

LATE MATERIAL**CANYON CREEK CONSTRUCTION, INC.** **ENDING DATE** 9/18/08P.O. Box 21270
Carson City, NV 89721
(775) 882-6622**ITEM #** 9

Nevada Contractor's License No. 29210 - Limit: \$3,000,000.00

Construction Contract

CANYON CREEK CONSTRUCTION, INC., a Nevada licensed contractor ("Contractor"), and Bank of the West, attorney in fact for Reynen & Bardis (Carson), LLC a Nevada limited liability company, ("Owner") agree as follows:

Article 1
Definitions

The following terms shall have the following meanings for the purpose of this Contract, the Project, and all related Contract documents and correspondence:

- 1.1 **Project** shall mean the City of Carson Race Track Abatement, in Carson City, Nevada. Project shall include demolition -of circled items on Exhibit A, excluding all trees, un-circled concrete structures, and demolition permits, demolition dump fees & water fees. *City of Carson will provide reclaimed water at no cost at treatment plant 2 miles north of site. *
- 1.2 **Change Directive** means a change directive issued pursuant to Article 3 of this Contract.
- 1.3 **Change Order** means a change order issued pursuant to Article 3 of this Contract.
- 1.4 **Contract Documents** shall include this contract and any Change Orders or Change Directives issued pursuant hereto, the map attached hereto as Exhibit "A", the proposal entitled "Scope of Work", attached hereto as Exhibit "B", and all necessary permits (which must be obtained by the Contractor after execution of this Contract and for which owner shall reimburse contractor)
- 1.5 **Contract Price** shall mean the lump sum of \$76,872.00 subject to adjustments as set forth in this Contract, including only those things within the scope of work as hereinafter set forth. This contract is a lump sum contract where the Contractor earns any savings, but so too, Contractor is responsible for any and all overruns, save and except overruns in allowance items or overruns caused by changes in the scope of work caused by Owner's or Owners' representatives direction, or delays occasioned by the Owner or the Owner's representatives.

*per 9/04/08 telecom with Walter Sullivan, Development Service Director, Carson City, Nevada (775) 887-2000 x-30077

1.6 **Owner's Representative** shall mean Alicia Anderson
Vice President
Bank of the West

1.7 **Substantial Completion** means that state in progress of the Work when the Work is sufficiently complete in accordance with the contract documents so that the Owner can occupy and utilize the Work for its intended use.

Article 2
The Work

2.1 **The Work.** Subject to any other provision of the Contract, Contractor shall supply the materials, tools, equipment, supplies and labor, and perform all other work necessary to construct the Project pursuant to the Contract Documents (the "Scope of Work"). Contractor shall not be responsible for providing or procuring engineering or design information, other than those designs already forming a part of this Contract, and shall not be responsible for providing or procuring permits or other items required to complete the work. Please see attached "**Scope of Work**" for a detailed description of other items. Owner is to separately provide general liability insurance. Contractor shall be named as an additional insured, if possible. Contractor to provide workmen's comp insurance for it employees.

2.1.1 I. **Scope of Work.** Contractor shall complete the following described scope of work: See attached Exhibit "B" inclusive of scope of work.

2.2 **Site conditions and utilities.** Owner shall provide and maintain at its own cost (i) site conditions which allow Contractor to perform the Work in a continuous and expeditious fashion, (ii) all weather access ways to allow for the transportation of Contractors trucks and equipment to and from the Project site. Owner shall take no action which causes a cessation of any utility service to the Project.

2.3 **Contractor's representations.** Contractor represents and warrants (i) that it holds all licenses required of it by law to perform this contract and undertake the Work, (ii) that it is able to furnish the tools, materials, supplies, equipment and labor to perform the Work, (iii) that it is experienced in and competent to perform the work, and (iv) that it is authorized to do business in the State of Nevada.

