INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT, hereinafter referred to as “Agreement” is made and entered into this 15th day of March, 2011, by and between COUNTY OF CLARK, NEVADA, a political subdivision of the State of Nevada, hereinafter referred to as “COUNTY,” and CITY OF NORTH LAS VEGAS, a municipal corporation under the State of Nevada, hereinafter referred to as “CITY.” Each hereinafter individually referred to as Party and collectively as Parties.

RECITALS

WHEREAS, the CITY desires to connect to the COUNTY’s storm drain and flood control system for the purpose of discharging treated effluent from CITY’s wastewater treatment plant to permitted areas of the Public Storm Drain and Channel (as hereinafter defined), as described in Exhibit “A” attached hereto and by this reference incorporated herein (“County Property”); and

WHEREAS, the COUNTY is willing to allow CITY to access the County Property for the sole purpose of discharging treated effluent from CITY’s wastewater treatment plant, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, it is mutually agreed by and between the Parties hereto as follows:

SECTION 1: DEFINITIONS

a. “Public Storm Drain” is defined as the Range Wash and Sloan Flood Control Channels within the COUNTY’s right-of-way on County Property (as described in Exhibit “A”).

b. “Storm Drain Connection” is defined as the CITY’s facilities that connect to the Public Storm Drain and Channel at Range Wash, and is described and depicted in Exhibit “B” and located at the permitted locations set forth in Exhibit “B” (“Permitted Locations”) attached hereto and by this reference incorporated herein.

SECTION 2: PREREQUISITES TO CONSTRUCTION, INSTALLATION, AND MAINTENANCE

1. The Clark County Director of Public Works has approved and accepted the Storm Drain Connection plans, as depict in Exhibit “B”. Said Storm Drain Connection, described in Exhibit “B”, is to be located only at the Permitted Locations, as described in Exhibit “B”, attached hereto and by this reference incorporated herein. Prior to the construction of the Storm Drain Connection in the County Property, CITY shall obtain and secure all permits required by the COUNTY. The COUNTY shall have the right in its sole discretion to review and approve or disapprove the final design and location of the Storm Drain Connection.
Any reconstruction, repair, replacement, removal, modification or adjustment of the Storm Drain Connection, or any new Storm Drain Connection plans or changes to the plans depicted in Exhibit “B”, must be approved by the COUNTY and CITY shall secure all permits, if any, required by the COUNTY.

2. CITY agrees that it has no right to legally challenge or contest the COUNTY’s conditions, requirements, and decisions, that are legally permissible, with respect to the Storm Drain Connection including, but not limited to, the Permitted Locations and/or lack of location and termination of the Storm Drain Connection.

3. CITY agrees that it shall not construct or engage in other improvements other than the Storm Drain Connection set forth in Exhibit “B”, located in the Permitted Locations and subject to in this Agreement.

SECTION 3: CONSTRUCTION, INSTALLATION AND MAINTENANCE

1. The COUNTY may include in its Range Wash Phase VI project the CITY’s Storm Drain Connection, subject to the separate approval of a change order by the COUNTY and the approval of the County’s contractor. Said Storm Drain Connection will be done at the CITY’s sole cost and expense and at no cost or expense whatsoever to the COUNTY. If a change order is approved by the Board of County Commissioners, CITY agrees to pay the COUNTY the amount of the change order prior to commencement of construction of the Storm Drain Connection. If the County does not include the Storm Drain Connection in the Range Wash Phase VI project or the Board of County Commissioners does not approve the change order for the CITY’s Storm Drain Connection, the CITY will be responsible for the construction of the Storm Drain Connection at no expense of the COUNTY.

   If the COUNTY approves a change order for the Storm Drain Connection, then, in addition to the cost of the change order for the Storm Drain Connection, CITY agrees to pay the COUNTY for all other costs related to or arising from the Storm Drain Connection including, but, not limited to, design costs, construction changes, construction management costs, supervision, administration, planning, engineering, quality assurance testing, survey, inspections, conflicts, time extensions, and delay costs (collectively referred to as “Construction Costs”). CITY understands and agrees that the Construction Costs shall be solely determined by the COUNTY. Said Construction Costs must be paid to the COUNTY within thirty (30) days of receipt of invoice by the CITY and prior to the CITY’s commencement of the CITY’s use and operation of the Storm Drain Connection.

