

Mem # 11A

**City of Carson City
Agenda Report**

Date Submitted: February 26, 2008

Agenda Date Requested: March 6, 2008
Time Requested: 5 minutes

To: Mayor and Supervisors

From: Purchasing & Contracts

Subject Title: Action to determine that Contract No. 0708-105 is a contract not required to be submitted for public bidding pursuant to NRS 338.1718, and to approve Contract No. 0708-105 a request for construction manager as agent services to be provided by Metcalf Builders, Inc. to be the Construction Manager as agent for the Carson City Indoor Recreation Center/Multi-Purpose Gym through December 31, 2009 for a not to exceed amount of \$991,764 to be funded from the Park Improvement/New Gymnasium Account 254-5046-452-7130 as provided in FY 2007/2008

Staff Summary: For the design and construction of the proposed new Recreation Center to be located adjacent to the new Boys and Girls Clubs of Western Nevada facility, staff recommends using a team of the project Architect, Valentiner Crane Architects, and a Construction Manager. This delivery system has worked well on the recent Sheriff's Administration Building project. A Request For Proposals was issued for Construction Manager Services and responses were received from seven (7) firms. A review and selection committee; consisting of Parks and Recreation staff, Public Works staff, and the project Architect, reviewed the proposals and conducted interviews of the three top rated firms. As a result, the committee has selected Metcalf Builders, Inc. as the most qualified firm. This proposed contract is for both pre-construction and construction phase Construction Manager Services for all phases of the project.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to determine that Contract No. 0708-105 is a contract not required to be submitted for public bidding pursuant to NRS 338.1718, and to approve Contract No. 0708-105 a request for construction manager as agent services to be provided by Metcalf Builders, Inc. to be the Construction Manager as agent for the Carson City Indoor Recreation Center/Multi-Purpose Gym through December 31, 2009 for a not to exceed amount of \$991,764 to be funded from the Park Improvement/New Gymnasium Account 254-5046-452-7130 as provided in FY 2007/2008

Explanation for Recommended Board Action: Pursuant to NRS 338.1718:

1. A construction manager as agent:

(a) Must:

- (1) Be a contractor licensed pursuant to chapter 624 of NRS;
- (2) Hold a certificate of registration to practice architecture, interior design or residential design pursuant to chapter 623 of NRS; or
- (3) Be licensed as a professional engineer pursuant to chapter 625 of NRS.

(b) May enter into a contract with a public body to assist in the planning, scheduling and management of the construction of a public work without assuming any responsibility for the cost, quality or timely completion of the construction of the public work. A construction manager as agent who enters into a contract with a public body pursuant to this section may not take part in the design or construction of the public work.

2. A contract between a public body and a construction manager as agent is not required to be awarded by competitive bidding.

Applicable Statue, Code, Policy, Rule or Regulation: NRS 338.1718

Fiscal Impact: Amount to be paid based on Time & Materials plus a fixed fee not to exceed \$991,764.00

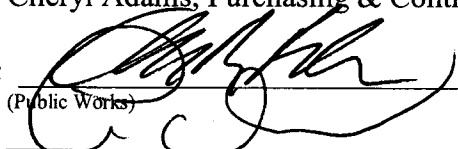
Explanation of Impact: Amount of contract

Funding Source: Original approved budget \$6,178,196 for Park Improvement/New Gymnasium Account 254-5046-452-7130 as provided in FY 2007/2008 and FY 2008/2009

Supporting Material: Contract for Services of Independent Contractor No. 0708-105

Prepared By: Cheryl Adams, Purchasing & Contracts Manager

Reviewed By:



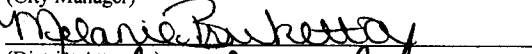
(Public Works)

Date: 2/26/08



(City Manager)

Date: 2/26/08



(District Attorney)

Date: 2-26-08



(Finance Director)

Date: 2-26-08

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-105

THIS CONTRACT, made and entered into this 6th day of March, 2008, by and between the City and County of Carson City, a political subdivision of the State of Nevada, hereinafter referred to as the "**CITY**", and Metcalf Builders, Inc. hereinafter referred to as the "**CONTRACTOR**".

