AGREEMENT TO ARBITRATE

THIS AGREEMENT TO ARBITRATE ("Agreement") is made this ___ day of February ____, 2009, by and between PCL Construction Services, Inc. ("PCL" or "Contractor"), Target Construction, Inc. (Target), West Edna Associates, Ltd., d/b/a Mojave Electric, Inc. ("Mojave"); ISEC Inc. ("ISEC"); and Clark County, a political subdivision of the State of Nevada (the "County" or "Owner"), for itself and as assignee of Mojave, Heinaman Contract Glazing ("Heinaman"); Pahor Mechanical Contractors, Inc. ("Pahor"); W & W Steel Company, Inc. ("W & W"); Carmel Architectural Sales, d/b/a Carmel Contract Glazing ("Carmel") (collectively, "the Assignors") and in the its capacity in having agreed to defend and hold harmless the Assignors as set forth in their respective Agreements;

WHEREAS, on or about November 19, 2003, PCL and the County entered into a public works construction contract (the "CCRF Contract") to perform renovation work and new construction on the Consolidated Car Rental Facility (the "CCRF"); and

WHEREAS, PCL entered into subcontract agreements with Target; Pahor; W & W; Carmel; Heinaman; ISEC; and Mojave (the "Subcontractors"); and

WHEREAS, certain claims and disputes have arisen between PCL, the County, and the Subcontractors including those claims submitted by the Subcontractors against PCL (the "Subcontractor Claims"); and

WHEREAS, PCL has demanded arbitration against the County, Target, Pahor, W & W, Carmel, Heinaman, and Mojave (AAA Case No. 79 110 92 08 MARS) (the "PCL Arbitration") to arbitrate its claims against the County and the Subcontractors Claims; and

WHEREAS, Target demanded arbitration with PCL (AAA Case No. 79 110 Y 00084 07 MARS) (the "Target Arbitration"), and the Target Arbitration is currently being administered by AAA, and

WHEREAS, the County has entered into settlement agreements with Pahor, W & W, Carmel, Heinaman, ISEC, and Mojave wherein these subcontractors, subject to the terms of these agreements, assigned their respective claims against PCL to the County and agreed to defend and be responsible for certain claims asserted by PCL against the Assignors; and

WHEREAS, the Peel Brimley law firm will serve as counsel for the County and the Assignors; and all references in this agreement to "the County" shall also include the County individually and as assignee on behalf of the Assignors and in its capacity in having agreed to defend and hold harmless the Assignors as set forth in their respective Agreements; and,

WHEREAS, Section 23 of the General Conditions of the CCRF Contract, and Paragraph 12.7 of each subcontract, contain a provision to arbitrate the disputes, and the parties hereby desire to have this agreement supersede and replace the arbitration clauses
in the CCRF Contract and the arbitration clauses in PCL’s subcontracts, provided, however that the fee-shifting provisions in Paragraphs 12.7.4, 12.8.4, 15.8 and 21.2 of the Uniform Special Conditions to Subcontract to the Subcontracts between PCL and the Assignors will remain in full force and effect, but only to the same extent such provisions were in force and effect prior to the execution of this Agreement and subject to any prior addendum or modifications to the Subcontracts.

NOW THEREFORE, in consideration of the promises and agreements of the parties hereto, each to the other, and other good and valuable consideration, which the parties acknowledge as sufficient, the parties hereto agree as follows:

1. The recitals set forth above are incorporated herein and made a part of this agreement.

2. Unless otherwise specified in this agreement, all references to “the County” shall also include Pahor, W&W, Carmel, Heinaman, ISEC, and Mojave.

3. The parties agree to pursue binding arbitration before a panel of three neutral arbitrators as the means of dispute resolution under the CCRF Contract and PCL’s subcontracts with the Subcontractors for all disputes, claims, liabilities, or causes of action existing or arising between and among them relating to those contracts, the subcontracts, and the CCRF, including the Subcontractor Claims assigned to the County, with the exception of those claims identified in Paragraph 7 of this Agreement (the “Consolidated Arbitration”). The Consolidated Arbitration shall be self-administered by the arbitration panel, not the CPR, and shall be governed by the 2007 International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration (the “CPR Rules”) except as modified by this Agreement. In addition to the terms of this Agreement that are inconsistent with the CPR Rules, the CPR Rules are modified by the deletion of following: Rule 3; the second sentence of Rule 12.3; Rule 14; the first sentence of Rule 15.7; Rule 17.2 (each party is to pay its respective portion of the panel’s fees and costs as set forth in this agreement and their own attorney fees and costs except that the arbitrators may award attorney’s fees and costs to the extent allowed by the subcontracts as set forth in the recitals and Paragraph 13 of this agreement); and the last sentence of Rule 19.2.