2. CITY shall, at its sole cost and expense, furnish all labor, equipment, and materials for the reconstruction, use, maintenance, repair, replacement, removal and construction of the Storm Drain Connection. All work, including maintenance, is to be performed to the satisfaction of the COUNTY, and in compliance with all permits, applicable codes, ordinances, rules, regulations, specifications, and standards of the COUNTY, and all applicable laws, statutes, rules, codes, and regulations of the State of Nevada including, but not limited to, all State of Nevada water discharge permits, and the United States, and in such a manner so as to pose no risk or danger to
persons or property, and no interference with the use of the storm drain, public streets, off-site improvements, and right-of-way, and no interference with the operations or reasonable convenience of the owners of the property which adjoins any of the public streets, right-of-way, Public Storm Drain and Channel and/or any other COUNTY property.

3. CITY shall, at its sole cost and expense, operate, use, maintain and construct the Storm Drain Connection. The Storm Drain Connection shall be constructed, installed, maintained, and used so as not to interfere with the installation, maintenance or use of the Public Storm Drain and Channel and/or any other COUNTY property.

4. Prior to any construction, reconstruction, installation, use, operation, maintenance, replacement, reconstruction, repair and/or modification or relocation of the Storm Drain Connection, plans shall be submitted by the CITY to the COUNTY for approval and permit issuance including, but not limited to, an off-site permit, upon acceptance by the COUNTY. All use, operation, maintenance, repair, reconstruction, replacement, modification, relocation and construction performed by the CITY shall be performed in a manner acceptable to the COUNTY. Construction, installation, use, maintenance, operation, reconstruction, repair, replacement, modification or relocation shall include, but not be limited to, the following additional conditions and restrictions:

(a) At all times, CITY must obtain and comply with all state and federal water discharge permits including, but not limited to, a National Pollutant Discharge Elimination System Permit (“NPDES”).

(b) The maximum discharge of ground water from CITY’s Property shall be fifty million gallons per day (50 MGD).

(c) CITY shall not permit, and shall be responsible for the prompt removal of any impediment, destruction, constraint, conflict, restraint or any other blockage to the Storm Drain Connection and/or any flow or drainage through the Public Storm Drain and Channel from the Storm Drain Connection.

(d) CITY shall be responsible for the prompt removal of debris and/or any pollutant or waste in concentrations in excess of those established by law within: (i) the Storm Drain Connection, (ii) the Public Storm Drain and Channel, (iii) the Permitted Locations, and (iv) in any other location if such debris, pollutant and/or waste is caused by the CITY.

(e) The Storm Drain Connection must in no way be supported by any improvements to the Public Storm Drain and Channel or flood channel system including, but not limited to, pipes and channel structure.

(f) CITY shall not interfere with the installation, maintenance or use of the Public Storm Drain and Channel or flood channels including, but not limited to, pipes, channel structure and improvements, flood control improvements, drainage
improvements, maintained, used or authorized by the Board of County Commissioners.

(g) CITY shall not maintain or use the Storm Drain Connection in such a manner as to damage or interfere with the rights of others, or any existing or future private or public improvements and utilities including, but not limited to, flood control improvements, drainage improvements or roadway improvements.

(h) CITY agrees that the Storm Drain Connection shall not interfere with the operation of the Public Storm Drain and Channel, flood channels. Furthermore, CITY shall, at its sole cost and expense, be responsible for maintaining the Storm Drain Connection to ensure the health, safety, and welfare of the public satisfactory to the COUNTY. Protection of workers shall be the sole responsibility of CITY.

(i) CITY’s work under this Agreement shall not involve, necessitate or require encroachment on or penetration of property owned by the COUNTY, or property owned by another, except within the County Property as permitted by this Agreement.

