nevada shall govern this Agreement without regard to conflicts of law principles.

19. Jurisdiction and Venue:

Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement must be brought against either of the parties in the courts of the State of Nevada, County of Washoe. Each of the parties consents to the jurisdiction of the court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to venue laid therein.

20. Claims:

Pursuant to NRS 268.020, which the parties agree to abide by contractually, all demands and accounts against the City must be presented to the Council, in writing, within six (6) months from the time the demands or accounts become due. No demand or account may be audited, considered, allowed or paid by the City unless this requirement is strictly complied with.

21. Assignment:

All of the terms, conditions and provisions of this Contract, and any amendments thereto, shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The Consultant shall not assign this Contract without the written consent of the City which will not be unreasonably withheld.

22. Notices:

All notices required to be given in writing by this Contract shall be deemed to be received (i) upon delivery if personally delivered, or (ii) when receipt is signed for if mailed by certified or registered mail, postage prepaid, or by express delivery service or courier, when addressed as follows (or sent to such



other address as a Party may specify in a notice to the others):

CITY OF SPARKS - PURCHASING DIVISION
431 PRATER WAY
PO BOX 857
SPARKS, NV 89432-0857

Damon Mazy
Black Eagle Consulting, Inc.
1345 Capital Blvd., Ste A
Reno, NV 89502

23. Entire Contract:

This Contract and all associated documents associated by reference constitute the entire agreement of the parties and shall supersede all prior offers, negotiations, agreements and contracts whether written or oral. Any modifications to the terms and conditions of this Contract must be in writing and signed by both parties.

24. Waiver:

No waiver of any term, provision or condition of this Contract, whether by conduct or otherwise, in any one or more instances, shall be deemed to be nor shall it be construed as a further or continuing waiver of any such term, provision or condition of this Contract. No waiver shall be effective unless it is in writing and signed by the party making it.

25. Annual Appropriation of Funds:

Multi-year contracts and leases are subject to annual appropriation of funds by the City Council. The City plans and makes appropriations to the City Budget with respect to a fiscal year that starts July 1st and ends June 30th of each year. Payments made under term contracts and leases are considered items of current expense. Purchase Orders are funded when issued; therefore, they are current expense items and are not subject to any subsequent appropriation of funds. Continuance of a multi-year contract beyond the limits of funds available shall be contingent upon appropriation of the requisite funds in the ensuing fiscal year and the termination of this contract by lack of appropriation shall be without penalty.

26. Severability:

If any part of this Contract is found to be void it will not affect the validity of the remaining terms of this Contract which will remain in full force and effect.

27. Headings:

Paragraph titles or captions contained in this Contract are inserted only as a matter of convenience and for reference only, and in no way define, limit, extend, or describe the scope of this Contract or the intent of any provision hereof.

28. Singular Includes the Plural; Gender; Title Reference:

Whenever the singular number is used in this Contract and when required by the context, the same shall include the plural, and the use of any gender, be it masculine, feminine or neuter, shall include all of the genders, and the word "person" or "entity" shall include corporation, firm, partnership, or any other combination or association.

The use of the title "Bidder", "Vendor", "Contractor" or "Consultant" within this contract or associated bid documents shall be deemed interchangeable and shall refer to the person or entity with whom the City of Sparks is contracting for the service or product referenced within this contract.



29. Execution:

The parties agree to execute such additional documents and to take such additional actions as are reasonably necessary or desirable to carry out the purposes hereof. They also agree, acknowledge and represent that all corporate authorizations have been obtained for the execution of this Contract and for the compliance with each and every term hereof. Each undersigned officer, representative or employee represents that he or she has the authority to execute this Contract on behalf of the party for whom he or she is signing.

IN WITNESS WHEREOF, the City of Sparks has caused this Contract to be executed by its officers thereunto duly authorized and the Consultant has subscribed same, all on the day and year first above written.

(Consultant)

CITY OF SPARKS, NEVADA
A Municipal Corporation

By: _____

By: _____
Ed Lawson, Mayor

(Title)

APPROVED AS TO FORM

ATTEST:

City Attorney

City Clerk



Attachment A

Price and scope per written proposal provided by Black Eagle Consulting, Inc., dated January 22, 2021 (attached).