4. The arbitration panel for the Consolidated Arbitration shall be selected as follows:

(a) PCL and the County shall each select and name an arbitrator within 30 days after execution of this Agreement by all parties. These two party-selected arbitrators shall be neutral and shall hear the case without bias or favoritism.
(b) The two party-selected arbitrators shall select a third arbitrator, who shall chair the panel, within thirty (30) business days after the last of them has made his or her disclosures to the parties unless the Parties mutually agree to an extension for good cause shown; provided, however, that, if any party-selected arbitrator or his or her replacement is challenged, the third arbitrator must be selected within thirty (30) business days after the final resolution of the challenge unless the Parties mutually agree to an extension for good cause shown. If the two party-appointed arbitrators do not select a third arbitrator within the specified time or any extension of that time to which all parties agree, the third arbitrator shall be selected by JAMS in accordance with mutually agreed criteria.

(c) The arbitrators shall be bound by the ABA/AAA Code of Ethics for Arbitrators in Commercial Disputes effective March 1, 2004 (“the Code of Ethics for Arbitrators”), including but not limited to the disclosure rules and the rules limiting *ex parte* contacts with attorneys and parties. The arbitrators shall make initial disclosures within ten (10) business days after being named, and promptly after they learn of any other facts or relationships requiring disclosure.

(d) Any party may object to the selection of an arbitrator for any ground for disqualification recognizable by Nevada Revised Uniform Arbitration Act or other applicable law. Any party may disqualify any arbitrator who has (1) previously been adverse to the disqualifying Party or, as a lawyer, represented an entity or a person adverse to the disqualifying Party; (2) previously served a judge, arbitrator, or special master in a matter in which he/she rendered or recommended a decision that was adverse to the disqualifying Party, (3) previously served as a judge, arbitrator, or special master in a matter in which he/she rendered or recommended a decision in favor of an entity that is adverse to the disqualifying Party in this arbitration; or (4) has or has had a personal, social, or professional relationship with a Party to this arbitration or their counsel other than simply having served as a mediator or arbitrator in another matter. Parties must serve all objections to an arbitrator’s appointment (a) within ten (10) business days after the arbitrator makes the disclosure(s) on which the objection is based or a party becomes independently aware of a basis for objection. If the challenged arbitrator does not voluntarily withdraw from the panel and the other parties do not stipulate to his or her withdrawal, the objection shall be referred to Floyd A. Hale or other mutually-acceptable individual, who by a jointly-submitted request shall be asked to serve as the arbitrator for the sole purpose of deciding challenges to the arbitrators and the selection process, and who shall be subject to the disclosure rules and other requirements of the Code of Ethics.

(e) If an arbitrator withdraws or is disqualified, then within fifteen (15) business days a substitute arbitrator shall be named by the party who originally selected him or her or by the arbitrators if the Chair of the panel withdraws or is disqualified. If the Chair withdraws or is disqualified, he/she shall be replaced as provided in Paragraph 4(b).
5. Upon the appointment of the third arbitrator, the arbitrators shall proceed without delay in conjunction with counsel for PCL, counsel for Target, and counsel for the County to plan, arrange, organize, and manage an efficient and expeditious arbitration proceeding. After the third arbitrator is appointed, the arbitrators will promptly conduct a preliminary hearing for the purpose of establishing a Scheduling Order, requiring the parties to submit statements of claims and defenses. If any party-selected arbitrator or his or her replacement is challenged, however, the preliminary hearing shall be held within fifteen (15) working days after the final resolution of the challenge. The arbitrators shall issue a written Scheduling Order to the parties not later than thirty (30) calendar days after the preliminary conference. Discovery shall not be limited by the CPR Rules but the parties shall be allowed full discovery in accordance with the Federal Rules of Civil Procedure unless otherwise agreed to by the parties or ordered by the arbitrators, except that the parties are not required to make the Rule 26 automatic disclosures. The parties shall give each party sufficient time to conduct full, thorough, and adequate discovery. The panel may relax the evidentiary rules during the arbitration as the panel determines to be appropriate to allow for any efficient and expeditious hearing of the matters in dispute.

6. The arbitration award shall be a reasoned award in which the Arbitrators provide a written detailed explanation of the reasons for and the basis of the award and an itemization of any damages awarded. The arbitration award shall be based on, and adhere to, the applicable law and to the facts and evidence presented at the arbitration hearing. PCL, Target, and the County agree that, following an award in the Consolidated Arbitration, no party may consult ex parte with any of the arbitrators or communicate with any of the arbitrators concerning the arbitration proceedings and/or awards until the case is fully resolved and all appeals are exhausted.

7. All disputes, claims, liabilities, causes of action, or defenses related to the CCRF Contract, PCL’s subcontracts with the Subcontractors, and any agreements between the County and the Assignors will be included in the Consolidated Arbitration under this Agreement, including but not limited to the claims submitted by the Assignors and Target, with the exception of (a) all claims against PCL’s sureties asserted by the County or previously asserted by the Assignors and Target; and (b) all warranty/defect claims by the County against PCL other than claims arising out of or relating to the agglomerate tile. The Parties will not object to any Party’s joinder of other entities to ensure full and complete adjudication of all disputed issues except as specifically excluded above.