(j) CITY shall in no way impair, impede, conflict, delay, disrupt and/or in any way interfere with improvements in or on the County Property including, but not limited to, to the construction, repair, removal, maintenance and/or use of utilities.

(k) CITY understands and agrees that certain improvements may be made to the County Property and the Public Storm Drain and Channel. CITY shall not impair, impede, conflict, delay, disrupt and/or in any way interfere with the construction of public or private projects. In the event the Storm Drain Connection impairs, impedes, conflicts, delays, disrupts and/or in any way interferes with improvements and/or the construction of improvements, as solely determined by the COUNTY, then CITY shall, at its sole cost and expense, after receipt of written notice from the COUNTY, reconstruct, modify, relocate or adjust the Storm Drain Connection, in the manner and time specified by the COUNTY in writing.

(l) The CITY acknowledges and agrees that the County’s use of the Public Storm Drain and Channel is a more necessary public use than that of the CITY’s use of the Public Storm Drain and Channel.

SECTION 4: CONDITIONS OF COUNTY PROPERTY OCCUPANCY

1. In the event that the CITY’s construction, installation, maintenance, reconstruction, repair, removal of the Storm Drain Connection are the cause of damage or disturbance to the surface or subsurface of the County Property including, but not limited to, any improvements and structures in the Public Storm Drain and Channel, public roads, rights-of-way or adjoining public
property, or any public property, then, after receipt of written notice to CITY by the COUNTY, CITY shall immediately at its own cost and expense, and in a manner approved by the COUNTY, repair and/or restore, to the satisfaction of the COUNTY, any damage sustained to the COUNTY’s Property caused by CITY. If the repair or replacement is not completed within a reasonable time or does not meet the COUNTY's requirements for such work, the COUNTY will perform the work or have the work performed and CITY will reimburse the COUNTY for all costs incurred within thirty (30) days after receipt of a bill evidencing such costs from the COUNTY.

2. Notwithstanding any other provision contained in this Agreement, in the case of an emergency or threat to the public’s health, safety or welfare caused by or attributed to the Storm Drain Connection, the CITY hereby agrees to immediately (upon notice thereof) demolish, adjust, replace, repair or reconstruct said Storm Drain Connection. In addition, the COUNTY at its option may, at the expense of the CITY, adjust, demolish, replace, repair or reconstruct said Storm Drain Connection if said Storm Drain Connection causes or contributes to an emergency or threat to the public’s health, safety, and welfare. CITY agrees to pay the COUNTY for all costs and expenses incurred by the COUNTY associated therewith within thirty (30) calendar days of receipt of a bill from the COUNTY.

3. CITY agrees that CITY must accept its use of the County Property pursuant to this Agreement in an AS-IS condition. The COUNTY makes no warranties or guarantees as to the condition of the County Property and the Public Storm Drain and Channel or that the County Property and the Public Storm Drain and Channel are suitable for use for the Storm Drain Connection. CITY further agrees that the COUNTY makes no warranties or guarantees that the Public Storm Drain and Channel has the capacity to carry any discharges from CITY’s Property.

4. The COUNTY may utilize the Public Storm Drain and Channel for any public purpose and may remove, modify, change, adjust, realign, reconstruct, construct the Public Storm Drain and Channel at any time as solely determined by the COUNTY.

SECTION 5: LIABILITY

1. CITY shall be solely responsible for the liability, claims, actions, damages, attorney fees, losses, and expenses to the extent caused by the discharge of wastewater from the treatment plant into the Public Storm Drain and Channel, the use and operation of the treatment plant, and/or the negligence, errors, omissions, recklessness or intentional misconduct of its officers, and employees.

2. COUNTY shall be solely responsible for the liability, claims, actions, damages, attorney fees, losses, and expenses to the extent caused the negligence, errors, omissions, recklessness or intentional misconduct of its officers, and employees.

3. CITY also agrees to repair or restore, to the satisfaction of the COUNTY, any damage sustained to any public property, including the County Property and the Public Storm Drain and
Channel that results from and/or arises out of the acts or omissions of CITY under this Agreement.