WITNESSETH:

WHEREAS, the Purchasing & Contracts Director for the City and County of Carson City is authorized, pursuant to Nevada Revised Statute Chapter 332 and Carson City Purchasing Resolution #1990-R71, to approve and accept the Contract as set forth in and by the following provisions; and

WHEREAS, it is deemed that the services of **CONTRACTOR** for **CONTRACT No. 0708-105 Construction Manager as agent for the Carson City Indoor Recreation Center/Multi-Purpose Gym** are both necessary and in the best interests of the **CITY**; and

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1 REQUIRED APPROVAL:

1.1 This Contract shall not become effective until and unless approved by the Carson City Board of Supervisors.

2 CONTRACT TERM:

2.1 This Contract shall be effective from March 6, 2008 subject to Carson City Board of Supervisors' approval (anticipated to be March 6, 2008) to December 31, 2009, unless sooner terminated by either party as specified in **Section 13 Contract Termination**.

3 NOTICE:

3.1 Unless otherwise specified, termination shall not be effective until seven (7) calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by e-mail with simultaneous regular mail, by telephonic facsimile with simultaneous regular mail, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified below.

For P&C Use Only			
CCBL expires	12/31/08	PL expires	_____
NVCL expires	7/31/08	WC expires	_____
GL expires	_____	Builder's All Risk	_____
AL expires	_____	Umbrella or Excess	_____

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3.1.1 Notice to **CONTRACTOR** shall be addressed to:

Jonathan Young, Project Manager
Metcalf Builders, Inc.
751 Basque Way
Carson City, NV 89706
775-885-1844 / FAX #775-885-0178
jonathan.young@metcalfbuilders.com

3.1.2 Notice to **CITY** shall be addressed to:

Carson City Purchasing & Contracts
Cheryl Adams, Purchasing & Contracts Manager
201 North Carson Street Suite 11
Carson City, NV 89701
775-887-2027 extension 1100 / FAX 775-887-2107
CAdams@ci.carson-city.nv.us

4 SCOPE OF WORK:

4.1 **CONTRACTOR** shall provide and perform services for and on behalf of **CITY** hereinafter referred to as the "**SERVICES**", as more fully described in Subsection 6.2 **CONTRACTOR'S** Basic Services and Subsection 6.3 **CONTRACTOR'S** Additional Services.

5 CONTRACTOR REQUIREMENTS:

5.1 **CONTRACTOR** represents that it is duly licensed by Carson City for the purposes of performing the **SERVICES**.

5.2 **CONTRACTOR** represents that it is duly qualified and licensed in the State of Nevada for the purposes of performing the **SERVICES**.

5.3 **CONTRACTOR** represents that it and/or the persons it may employ possess all skills and training necessary to perform the **SERVICES** described herein and required hereunder. **CONTRACTOR** shall perform the **SERVICES** faithfully, diligently, in a timely and professional manner, to the best of its ability, and in such a manner as is customarily performed by a person who is in the business of providing such services in similar circumstances. **CONTRACTOR** shall be responsible for the professional quality and technical accuracy of all **SERVICES** furnished by **CONTRACTOR** to **CITY**.

5.4 **CONTRACTOR** represents that neither the execution of this Contract nor the rendering of services by the **CONTRACTOR** hereunder will violate the provisions of or constitute a default under any other contract or agreement to which the **CONTRACTOR** is a party or by which the **CONTRACTOR** is bound, or which would preclude the **CONTRACTOR** from

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performing the **SERVICES** required of the **CONTRACTOR** hereunder, or which would impose any liability or obligation upon **CITY** for accepting such **SERVICES**.

5.5 Before commencing with the performance of any work under this Contract, the **CONTRACTOR** shall obtain all necessary permits and licenses as may be necessary. Before and during the progress of work under this Contract, the **CONTRACTOR** shall give all notice and comply with all the laws, ordinances, rules and regulations of every kind and nature now or hereafter in effect promulgated by any Federal, State, County, or other Governmental Authority, relating to the performance of work under this Contract. If the **CONTRACTOR** performs any work that is contrary to any such law, ordinance, rule or regulation, he shall bear all the costs arising therefrom.