Mr. Jon Ericson, P.E.
City of Sparks
431 Prater Way
Sparks, NV 89431

Exhibit A
January 22, 2021

**RE: Project Estimate to Provide Materials Testing Services
5 Ridges Subdivision
Sparks, Nevada**

Dear Mr. Ericson:

Black Eagle Consulting, Inc. (BEC) is pleased to present the following proposal to provide materials testing services for the above-referenced project located in Sparks, Nevada. The following information was used to develop our scope and cost:

- *Civil Improvement Plans for 5 Ridges Backbone Infrastructure*, prepared by Christy Corporation, dated November 6, 2020.
- *Mass Grading Plans for 5 Ridges Phase 1*, prepared by Christy Corporation, dated June 24, 2020.
- *Q&D Construction (Q&D) Schedule*, dated December 9th, 2020.
- *Geotechnical Investigation, 5 Ridges Subdivision, Sparks, Nevada*, prepared by BEC, dated May 1, 2020.
- Email and phone conversations with Padovan Consulting and Q&D Construction (Q&D).
- Phone conversations with the City of Sparks (the City), Mr. Jon Ericson, P.E.
- *Standard Specifications for Public Works Construction*, 2012, Revision 8 (The Orange Book).

Based on the information noted above and our experience with similar projects in the area, the following scope of work will be provided:

First Takedown Total: \$114,100.00

Phase 1 Parcel 1A-1F

Site Concrete

- We have budgeted for a field technician to make 8 site visits at 3 hours each during concrete placement within the City right-of-way (ROW). The on-site technician will perform concrete sampling, testing, and inspection duties for daily Portland cement concrete (PCC) construction operations based on the contractor's concrete schedule.

AC Paving

- We have budgeted for a field technician to make 12 site visits at 10 hours per day during the paving operations. The on-site technician will perform necessary field testing and inspection duties for daily asphalt paving construction operations based on the contractor's paving schedule.
- We have budgeted for a field technician to make 2 site visits at 5 hours per day during the asphalt concrete (AC) paving operations for the 5-foot AC sidewalk. The on-site technician will perform necessary field testing and inspection duties for daily asphalt paving construction operations based on the contractor's paving schedule.
- We have budgeted for a field technician to make 2 site visits at 8 hours each for AC coring after the paving operations. Core holes will be filled with non-shrink grout after removal.



Phase 1 Parcel 2

Roadway & Site Improvements Aggregate Base

- Based on Q&D's December 9, 2020 Construction Schedule, we have budgeted for a field technician to make 6 site visits at 3 hours each to density test the roadway, curb, gutter, and sidewalk aggregate base within the City ROW.

Site Concrete

- We have budgeted for a field technician to make 14 site visits at 3 hours each during concrete placement within the City ROW. The on-site technician will perform concrete sampling, testing, and inspection duties for all daily PCC construction operations based on the contractor's concrete schedule.

AC Paving

- We have budgeted for a field technician to make 8 site visits at 10 hours per day during the paving operations. The on-site technician will perform necessary field testing and inspection duties for daily asphalt paving construction operations based on the contractors paving schedule.
- We have budgeted for a field technician to make 2 site visits at 5 hours per day during the AC paving operations for the 5-foot AC sidewalk. The on-site technician will perform necessary field testing and inspection duties for daily asphalt paving construction operations based on the contractor's paving schedule.
- We have budgeted for a field technician to make 2 site visits at 8 hours each for AC coring after the paving operations. Core holes will be filled with non-shrink grout after removal.

Special Inspections

- We have budgeted for an ICC inspector to make 7 site visits at 3 hours each to perform the reinforcing steel inspection and concrete sampling with field testing for the headwalls.

Phase 1 Parcel 4-4C

Roadway & Site Improvements Aggregate Base

- Based on Q&D's December 9, 2020 Construction Schedule, we have budgeted for a field technician to make 3 site visits at 3 hours each to density test the roadway, curb, gutter, roundabout, and sidewalk aggregate base within the City ROW.

Site Concrete

- We have budgeted for a technician to make 12 site visits at 3 hours per day during concrete placement within the City ROW. The on-site technician will perform concrete sampling, testing, and inspection duties for all daily PCC construction operations based on the contractor's concrete schedule.