- 2.4 **Delays.** Contractor shall perform the Work in an expeditious fashion, subject to delays caused by interruptions, conditions and circumstances beyond Contractor's control. **Damages for delays shall be limited to actual damages, and neither Owner nor Contractor shall be entitled to recover liquidated damages for delays in the progress of the Work.** In the event that the progress of the Work is delayed through no fault of Contractor, Owner shall issue a Change Order, pursuant to Article 3 below, to compensate Contractor for costs and expenses incurred by Contractor as a result of the delay. Furthermore, owner agrees and understands that any delay, even if just a day, may result in a disproportionate resulting delay due to the inability to promptly reschedule contractors, subcontractors, manufacturers, special manufacturing schedules, and material availability. Contractor will use all available means at his disposal to mitigate any delays so caused, but in any event, Owner, if the cause of any such delay, shall compensate Contractor for all costs and expenses so incurred and extend the contract completion date.
- 2.5 **Workmanship and supervision.** All workmanship on the Project, including the special manufacture of assemblies constructed away from the Project site for installation at the Project site, shall be in substantial conformity with the Contract Documents. All labor performed on the Project site shall be under the direction of a competent supervisor employed by Contractor. Contractor shall be solely responsible for the care, custody, control and direction of all persons performing the Work and shall have sole responsibility for the employment, discharge, and direction of such persons. It is the clear understanding of the Owner that Contractor or an appointed superintendent need not be on site of the Project at all times during performance of the work but only to such extent to insure that work proceeds in a proper sequence with good workmanship practices taking place at all times.
- 2.6 N/A
- 2.7 **Clean-up.** Contractor shall keep the Project site cleaned up in a thorough and workmanlike manner to the reasonable satisfaction of Owner on a daily basis.
- 2.8 **Safety.** Contractor shall comply with all statutory or regulatory safety laws that apply to the Project including but not limited to methods of construction, operation of tools, and storage of chemicals and other materials. Contractor shall take reasonable precautions to keep the Project site and adjacent lands free from safety hazards, and to protect all of Contractor's materials, equipment, and work, whether fully or partially completed, from loss or damage. Contractor will leave job site in a safe condition on a daily basis.
- 2.9 **Licenses.** Contractor shall obtain and maintain at all times during performance of the Work all licenses (except as otherwise provided in this Contract) required by local, county, state, and federal governments. Contractor shall hold harmless and indemnify Owner from and against damages, claims, costs and expenses (including reasonable attorney's fees) arising out of or based upon violations of licensing laws by Contractor or

it subcontractors, or the employees and agents of Contractor and its subcontractors.

- 2.10 **Illegal or non-conforming work.** Contractor shall perform all work in accordance with the Contract Documents and all applicable laws, ordinances, rules, regulations or restrictions, including applicable building codes. If Contractor performs any work which it knows, or reasonably should have known, is not in substantial conformity with the Contract Documents, or any applicable laws, ordinances, rules, regulations or restrictions, including applicable building codes, and fails to obtain the Owner's written authorization to proceed with such illegal or non-conforming work, Contractor shall bear all costs to remove the illegal or non-conforming work.
- 2.11 **Environmental concerns.** Based on the Phase I report provided to contractor, the undersigned information and belief is that there is no asbestos, polychlorinated biphenyl (PCB), or other hazardous substance (collectively "Hazardous Substances") on the Project site which will have to be removed and/or disposed of during the course of Contractor's performance of the Work. Owner understands and acknowledges that Contractor has no obligation under the Contract Documents to remove or dispose of hazardous Substances, such removal and/or disposal being outside the Scope of the Work to be performed under the Contract Documents.
- 2.12 N/A
- 2.13 **Punch lists; Final Payment.** When Contractor believes that the Work has reached a state of Substantial Completion, Contractor shall call for an inspection by Owner, and an inspection by all appropriate governmental agencies. Owner and the appropriate governmental agencies shall then compile a comprehensive "punch list" of items to be completed, corrected, or repaired (the "Punch List"). Contractor shall diligently perform all work necessary to complete, correct or repair the items on the Punch List, provided that Contractor shall have no obligation to supply labor or materials, or perform corrections or repairs which are outside the scope of the Contract Documents. When Contractor completes, corrects or repairs the items on the Punch List, which shall be evidenced by the City of Carson, - signing the demolition permit as completed and accepted-. Owner shall pay Contractor the entire contract Price.
- 2.14 **Warranty.** In addition to any warranties provided by manufacturers (not extending any manufacturers warranties) or vendors of any equipment, materials, or systems (including methods of fabrication) incorporated into the Work or the Project, Contractor warrants and guarantees that the Work, including all workmanship and materials incorporated into the Work or the Project (excluding materials supplied by Owner) shall be free from defects and fit for the intended use of the Project for a period of one year from the date of Substantial Completion, which date shall be determined by Contractor.