5.6 **Fair Employment Practices:**

5.6.1 Pursuant to NRS 338.125, it is unlawful for any Contractor in connection with the performance of work under a contract with a public body, when payment of the contract price, or any part of such payment, is to be made from public funds, to refuse to employ or to discharge from employment any person because of his race, color, creed, national origin, sex, sexual preference or age, or to discriminate against a person with respect to hire, tenure, advancement, compensation or other terms, conditions or privileges of employment because of his race, creed, color, national origin, sex, sexual preference or age.

5.6.2 In connection with the performance of work under this Contract, **CONTRACTOR** agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship.

5.6.3 **CONTRACTOR** further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

5.7 **Preferential Employment:**

5.7.1 Pursuant to NRS 338.130, in all cases where persons are employed in the construction of public works, preference shall be given, the qualifications of the applicants being equal: (1) First: To persons who have been honorably discharged from the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States, a reserve component thereof or the National Guard; and are citizens of the State of Nevada. (2) Second: To other citizens of the State of Nevada.

5.7.2 In connection with the performance of work under this Contract, the **CONTRACTOR** agrees to comply with the provisions of NRS 338.130 requiring certain preferences to be given to which persons are employed in the construction of a public work. If the **CONTRACTOR** fails to comply with the provisions of NRS 338.130, pursuant to the terms of NRS 338.130(2), this

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Contract is void, and any failure or refusal to comply with any of the provisions of this section renders this Contract void.

5.8 Arbitration:

5.8.1 Pursuant to NRS 338.150, any public body charged with the drafting of specifications for a public work shall include in the specifications a clause requiring arbitration of a dispute arising between the public body and the contractor engaged on a public work if the dispute cannot otherwise be settled.

5.8.2 Any dispute requiring arbitration must be handled in accordance with the construction industry's rules for arbitration as administered by the American Arbitration Association or the Nevada Arbitration Association.

5.8.3 This section does not prohibit the use of alternate dispute resolution methods before arbitration.

5.9 Pursuant to NRS 338.153, A public body shall include in each contract for a public work a clause requiring each contractor, subcontractor and other person who provides labor, equipment, materials, supplies or services for the public work to comply with the requirements of all applicable state and local laws, including, without limitation, any applicable licensing requirements and requirements for the payment of sales and use taxes on equipment, materials and supplies provided for the public work.

5.10 **CONTRACTOR** shall comply with the Copeland Anti-Kickback Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each contractor or subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

5.11 CONTRACTOR'S ACCOUNTING RECORDS:

5.11.1 Books and Records: **CONTRACTOR** agrees to keep and maintain under general accepted accounting principles (GAAP) full, true, and complete records, contracts, books, and documents as are necessary to fully disclose to the City, State, or United States Government, or their authorized representatives, upon audits, or reviews, sufficient information to determine compliance with all State and Federal regulations and statutes. **CITY** shall provide **CONTRACTOR** with funding entity breakdown to accommodate compliance.

5.11.2 Inspection and Audit: **CONTRACTOR** agrees that the relevant books, records (written, electronic, computer related, or otherwise), including, without limitation, relevant accounting procedures and practices of **CONTRACTOR** or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of **CONTRACTOR** where such records may be found, with or without



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notice by **CITY**, and with regard to any Federal funding, the relevant Federal agency, the Comptroller, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All trade contracts shall reflect requirements of this Subsection.

5.11.3 Period of Retention: All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years and for five (5) years if any Federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by **CITY** or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

6 CONTRACTOR'S RESPONSIBILITIES:

6.1 CONTRACTOR'S Services:

6.1.1 In providing the services described in this Contract, **CITY** has the authority to accept, modify, or reject the recommendations and/or other actions of **CONTRACTOR**. All bidding and contracting shall use best efforts to conform with the appropriate requirements of the Nevada Revised Statutes.

6.1.2 **CONTRACTOR** shall provide all required work and related services as necessary to satisfy the intended purposes of this Contract. Such services shall be as delineated by the terms and conditions of this Contract and shall not be altered except by written mutual consent of both parties.

6.1.3 **CONTRACTOR'S** services consist of those services performed by **CONTRACTOR**, **CONTRACTOR'S** employees, and consultants as enumerated in Subsection 6.2 **CONTRACTOR'S** Basic Services and Subsection 6.3 **CONTRACTOR'S** Additional Services.