AC Paving

- We have budgeted for a field technician to make 4 site visits at 10 hours per day during the paving operations. The on-site technician will perform necessary field testing and inspection duties for daily asphalt paving construction operations based on the contractor's paving schedule.
- We have budgeted for a field technician to make 2 site visits at 8 hours each for AC coring after the paving operations. Core holes will be filled with non-shrink grout after removal.



Special Inspections

- We have budgeted for an ICC inspector to make 4 site visits at 3 hours each to perform the reinforcing steel inspection and concrete sampling with field testing for the headwalls.

Phase 1 Parcel 6A-6C

Roadway & Site Improvements Aggregate Base

- Based on Q&D's December 9, 2020 Construction Schedule, we have budgeted for a field technician to make 3 site visits at 3 hours each to density test the roadway, curb, gutter, roundabout, and sidewalk aggregate base within the City ROW.

Site Concrete

- We have budgeted for a technician to make 7 site visits at 3 hours per day during concrete placement within the City ROW. The on-site technician will perform concrete sampling, testing, and inspection duties for all daily PCC construction operations based on the contractor's concrete schedule.

AC Paving

- We have budgeted for a field technician to make 3 site visits at 10 hours per day during the paving operations. The on-site technician will perform necessary field testing and inspection duties for daily asphalt paving construction operations based on the contractor's paving schedule.
- We have budgeted for a field technician to make 1 site visit at 5 hours during the AC paving operations for the 5-foot AC sidewalk. The on-site technician will perform necessary field testing and inspection duties for daily asphalt paving construction operations based on the contractor's paving schedule.
- We have budgeted for a field technician to make 2 site visits at 8 hours each for AC coring after the paving operations. Core holes will be filled with non-shrink grout after removal.

Laboratory Materials Testing

- We have budgeted for materials testing of the AC pavement. We have budgeted our AC pavement samples to be sampled per the Orange Book specifications (every 500 tons) based on a 2,000-ton daily paving schedule. Our samples will be laboratory tested for the following tests: Bitumen Content by Ignition, Asphalt Gradation, and Maximum Theoretical Specific Gravity. We have also budgeted for additional laboratory testing of AC samples to be tested for Marshall Stability and Flow (1 per day and 1 per AC change) Compaction and Unit Weight.
- Concrete sampling and testing will include sets of 6 (4"x8") cylinders for compressive strength testing for all PCC sidewalk, curb & gutter, median post curb, and roundabout.
- Concrete sampling and testing are based on the contractor's concrete placement schedule. For the purposes of this proposal, we have budgeted for a minimum of one concrete sample per day with one set of 6 (4"x8") cylinders for compressive strength testing for all PCC work.

Incidental Items

- Our hourly rate per technician is \$95/hour (regular) and \$137/hour (overtime [OT]) all-inclusive rate. This rate includes the following: labor, vehicle, and nuclear density gauge.
- We have made an allowance for project management, clerical time, and travel to/from the project site.
- No allowance has been made for work on weekends or holidays.
- No allowance has been made for any re-testing or re-inspection of materials or workmanship not in conformance with project specifications.



A total estimated fee of **\$114,100.00** has been budgeted for Takedown 1. These costs are based on our current 2021 Standard Rates for Services and are valid for a period of 90 days from the date of this proposal. If work is authorized after 90 days has expired, our budget may need to be modified to reflect any adjustments to our Standard Rates for Services in effect at that time. Our actual costs will be directly associated with the contractor's production. If the contractor takes longer to complete the tasks than we assumed or if the contractor requests testing more frequently than we have assumed, additional costs will be incurred. Conversely, if the contractor completes work sooner than assumed and efficiently coordinates inspection and testing, a cost savings will be realized.

Services rendered by BEC under this agreement will be conducted in a manner consistent with that level of care and skill ordinarily expected by members of the profession currently practicing under similar conditions. No other warranty, express or implied, is made.

We greatly appreciate having the opportunity to submit this proposal and look forward to working with you on this project. If you have any questions or require any additional information, please feel free to call us.

Sincerely,

Black Eagle Consulting, Inc.