4. CITY agrees that the COUNTY will not be responsible for any damage to the Storm Drain Connection and/or CITY’s Property and any losses or damages arising from the Storm Drain Connection, this Agreement, the discharge of sewage, untreated water, water, flooding, water damage, rain events, backflow, lack of capacity of the Public Storm Drain and Channel, rain and flooding events whether such loss or damage is caused by CITY, the COUNTY, a contractor, a utility or any other person, party or entity.

5. CITY further agrees to waive as to the COUNTY and the Clark County Regional Flood Control District and their officers, agents, employees, and volunteers any claims, causes of actions and/or damages CITY may receive as a result of any waters, debris, substances, materials, pollutants, lack of capacity of the storm drain, flood or lack of capacity of the storm drain which causes damage to CITY’s Property and its invitees, guests, patrons, agents, employees, officers, contractors, and subcontractors and/or improvements including, but not limited to, buildings, structures, and personal property.

6. CITY agrees that the COUNTY will not be responsible for any liabilities related to, arising from or attributable to the construction of the Storm Drain Connection including, but not limited to, design defects, warranty issues, inspections and performance of the Storm Drain Connection. CITY also agrees to defend the COUNTY in any construction claims or lawsuits relating to, arising from or attributable to the Storm Drain Connection. Further CITY agrees to be responsible and pay for any judgments or damages related to, arising from or attributable to the construction of the Storm Drain Connection.

This Section 5 survives termination of this Agreement.

SECTION 6: REMOVAL AND REPLACEMENT OF IMPROVEMENTS UPON TERMINATION

Upon termination of this Agreement, the CITY shall, at its sole cost and expense, if requested by the COUNTY, remove the Storm Drain Connection from the County Property and replace it with improvements, as required by the COUNTY within thirty (30) days of receipt of written notice of termination. Prior to such removal, CITY shall secure, at its sole expense, all permits and approvals required by the COUNTY. CITY agrees and understands that it does not have any right to legally challenge or contest the COUNTY’s conditions, requirements and/or decisions, that are legally permissible, with respect to the removal of the Storm Drain Connection.

SECTION 7: COSTS / FEES FOR MAINTENANCE

1. Within ten (10) days of Board of County Commission approval, and prior to the issuance of any permits and prior to the commencement of any construction, the CITY shall pay an annual fee of Fifty Thousand and 00/00 Dollars ($50,000.00) to the COUNTY for the costs to the
COUNTY relating to the routine maintenance of the Public Storm Drain and Channel. Routine maintenance, as solely determined by the COUNTY, may include, but is not limited to debris removal, joint sealant replacement, fence repair and/or fence installation. The annual fee of $50,000 will be paid in advance annually on April 1.

2. If and when maintenance of the Public Storm Drain and Channel involves more than routine maintenance, which may include, but may not be limited to, reconstruction of concrete lining, buckling of the channel, water intrusion, safety enhancements (which could include but not be limited to additional fencing), or increased costs due to diversion of water, that is attributable to, caused by, or resulting from the discharge from the wastewater treatment plant, as determined by the County in consultation with the Clark County Regional Flood District and the CITY, the City agrees to pay to the County the cost of such construction, maintenance and/or safety enhancements that are attributable to, caused by, or resulting from the discharge from the wastewater treatment plant, within thirty (30) days after receipt of invoice by the County.

3. If this Agreement is terminated, the COUNTY shall return a portion of the annual fee prorated based upon the number of days remaining in the period covered by the annual fee.

4. The maintenance of the Public Storm Drain and Channel, and the costs and fees for the maintenance, as required by this Agreement, will be reviewed by the Board of County Commissioners annually. At the time of review, the cost, fees and maintenance provisions may be modified or adjusted as necessary, as solely determined by the Board of County Commissioners. However, prior to adjusting the costs, fees and maintenance, the County shall provide details of such costs, fees and maintenance to the City for the City’s review.

5. The COUNTY’s performance of maintenance on the Public Storm Drain and Channel is subject to funding and budget appropriation by the Board of County Commissioners.