6.1.4 **CONTRACTOR'S** services shall be provided in conjunction with the services of an Architect as described in Contract No. 0708-075 Recreation Center Conceptual Planning and Design Study at Boys & Girls Clubs of Western Nevada Project Site with Valentin Crane Architects.

6.1.5 **CONTRACTOR'S** services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the work. Upon request of **CITY**, the **CONTRACTOR** shall submit for **CITY'S** approval a schedule for the performance of the **CONTRACTOR'S** services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for **CITY'S** review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by **CITY** shall not, except for reasonable cause, be exceeded by **CONTRACTOR**.

6.1.6 Unless otherwise provided in this Contract, **CONTRACTOR** and **CONTRACTOR'S** consultants shall have no responsibility for the discovery, presence, handling, removal, or

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disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

6.2 CONTRACTOR'S Basic Services:

6.2.1 Definition:

6.2.1.1 CONTRACTOR'S Basic Services consist of those described in Subsection 6.2.2 Pre-Construction Phase, Subsection 6.2.3 Additional Preconstruction Services, and Subsection 6.2.4 Construction Phase – Administration of the Construction Contract and any of the other services identified as part of the Basic Services.

6.2.2 Pre-Construction Phase:

6.2.2.1 CONTRACTOR shall review the program, schedule, and construction budget furnished by **CITY** to ascertain the requirements of the Project.

6.2.2.2 Based on early schematic designs and other design criteria prepared by the Architect, **CONTRACTOR** shall prepare preliminary estimates of construction cost for program requirements using area, volume, or similar conceptual estimating techniques. **CONTRACTOR** shall provide cost evaluations of alternative materials and systems.

6.2.2.3 CONTRACTOR shall expeditiously review design documents during their developments and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. **CONTRACTOR** shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.

6.2.2.4 CONTRACTOR shall prepare and periodically update a Project Schedule for the Architect's review and **CITY'S** acceptance. **CONTRACTOR** shall obtain the Architect's approval for the portion of the preliminary Project schedule relating to the performance of the Architect's services. In the Project schedule, **CONTRACTOR** shall coordinate and integrate **CONTRACTOR'S** services and **CITY'S** responsibilities with anticipated construction schedules, high-lighting critical and long-lead items.

6.2.2.5 As the Architect progresses with the preparation of the Schematic, Design Development, and Construction Documents, **CONTRACTOR** shall prepare and update estimates of construction cost of increasing detail and refinements. The estimated cost of each contract shall be indicated with supporting detail. Such estimates shall be provided for the Architect's review and **CITY'S** approval. **CONTRACTOR** shall advise **CITY** and Architect if it appears that the construction cost may exceed the latest approved Project budget and make recommendations for corrective action.



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6.2.2.6 **CONTRACTOR** shall consult with **CITY** and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost or schedules.

6.2.3 **Additional Preconstruction Services:**

6.2.3.1 **CONTRACTOR** shall provide recommendations and information to **CITY** and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the trade contractors. **CONTRACTOR** shall verify that such requirements and assignments of responsibility are included in the proposed Contract Documents.

6.2.3.2 **CONTRACTOR** shall provide recommendations and information to **CITY** regarding the allocation of responsibilities for safety programs among all trade contractors.

6.2.3.3 **CONTRACTOR** shall advise on the division of the Project into various trade contracts for various categories of work, including the method to be used for selecting various trade contractors and awarding various trade contracts. If multiple trade contracts are to be awarded, **CONTRACTOR** shall review the Construction Documents and make recommendations as required to provide that (1) the work of the various trade contractors is coordinated, and (2) all requirements for the Project have been assigned to the appropriate contract, (3) the likelihood of jurisdictional disputes have been minimized, and (4) proper coordination has been provided for phased construction.

6.2.3.4 **CONTRACTOR** shall prepare a Project construction schedule providing for the components of the work, including phasing of construction, times of commencement, and completion required of each trade contractor, ordering and delivery of products requiring long-lead time, and the occupancy requirements of **CITY** and other joint use occupants. **CONTRACTOR** shall provide the current Project construction schedule for each set of bidding documents.