Damon Mazy
Project Manager

SAS:DVM:mrc

Enclosures: 2021 Standard Rates for Services





BLACK EAGLE CONSULTING, INC.
5 Ridges Subdivision
2020 STANDARD RATES FOR SERVICES

The following lists a schedule of fees associated with engineering, materials testing, and construction testing and inspection support services. For projects lasting less than 4 weeks, invoices will be submitted upon project completion, while monthly invoices will be submitted for projects that last longer than 4 weeks. Overtime is defined as any hour of service provided in excess of 40 hours in a single week or any hour of service provided on a Saturday or Sunday. Any overtime work will be invoiced at time and one-half. Double time is defined as any hour of service provided on a holiday. Any double time work will be invoiced at double time.

<u>SUPPORT SERVICE</u>	<u>RATE/HOUR</u>	
President	\$175.00	
Vice President	\$175.00	
Senior Consultant	\$175.00	
ENGINEERING:		
Division Manager	\$160.00	
Project Manager	\$130.00	
Project Engineer/Geologist	\$120.00	
Engineering Technician	\$ 95.00	
Drafting	\$ 75.00	
MATERIALS TESTING:		
Division Manager	\$140.00	
Senior Materials Technician	\$100.00	
Materials Technician	\$ 87.00	
Materials Technician Trainee	\$ 75.00	
CONSTRUCTION TESTING AND INSPECTION:		
Division Manager	\$150.00	
Project Manager	\$130.00	
Field Manager/Assistant Project Manager	\$105.00	
Inspector/Tester	\$ 95.00***	O.T. \$137.00***
TRAVEL AND EQUIPMENT:		
Vehicle	\$ 0.00	
Mileage	\$ 0.00/mile	
Per Diem	P.O.R.*	
Nuclear Densometer	\$ 0.00	
Coring Machine	\$ 35.00	
Pachometer	\$ 15.00	
Torque Wrench	\$ 15.00	
Skidmore-Wilhelm Bolt Tension	\$ 15.00	
Ultrasonic Equipment	\$ 20.00	
Thickness Gauge	\$ 15.00	
Schmidt Hammer	\$ 10.00	
Vane Shear	\$ 10.00	
HERZ	\$ 60.00	
ReMi Geophysical	\$600.00/day	
Crosshole Sonic Logging	\$500.00/day	
Floor Flatness Equipment + Labor	\$200.00/Hour	
CLERICAL:		
Clerical/Word Processor	\$ 65.00	
Computer	\$ 10.00	
Supplies	Cost + 10%	
Copying	\$ 0.20/page	
Color Copies: 8-1/2" x 11"	\$ 0.50/page	
Color Copies: 11" x 17"	\$ 2.00/page	
OUTSIDE SERVICES:	Cost + 10%	



BLACK EAGLE CONSULTING, INC.
5 Ridges Subdivision
2020 STANDARD RATES FOR SERVICES