Article 3
Changes to the Work

- 3.1 **Exclusive Provisions for Changes.** The parties' obligations under this Contract, including the Work and compensation to Contractor, shall not be changed except in strict compliance with this Article. Contractor specifically agrees that it will make no claim for extra monies to do any extra work or make any modification to the Work except as provided in this Article.
- 3.2 **Price Requests.** Owner may, from time to time, submit written Price Requests directing Contractor to submit a proposal to make a change in the Work. The Price Request shall identify the change in the Work (including drawings and a narrative, if necessary) sufficient for Contractor to estimate the cost impact of the proposed change. Before the later of (a) ten (10) calendar days after Contractor receives the Price Request or (b) a later time specified in the Price Request, Contractor shall submit an estimate of the cost to change the Work pursuant to the Price Request (the "Cost Estimate"). Owner then may accept the Cost Estimate, and authorize the changed work. If Owner does not accept the Cost Estimate within thirty (30) days of receipt of the Cost Estimate, then Contractor shall not perform the work requested in the Price Request, and shall not be responsible for not performing such additional work.
- 3.3 **Change Directive.** Owner may, but is not required to, issue a Change Directive to Contractor to make the changes in the Price Request. Upon receipt of a Change Directive, Contractor shall take the necessary steps to change the Work in accordance with the instructions in the Change Directive, and the Contract Price shall be adjusted as set forth in Section 3.4 below.
- 3.4 **Changes to Contract Price.** Upon issuance of a Change Directive, the Contract Price shall be modified as follows:
- 3.4.1 If there will be a net additive change to the Cost of the Work, as determined by reference to the Cost Estimate, then the Contract price shall be increased by the cost of the change plus eighteen percent (18%).
- 3.4.2 If there will be a net deductive change to the cost of the Work, as determined by reference to the Cost Estimate, then the Contract Price shall be decreased by the amount of the change only.
- 3.4.3 Any portion of an additive change to be paid to a subcontractor (excluding any subcontractor retained to remove and dispose of hazardous Substances pursuant to Section 2.11 above) shall be limited to the subcontractor's estimated actual cost, plus a markup of eighteen percent (18%) for both profit and overhead.
- 3.5 **Change Orders.** In addition to using the Change Directive process outlined above, the parties may, by Change Order signed by Owner and Contractor, change the Work or Contract Price, or both.

- 3.6 **Change Order Compensation.** Due to Owner's financing and value of the contract, any change orders creating an addition to the contract amount directed by the Owner, over and above loan and financing amounts as herein set forth, shall be paid, in cash, within ten (10) days of receipt of the invoicing for the same by the Owner from Owner's personal funds.
- 3.7 **Owner's Representative.** No Cost Estimate or Change Order shall be binding upon Contractor unless signed by Contractor and by Owner's Representative, and any questions or communications regarding the scope of the Work, or proposed changes thereto, shall be directed to Contractor.

Article 4
Payments to Contractor

- 4.1 **Contract Payment Draws.** Owner shall pay for the work as stipulated in Section 2.13 above, and if by then owner has not otherwise paid contractor for such payment request, then contractor shall be entitled to proceed with the rights afforded to it pursuant to Chapter 108 of Nevada Revised Statutes.
- 4.2 **Right to Suspend Performance for Nonpayment.** If Owner fails to make any payment when due, Contractor may notify Owner in writing that it intends to suspend its performance hereunder. If Owner fails to make payment in full within three (3) days after receiving such notice, Contractor shall have the right to suspend its performance hereunder until it receives full payment of amounts due. The right to suspend performance shall be in addition to any other rights or remedies which Contractor may have under this Contract, or any other rights or remedies available at law or in equity. At that point the Scheduled completion date will be changed to account for any suspension of performance.
- 4.3 **Final Payment.** Owner shall retain from progress or other payments to the contractor hereunder (zero %) of the amount due until after final acceptance of the work by the owner.
- 4.4 **Acceptance of Final Payment.** Acceptance of final payment by Contractor shall constitute a waiver of all claims except those previously made in writing and identified by Contractor as unsettled at the time of Final Payment.

Article 5
Risk of Loss, Liability and Indemnification

- 5.1 **Contractor's Financial Representations and Warranties.** Contractor represents and warrants that Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Project.

- 5.2 **Performance Bond.** [N/A]
- 5.3 **Payment Bond.** [N/A]
- 5.4 **Title to Materials.** Owner shall own all materials and supplies which are delivered to the Project site for incorporation into the Project. Title to these items shall vest in Owner upon their delivery to the Project site, provided that such vesting of title shall not relieve Contractor of any of its obligations under this Contract provided Owner is current on payments to Contractor.
- 5.5 **Property Insurance.** Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance for the full amount of the Contract Price, insuring against the perils of fire, extended coverage, vandalism and malicious mischief. The insurance shall be maintained by Owner until final payment has been made or until no person or entity other than Owner has an insurable interest in the Work, whichever is earlier. Contractor shall be responsible for insuring any of Contractor's equipment, tools, supplies or materials not intended to be incorporated into the Project.
- 5.6 **Safety precautions.** Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- 5.6.1 Contractor's employees, subcontractors, employees of subcontractors, material men, government inspectors, the Owner's employees on the job site, inspectors and other persons whom the Contractor should reasonably foresee may be affected by the Work, or,
- 5.6.2 The Work and materials and equipment to be incorporated into the Work, whether in storage on or off the Project site, under the care, custody or control of Contractor or its subcontractors.
- 5.7 **Safety regulations.** Contractor shall fully comply with all applicable laws, rules, ordinances, regulations and lawful orders of public authorities bearing on the safety of persons or property related to the Project.
- 5.8 **Indemnification.** To the extent permitted by applicable laws, Contractor agrees to defend, indemnify, and hold harmless Owner from and against any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons and property (including loss of use thereof) to the extent caused by the intentional acts or negligence of Contractor, its agents and employees.