6.2.3.5 **CONTRACTOR** shall expedite and coordinate the ordering and delivery of materials requiring long-lead time.

6.2.3.6 **CONTRACTOR** shall assist **CITY** in selecting, retaining and coordinating the professional services of surveyors, special consultants, and testing laboratories required for the Project.

6.2.3.7 **CONTRACTOR** shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. **CONTRACTOR** shall make recommendations for actions designed to minimize adverse effects of labor shortage.

6.2.3.8 **CONTRACTOR** shall assist **CITY** in obtaining information regarding applicable

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requirements for equal opportunity programs for inclusion in the Contract Documents.

6.2.3.9 Following **CITY'S** approval of the Construction Documents, **CONTRACTOR** shall update and submit the latest estimate of Construction Cost and the Project construction schedule for the Architect's review and **CITY'S** approval.

6.2.3.10 **CONTRACTOR** shall submit the list of prospective bidders for the Architect's review and **CITY'S** approval.

6.2.3.11 **CONTRACTOR** shall develop bidder's interest in the Project and establish bidding schedules. **CONTRACTOR**, with the assistance of the Architect, shall conduct pre-bid conferences with prospective bidders. **CONTRACTOR** shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

6.2.3.12 **CONTRACTOR** shall receive bids, prepare bid analyses, and make recommendations to **CITY** for **CITY'S** award of trade contracts or rejection of bids.

6.2.3.13 **CONTRACTOR** shall assist **CITY** in preparing trade contracts and advise **CITY** on the acceptability of subcontractors and material suppliers proposed by trade contractors.

6.2.3.14 **CONTRACTOR** shall assist **CITY** in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various trade contractors. **CONTRACTOR** shall assist **CITY** and Architect in connection with **CITY'S** responsibility for filing documents required for the approvals of other governmental authorities having jurisdiction over the Project.

6.2.4 Construction Phase - Administration of the Construction Contract:

6.2.4.1 The Construction Phase will commence with the award of the initial construction contract or purchase order and, together with **CONTRACTOR'S** obligation to provide Basic Services under this Contract, will end thirty (30) calendar days after final payment to all trade contractors is due.

6.2.4.2 **CONTRACTOR** shall provide administration of trade contracts in cooperation with the Architect as set forth in Contract No. 0708-075 Recreation Center Conceptual Planning and Design Study at Boys & Girls Clubs of Western Nevada Project Site with Valentin Crane Architects.

6.2.4.3 **CONTRACTOR** shall provide administrative, management, and related services to coordinate scheduled activities and responsibilities of the trade contractors with each other and with those of **CONTRACTOR**, **CITY**, and the Architect to endeavor to manage the Project in accordance with the latest approved estimate of Construction Cost, the Project Schedule, and the Contract Documents.

6.2.4.4 **CONTRACTOR** shall schedule and conduct meetings to discuss such matters as

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procedures, progress, and scheduling. **CONTRACTOR** shall prepare and promptly distribute minutes to **CITY**, Architect, and trade contractors.

6.2.4.5 Utilizing the Construction Schedules provided by the trade contractors, **CONTRACTOR** shall update the Project construction schedule incorporating the activities of the trade contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long-lead time and procurement. The Project construction schedule shall include **CITY'S** occupancy requirements showing portions of the Project having occupancy priority. **CONTRACTOR** shall update and reissue the Project construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, **CONTRACTOR** shall recommend corrective action to **CITY** and Architect.

6.2.4.6 Consistent with the various bidding documents and utilizing information from the trade contractors, **CONTRACTOR** shall coordinate the sequence of construction and assignment of space in areas where the trade contractors are performing work.

6.2.4.7 **CONTRACTOR** shall endeavor to obtain satisfactory performance from each of the trade contractors. **CONTRACTOR** shall recommend courses of action to **CITY** when requirements of a contract are not being fulfilled.

6.2.4.8 **CONTRACTOR** shall monitor the approved estimate of Construction Cost. **CONTRACTOR** shall show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.

6.2.4.9 **CONTRACTOR** shall develop cash flow reports and forecasts for the Project and advise **CITY** and Architect as to variances between actual and budgeted or estimated costs.