8. Within five (5) business days after this Agreement is signed by all parties, (a) PCL shall withdraw and dismiss the PCL Arbitration without prejudice, and (b) Target and PCL shall stipulate to the withdrawal and dismissal of the Target Arbitration without prejudice. These withdrawals and dismissals are without prejudice to the rights of PCL and Target to
pursue arbitration under this Agreement. For purposes of any statutory or contractual limitations periods between County and PCL, the Consolidated Arbitration shall be deemed to have been commenced on the date when PCL added the County as a respondent in the PCL Arbitration.

9. Any judgments, findings, decisions, determinations, or arbitration awards that result from the resolution of disputes, claims, liabilities, causes of action, or defenses pursuant to arbitration under this Agreement shall be binding upon and enforceable against PCL, Target, and the County. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court with jurisdiction over the parties.

10. The arbitrator fees and expenses of the Consolidated Arbitration shall be paid as follows:

(a) PCL shall initially pay the fees and expenses of the arbitrator selected by PCL; Clark County shall initially pay the fees and expenses of the arbitrator selected by the County; and PCL and Clark County shall initially each pay one-half of the fees and expenses of the third arbitrator. If either PCL or the County is dismissed from the arbitration by settlement or order, however, then the remaining parties shall each pay the fees and expenses of the three arbitrators on pro rata basis. Target shall pay as its share of Arbitrator fees and expenses an amount of the fees and expenses of the third Arbitrator that is in direct proportion to the amount of Target’s claims compared to the total value of all claims made by all parties. Target and PCL shall be solely responsible for Arbitrators’ fees and costs for those motions and matters relating solely to PCL and Target.

(b) Regardless who pays the fees and expenses of an arbitrator, the arbitrator shall provide all parties with copies and terms of its fee agreement with the paying party and copies of all invoices sent to the party responsible for paying his or her fees;

(c) If directed by the arbitrators, the County, PCL, and Target shall place into trust or escrow in advance of the arbitration hearing the amounts designated by the arbitrators to cover the anticipated fees and expenses of attending the arbitration hearing, deliberating, and preparing the award.

(d) The County, Target, and PCL agree that, if one or more of them refuse to pay the compensation of the arbitrators or administrative expenses, each of the other parties has the right, but not the obligation, to pay that compensation so that the arbitration proceeding may continue. If a party exercises that right, the arbitration proceeding shall continue in accordance with this Agreement as though the compensation was being paid in accordance with this Agreement. The arbitration award shall order the reimbursement of the party that paid the arbitrator compensation or administrative expense pursuant to this Paragraph, together with interest thereon at the rate of 10% per annum.
11. The Consolidated Arbitration proceedings shall take place in Clark County, Nevada, at a location agreed by the parties or, if the parties cannot agree, at a location selected by the arbitrators.

12. The parties to this Agreement mutually acknowledge that this instrument constitutes their entire understanding of the terms of their agreement pertaining to the matters covered by this Agreement. Any modification of this Agreement must be made in writing and executed by all the parties hereto.

13. This Agreement supersedes and replaces the arbitration clauses in the CCRF Contract and the arbitration clauses in PCL’s subcontracts, provided, however that the fee-shifting provisions in Paragraphs 12.7.4, 12.8.4, 15.8 and 21.2 of the Uniform Special Conditions to Subcontract to the subcontracts between PCL and the Assignors remain in full force and effect. By executing this Agreement, the parties do not intend to expand or modify the fee-shifting provisions of the Subcontracts (inclusive of all addendum and modifications), but to maintain the rights of the Parties with regard to such provisions that existed prior to the execution of this Agreement.

14. The laws of the State of Nevada, including but not limited to the Nevada Revised Arbitration Act, NSA Chapter 38, shall govern the arbitration and the interpretation and performance of this Agreement.

15. Should any portion of this Agreement be found unenforceable by a court of competent jurisdiction, such unenforceable portion shall be struck from the Agreement and the remainder of the Agreement shall continue in full force and effect.

16. The parties acknowledge that they have had the opportunity to consult legal counsel of their choosing, that they understand the terms of this Agreement, that no other promise or inducement has been made except as set forth herein, and that they sign voluntarily. The parties acknowledge that this Agreement was the product of negotiations among the parties and agree that this Agreement was mutually drafted by the parties.

17. This Agreement may be executed in any number of counterparts and facsimile signatures shall be considered as originals.

Dated: March ___, 2009

CLARK COUNTY, NEVADA, for itself and as assignee on behalf of the Assignors and in its capacity in having agreed to defend and hold harmless the Assignors as set forth in their respective Agreements

By: ______________________________
Title: ______________________________
Dated: March ___, 2009

TARGET CONSTRUCTION, INC.

By: ____________________________
Title: ___________________________

Dated: March ___, 2009

PCL CONSTRUCTION SERVICES, INC.

By: ____________________________
Title: ___________________________

Dated: March ___, 2009

WEST EDNA ASSOCIATES, LTD., d/b/a
MOJAVE ELECTRIC, INC.

By: ____________________________
Title: ___________________________