



**STANDBY POWER – ENGINEERING EVALUATION
CITY OF SPARKS, NEVADA**

THIS CONTRACT made and entered into on this 26th day of November, 2012 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 **CDM Smith**, 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 **October 19, 2012**, 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 **Standby Power – Engineering Evaluation**. 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 **\$87,630.00** 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 shall provide proof of Commercial General Liability Insurance and Automobile Liability, Professional Liability and Workers' Compensation (if applicable) 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 and shall meet the following minimum specifications:

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 RFP, BID OR QUOTE SUBMITTAL, THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS AS PRESCRIBED AND PROVIDED HEREIN. IF ANY CONSULTANT FAILS TO COMPLY STRICTLY WITH THE INSURANCE REQUIREMENTS, THAT CONSULTANT MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.



INDUSTRIAL INSURANCE

It is understood and agreed that there shall be no Industrial Insurance coverage provided for Consultant or any Sub-Contractor of the Consultant by the City. Consultant 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 Consultant that Consultant shall procure, pay for, and maintain the above mentioned industrial insurance coverage at Consultant's sole cost and expense.

Should Consultant be self-funded for Industrial Insurance, Consultant 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.

MINIMUM LIMITS OF INSURANCE

Consultant shall maintain coverage and limits no less than:

1. General Liability: \$1,000,000 (or amount customarily carried by Consultant, whichever is greater) combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.
3. Workers' Compensation: Consultant shall provide proof of worker's compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapters 616A-D and all other related chapters is not required.
4. Consultant Errors and Omissions Liability: \$1,000,000 per claim and as an annual aggregate. Premium costs incurred to increase Consultant's insurance levels to meet minimum contract limits shall be borne by the Consultant at no cost to the City.

Consultant will maintain Consultant liability insurance during the term of this Agreement and for a period of three (3) years from the date of substantial completion of the project. In the event that Consultant goes out of business during the term of this Agreement or the three (3) year period described above, Consultant shall purchase Extended Reporting Coverage for claims arising out of Consultant's negligent acts, errors and omissions committed during the term of the Consultant Liability Policy.

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



OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. City, its officers, agents, employees, and volunteers are to be included as insureds in respects to damages and defense arising from: activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, or volunteers.
- b. Consultant's insurance coverage shall be Primary insurance as it relates to City, its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it in any way.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officers, agents, employees, or volunteers.
- d. Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or non-renewed by either CONSULTANT or by the insurer, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CITY except for nonpayment of premium.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII. City, with the approval of the Risk Manager, may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Consultant and insurance carrier. City reserves the right to require that Consultant's insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

VERIFICATION OF COVERAGE

Consultant 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.

All certificates and endorsements are to 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. Consultant must provide the following documents to City of Sparks, Attention: Purchasing Division, P.O. Box 857, Sparks, NV 89432-0857:

- A. Certificate of Insurance.** Consultant must provide a Certificate of Insurance form to THE CITY OF SPARKS to evidence the insurance policies and coverage required of Consultant.



B. Additional Insured Endorsements. An original Additional Insured Endorsement, signed by an authorized insurance company representative, must be submitted to the City, 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 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, the policy shall not be cancelled, non-renewal or coverage and/or limits reduced or materially altered, 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.

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

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 of the requirements stated herein.

MISCELLANEOUS CONDITIONS

- A. Consultant shall be responsible for and remedy all damage or loss to any property, including property of City, caused in whole or in part by Consultant, any SubConsultant, or anyone employed, directed, or supervised by Consultant.
- B. Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any SubConsultants under it.
- C. In addition to any other remedies City may have if Consultant 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:
 1. Purchase such insurance to cover any risk for which City may be liable through the operations of Consultant under this Agreement and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement;
 2. Order Consultant to stop work under this Agreement and/or withhold any payments which become due Consultant here under until Consultant demonstrates compliance with the requirements hereof; or,
 3. Terminate the Agreement.

12. Indemnity:

Consultant agrees to defend, indemnify and hold harmless the City, and the employees, officers and agents of the City from any liabilities, damages, losses, claim, actions or proceedings, including, without limitation, reasonable attorneys' fees and costs, to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Consultant or employees or agents of the Consultant in the performance of the contract. If the insurer by which the Consultant is insured against professional liability does not so defend the City



and the employees, officers and agents of the City and the employees, officers and agents of the City and the Consultant 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 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. 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.

17. Governing Law:

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

18. 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.

19. 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.

20. 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.

21. 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

Paul Meyerhofer
CDM Smith
3860 GS Richards Blvd. #100
Carson City, NV 89703

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.



28. 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: _____
Geno R. Martini, Mayor

(Title)

APPROVED AS TO FORM

ATTEST:

City Attorney

Linda Patterson, City Clerk



Attachment A

Pricing and scope per CDM Smith proposal, dated October 19, 2012 (attached).