6.2.4.10 **CONTRACTOR** shall maintain accounting records on authorized work performed under unit costs, additional work performed on the basis of actual costs of labor and materials. **CITY** shall provide **CONTRACTOR** with periodic accounts payable reports.

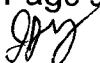
6.2.4.11 **CONTRACTOR** shall develop and implement procedures for the review and processing of applications by trade contractors for progress and final payments.

6.2.4.11.1 Based on the **CONTRACTOR'S** observations and evaluations of each trade contractor's Application for Payment, **CONTRACTOR** shall review and certify the amounts due respective trade contractors.

6.2.4.11.2 Trade contractors shall utilize **CITY'S** application form. **CONTRACTOR** shall review each invoice and make recommendation for payment in accordance with Subsection

6.2.4.11.3

6.2.4.11.3 **CONTRACTOR** shall review each certification for payment which shall constitute a



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representation to **CITY**, based on **CONTRACTOR'S** determination at the site as provided in Subsection 6.2.4.13 and on the data comprising the Contractors' Applications for Payment, that, to the best of **CONTRACTOR'S** knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject of an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations for the Contract Documents correctable prior to completion and to specific qualifications expressed by **CONTRACTOR**. The issuance of a Certificate for Payment shall further constitute a representation that the trade contractor is entitled to payment in the amount certified. However, all payments are subject to review and approval by **CITY**.

6.2.4.11.4 **CONTRACTOR** shall monitor all trade contractors for compliance with State Labor Commission prevailing wage rate requirements.

6.2.4.12 **CONTRACTOR** shall review the safety programs developed by each of the trade contractors for purposes of coordinating the safety programs with those of the other trade contractors. **CONTRACTOR'S** responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the trade contractors, subcontractors, agents or employees of the trade contractors or subcontractors, or any other persons performing portions of the work and not directly employed by **CONTRACTOR**.

6.2.4.13 **CONTRACTOR** shall determine in general that the work of each trade contractor is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard **CITY** against defects and deficiencies in the work. As appropriate, **CONTRACTOR** shall have authority, upon written authorization from **CITY**, to require additional inspections or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed, or completed. **CONTRACTOR**, in consultation with the Architect, may reject work which does not conform to the requirements of the Contract Documents.

6.2.4.14 **CONTRACTOR** shall schedule and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Project construction schedule.

6.2.4.15 With respect to each trade contractor's own work, **CONTRACTOR** shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of each of the trade contractors, since these are solely the trade contractor's responsibility under the contract for construction. **CONTRACTOR** shall not be responsible for a trade contractor's failure to carry out the work in accordance with the respective Contract Documents. **CONTRACTOR** shall not have control over or charge of acts or omissions of the trade contractors, subcontractors, or their agents or employees, or any other persons performing portions of the work not directly employed by **CONTRACTOR**.

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6.2.4.16 **CONTRACTOR** shall transmit to the Architect requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.

6.2.4.17 **CONTRACTOR** shall review requests for changes, assist in negotiating trade contractor's proposals, submit recommendations to the Architect and **CITY**, and if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the Architect's modifications to the Documents.

6.2.4.18 **CONTRACTOR** shall assist the Architect in the review, evaluation, and documentation of Claims.

6.2.4.19 **CONTRACTOR** shall receive certificates of insurance from the trade contractors and forward them to **CITY** with a copy to the Architect.

6.2.4.20 In collaboration with the Architect, **CONTRACTOR** shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples, and other submittals. **CONTRACTOR** shall review all Shop Drawings, Product Data, Samples, and other submittals from the trade contractors. **CONTRACTOR** shall coordinate submittals with information contained in related documents and transmit to the Architect those which have been approved by **CONTRACTOR**. **CONTRACTOR'S** actions shall be taken with such reasonable promptness as to cause no delay in the work or in the activities of **CITY** or trade contractors.

6.2.4.21 **CONTRACTOR** shall record the progress of the Project. **CONTRACTOR** shall submit written progress reports to **CITY** and Architect including information on each trade contractor and each trade contractor's work, as well as the entire Project, showing percentages of completion. **CONTRACTOR** shall keep a daily log containing a record of weather, each trade contractor's work on the site, number of workers, identification of equipment, and other similar relevant data as **CITY** may require.