2020 LABORATORY SERVICES SCHEDULE OF CHARGES

<u>TESTS</u>	<u>UNIT PRICE</u>
SOILS TESTING:	
Moisture Content (ASTM D 2216)	\$ 25.00/test
Moisture Content and Dry Density (ASTM D 2937)	\$ 50.00/test
Atterberg Limit (ASTM D 4318)	\$ 95.00/test
Minus 200 Wash (ASTM D 1140)	\$ 70.00/test
Standard Sieve Analysis	\$100.00/test
Hydrometer Analysis minus No. 10 (ASTM D 422)	\$225.00/test
Soil Specific Gravity (ASTM D 854)	\$ 80.00/test
R-Value, Untreated Field Sample (ASTM D 2844)	\$255.00/test
▪ ¾" Batching	add \$ 35.00/test
Consolidation, 4 points & 1 Rebound Point (ASTM D 2435)	\$300.00/test
Direct Shear, UU, CU, CD (ASTM D 3080)	\$300.00/test
Unconfined Compression (ASTM D 2166)	\$ 90.00/test
Durability Index	\$120.00/test
California Bearing Ratio	\$700.00/test
Resistivity (Miller Soil Box)	\$100.00/test
Standard Proctor Compaction (ASTM D 698)	
Method A or B (4-inch mold) or Method C (6-inch mold)	\$160.00/test
Modified Proctor Compaction (ASTM D 1557)	
Method A or B (4-inch mold) or Method C (6-inch mold)	\$170.00/test
Compaction Check Point (4-inch or 6-inch mold)	\$ 50.00/test
Rock Correction (ASTM D 4718)	\$ 80.00/test
Harvard Miniature (Nev T-101)	\$200.00/test
Expansion Index	\$175.00/test
AGGREGATE TESTING:	
Standard Sieve Analysis	\$100.00/test
Atterberg Limit (ASTM D 4318)	\$ 95.00/test
Moisture Content (ASTM D 2216)	\$ 25.00/test
Specific Gravity Fine Aggregate with Absorption (ASTM C 128)	\$ 80.00/test
Specific Gravity Coarse Aggregate with Absorption (ASTM C 127)	\$ 80.00/test
Clay Lumps and Friable Particles (ASTM C 142)	\$ 85.00/test
Flat and Elongated Particles (CRD 119, 120)	\$ 75.00/test
Fractured Faces (Nev T-230)	\$ 75.00/test
Sand Equivalent (ASTM D 2419)	\$100.00/test
Cleanliness Test of Aggregate	\$100.00/test
Organic Impurities (ASTM C 40)	\$ 75.00/test
Dry Unit Weight of Aggregate (ASTM C 29)	\$ 60.00/test
Sodium Soundness of Aggregate (ASTM C 88)	\$ 90.00/fraction
Los Angeles Rattler, 1.5 inch minus aggregate size (ASTM C 131) and Los Angeles Rattler, greater than 1.5 inch aggregate size (ASTM C 535)	\$300.00/test
PORTLAND CEMENT TESTING:	
Compression of Concrete Cylinder (ASTM C 39)	\$ 22.00/ea.
Compression of Grout Cylinder (UBC 24-28)	\$ 22.00/ea.
Compression of Mortar Cylinder (UBC 24-22)	\$ 22.00/ea.
Compression of Cored Concrete (ASTM C 42)	\$ 40.00/ea.
Compression of Shotcrete	\$100.00/ea.
Flexural Strength of Concrete Beams (ASTM C 78, C 293)	\$ 75.00/ea.
Splitting Tensile Strength of Concrete Cylinder (ASTM C 496)	\$ 50.00/ea.



BLACK EAGLE CONSULTING, INC.
5 Ridges Subdivision
2020 STANDARD RATES FOR SERVICES

MASONRY TESTING:

Compression of Masonry Unit (ASTM C 140) (Set of 3)	\$180.00/set
Compression of Masonry Prism (ASTM C 1314)	\$130.00/ea.
Shrinkage (Set of 3)	\$450.00/set
Moisture (Set pf 3)	\$120.00/set

ASPHALT CONCRETE TESTING:

Bitumen Content by Ignition	\$110.00/test
Asphalt Gradation	\$ 90.00/test
Marshall Stability and Flow, Compaction and Unit Weight (ASTMD 1559)	\$210.00/test
Maximum Theoretical Specific Gravity (ASTM D 2041)	\$ 90.00/test
Unit Weight of Asphalt Cores (ASTM D 2726)	\$ 35.00/ea.
Hveem Compaction and Stability	\$120.00/ea.
Hot Mix Asphalt Mix Design	P.O.R.*
CTB Mix Design	P.O.R.*

MISCELLANEOUS:

Mobile Asphalt/Soils Testing Laboratory	\$150.00/working day**
Special Handling	\$ 75.00/hour
Rush Charge	50% Additional Charge
Fireproofing	\$ 65.00/test

ADDITIONAL INFORMATION

Laboratory test unit prices are based upon the average running time required for each test. Special research, sample or equipment preparation or laboratory consulting will be based upon hourly personnel charges. Fixed unit prices do not include extra preparation time for large bulk samples, saturated samples or extremely clayey samples. This time will be invoiced on a per-hour basis. Special report preparation and data presentation beyond industry standards will also be invoiced on a per-hour basis. Cost estimates for hourly charges will be provided on a project-specific basis upon request.

Any specialized testing not covered by this fee schedule will be developed or subcontracted out under Black Eagle Consulting, Inc. supervision. Costs for these tests will be time-and-materials. When applicable, subcontractors' fees will be invoiced at cost plus ten (10) percent.

All samples will be discarded thirty (30) days after submission of our report, unless otherwise directed by the client. Upon request, Black Eagle Consulting, Inc. will deliver samples to the client, shipping collect on delivery, or will store them for an agreed charge.

* Price on request

**Excludes mobilization/demobilization, which is performed on a time-and-materials basis.

***All Inclusive Rate (i.e. Inspector, Vehicle, & Nuclear Densometer)