SECTION 8: TERMINATION

The breach of any condition, covenant, restriction or agreement herein contained to be kept, observed, and performed by the CITY shall, at the option of the COUNTY, constitute a default of this Agreement and provide the COUNTY the right upon notice to CITY to terminate all rights of the CITY hereunder. The waiver by the COUNTY of the breach of any condition, covenant, restriction or agreement herein contained to be kept, observed, and performed by the CITY shall in no way impair the right of the COUNTY to enforce its rights upon any subsequent breach thereof.

Notwithstanding the above, the Board of County Commissioners may terminate this Agreement if the City fails to pay to the County any amounts properly due to the County in accordance with the requirements of this Agreement, subject to thirty (30) days prior written notice and opportunity to cure the failure the failure to pay. This Agreement also terminates if the County, in its sole discretion, determines to cease its use and operation of the Public Storm Drain and Channel, or if the COUNTY does not approve funding or budget appropriation for the Public Storm Drain and Channel including, but not limited to, the maintenance thereof.
Additionally, this Agreement shall terminate if the City and County cannot agree to modified or adjusted costs, fees and maintenance at an annual review.

At the time of termination, CITY shall comply with Section 6 of this Agreement and, if requested by the COUNTY, have the Storm Drain Connection removed, relocated and/or replaced with improvements, as required by the COUNTY, within thirty (30) days of receipt of written notice of termination.

SECTION 9: TERM

The term of this Agreement is thirty (30) years unless otherwise extended by the Clark County Board of County Commissioners or terminated as set forth herein.

SECTION 10: ASSIGNMENT MUST BE APPROVED BY COUNTY

CITY shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the COUNTY. At the time an assignment is requested, the Board of County Commissioners may, in their discretion, accept and approve the assignment or terminate this Agreement and require the CITY to comply with the requirements of Section 6 above. In the event the Board of County Commissioners accepts and approves an assignment of this Agreement, such assignment may be subject to a separate agreement that may include new, modified and/or additional terms and conditions, as solely determined by the COUNTY in its sole discretion.

SECTION 11: EFFECTIVE DATE

This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

SECTION 12: NOTICES

All notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given either when personally delivered, or three (3) business days after deposit in the U.S. Mail, registered or certified mail, return receipt requested, postage pre-paid, addressed as follows:

COUNTY:

Clark County, Nevada
Attention: Denis Cederburg, Director
Clark County Public Works Department
500 South Grand Central Parkway
Las Vegas, Nevada 89155-4000

CITY:

City of North Las Vegas
Attention: City Manager, Utilities Director
and City Attorney
2200 Civic Center Drive
North Las Vegas, Nevada 89030
SECTION 13: SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and insure to the benefit of the Parties hereto, their heirs, executors, administrators, successors, successors in interest and permitted assigns. Notwithstanding the above, CITY will also continue to be bound by the terms and conditions of this Agreement until the subsequent successors and assigns agree in writing to be bound by the terms and conditions herein and the COUNTY gives in writing of its consent to relieve CITY of its obligations herein.

SECTION 14: RELATIONSHIP OF PARTIES

This is not a joint enterprise. The City is an independent contractor and nothing contained herein shall be deemed or construed to create a partnership, joint venture or agency, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for the County.

SECTION 15: PARTIES AND INTERESTS

This Agreement and license shall not bestow any rights upon any third party, but rather shall bind and benefit the COUNTY and the CITY only.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

COUNTY OF CLARK, NEVADA
Board of County Commissioners

______________________________
SUSAN BRAGER
Chair

______________________________
DIANA ALBA
County Clerk

APPROVED AS TO FORM:

DAVID ROGER
Clark County District Attorney

______________________________
LAURA C. REHFELDT
Deputy District Attorney

CITY OF NORTH LAS VEGAS
A Nevada Municipal Corporation

______________________________
SHARI L. BUCK
Mayor

______________________________
KAREN L. STORMS
CMC, City Clerk

APPROVED AS TO FORM:

______________________________
JEFFREY F. BARR
Deputy City District Attorney