- 6.1 **Contractor's Default.** Subject to any other provision of this Contract, Contractor shall be in default under this Contract if it:
- 6.1.1 fails to commence the Work;
 - 6.1.2 Fails to prosecute the Work to completion in a diligent, efficient, workmanlike, skillful and careful manner and in substantial compliance with the provisions of the Contract Documents;
 - 6.1.3 fails to use sufficient quantity or quality of personnel or equipment to complete the Work without undue delay;
 - 6.1.4 is adjudged a bankrupt, makes a general assignment for the benefit of its creditors, permits a receiver to be appointed because of its insolvency, or becomes otherwise insolvent; or
 - 6.1.5 Fails to pay its subcontractors, material men, or laborers.
- 6.2 **Remedies for Contractor's Default.** If Contractor fails to cure any default within fifteen (15) days after receiving Owner's written notice of default, which shall specify the nature and extent of the default, then Owner may terminate this Contract. However, if Owner terminates this Contract without just cause, Contractor shall be entitled to recover all costs incurred plus eighteen percent (18%) of the Contract Price (which sum represents Contractor's profit and overhead).
- 6.3 **Owner's Default.** If Owner fails to perform any of its obligations under this Contract, Contractor shall give Owner written notice of default stating the nature and extent of the default. If Owner does not cure the default within fifteen (15) days after receiving the notice of default, Contractor may terminate this Contract, and Owner shall pay Contractor for all Work executed and for any proven loss sustained with respect to any materials, equipment, tools, construction equipment and machinery. Owner's default in payment are subject to the Suspension of Work provisions noted above.
- 6.4 **Cumulative Remedies.** The rights and remedies of both Owner and Contractor under this Article are nonexclusive and shall be in addition to all other remedies available to the parties under the Contract Documents or at law or in equity.

Article 7
Miscellaneous

- 7.1 **No Assignment of Contract.** Owner has selected Contractor to perform this Contract

based on the special expertise and other qualifications that the Contractor possesses. Therefore, Contractor may not assign this Contract. Contractor may, however, subcontract portions of the Work.

- 7.2 **Arbitration.** Unless the parties agree otherwise in writing, any claims or disputes under \$20,000.00 relating to or arising out of the Contract Documents, or any breach thereof, shall be resolved by arbitration before a single arbitrator. The arbitrator shall be selected by agreement of the parties, or if the parties are unable to agree on an arbitrator, then by the American Arbitration Association (AAA). Arbitration shall be held in Reno, Nevada, and shall be conducted in accordance with the AAA's construction industry rules of arbitration. All other disputes in excess of \$20,000.00 shall be litigated in court.
- 7.3 **Interest.** Contractor shall be entitled to interest on all past due amounts at the rate of interest of 2 percent per month unless otherwise provided with respect to specific funds or accounts as hereinabove provided.
- 7.4 **Attorney's Fees.** Should either party employ an attorney to institute suit or demand arbitration to enforce any of the provisions of this Contract, to protect itself in any matter arising under this Contract, or to collect damages for the breach of this Contract, the prevailing party shall be entitled to recover costs and reasonable attorney's fees incurred therein.
- 7.5 **Priority of documents.** In interpreting the Contract Documents, this Contract shall govern any conflicting provisions in the other Contract Documents, including an proposal or other such documents. The priority of the various plans, specifications, and other Contract Documents shall be given the priority assigned them in the Contract Documents. If the Contract Documents do not specify any priority, then written specifications shall govern plans and special provisions shall govern general provisions. Written addendums shall govern all prior writings.
- 7.6 **Law and Effect.** This Contract shall be interpreted and enforced in accordance with the laws of the state of Nevada.
- 7.7 **Severability and Waiver.** The partial or complete invalidity of any one or more provision of this Contract shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Contract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.
- 7.8 **Captions and Headings.** The captions and heading contained in this Contract are for convenience and ease of reference only, and shall not be relied upon or cited for any other purpose.
- 7.9 **Entire Contract.** This Contract represents the entire and integrated Contract between the

parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral.

- 7.10 **Amendments in Writing.** No modification of this Contract shall be binding unless evidenced by a written instrument signed by the parties hereto.
- 7.11 **No Third-Party Beneficiaries.** This Contract is made for the sole and exclusive benefit of Owner and Contractor, and not for the benefit of any third party.

DATED this Ninth day of September, 2007.

CANYON CREEK CONSTRUCTION INC.

By: SAMUEL A. NEVIS, President

Reynen & Bardis (Carson) LLC, a Nevada Corporation

By: BANK OF THE WEST
a California banking corporation, its
Attorney-in-fact

By: ALICIA ANDERSON, Vice President