6.2.4.22 **CONTRACTOR** shall maintain at the Project site for **CITY**, one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples, and similar required submittals. **CONTRACTOR** shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. **CONTRACTOR** shall make all such records available to the Architect and upon completion of the Project shall deliver them to **CITY**.

6.2.4.23 **CONTRACTOR** shall arrange for the delivery, storage, protection and security of **CITY**-purchased materials, systems, and equipment that are a part of the Project until such items are incorporated into the Project.

6.2.4.24 With the Architect and **CITY'S** maintenance personnel, **CONTRACTOR** shall

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observe the trade contractor's final testing and start-up of utilities, operational systems and equipment.

6.2.4.25 When **CONTRACTOR** considers each trade contractor's work or a designated portion thereof substantially complete, **CONTRACTOR** shall, jointly with the trade contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. **CONTRACTOR** shall assist the Architect in conducting inspections to determine whether the work or designated portion thereof is substantially complete.

6.2.4.26 **CONTRACTOR** shall coordinate the correction and completion of the work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, **CONTRACTOR** shall evaluate the completion of the work of the trade contractors and make recommendations to the Architect when work is ready for final inspection. **CONTRACTOR** shall assist the Architect in conducting final inspections.

6.2.4.27 **CONTRACTOR** shall secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to **CITY** and deliver all keys, manuals, record drawings, and maintenance stocks to **CITY**. **CONTRACTOR** shall forward to the Architect a final Project Application for Payment upon compliance with the requirements of the Contract Documents.

6.2.4.28 Duties, responsibilities, and limitations of authority of **CONTRACTOR** as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of **CITY** and **CONTRACTOR**. Consent shall not be unreasonably withheld.

6.3 CONTRACTOR'S Additional Services:

6.3.1 General:

6.3.1.1 The services described in this Section are not included in Subsection 6.2 **CONTRACTOR'S** Basic Services and they shall be paid for by **CITY** as provided in this Contract, in addition to the compensation for Basic Services. The Optional Additional Services described under Subsection 6.3.3 Optional Additional Services shall only be provided if authorized or confirmed in writing by **CITY**. If services described in Subsection 6.3.2 Contingent Additional Services are required due to circumstances beyond **CONTRACTOR'S** control, **CONTRACTOR** shall notify **CITY** prior to commencing such services. If **CITY** deems that such services described under Subsection 6.3.2 Contingent Additional Services are not required, **CITY** shall give prompt written notice to **CONTRACTOR**. If **CITY** indicates in writing that all or part of such Contingent Additional Services are not required, **CONTRACTOR** shall have no obligation to provide those services.

6.3.2 Contingent Additional Services:

6.3.2.1 Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity, or **CITY'S** schedule.

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6.3.2.2 Providing consultation concerning replacement of work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work.

6.3.2.3 Providing services made necessary by the termination or default of the Architect or a trade contractor, by major defects or deficiencies in the work of a trade contractor, or by failure of performance of either the **CITY** or trade contractor under a contract for construction.

6.3.2.4 Providing services in evaluating an extensive number of claims submitted by a trade contractor or others in connection with the work.

6.3.2.5 Providing services in connection with a public hearing, arbitration proceeding, or legal proceeding except where **CONTRACTOR** is party thereto.

6.3.3 Optional Additional Services:

6.3.3.1 Providing services relative to future facilities, systems, and equipment.

6.3.3.2 Providing services to investigate existing conditions or facilities or to provide measured drawings thereof.

6.3.3.3 Providing services to verify the accuracy of drawings or other information furnished by **CITY**.

6.3.3.4 Providing services required for or in connection with **CITY'S** selection, procurement or installation of furniture, furnishings, and related equipment.

6.3.3.5 Providing services for tenant improvements.

6.3.3.6 Providing any other services not otherwise included in this Contract.

7 CITY'S RESPONSIBILITIES:

7.1 **CITY** shall make available to **CONTRACTOR** all technical data that is in **CITY'S** possession, reasonably required by the **CONTRACTOR** relating to the **SERVICES**.

7.2 **CITY** shall provide access to and make all provisions for the **CONTRACTOR** to enter upon public and private lands, to the fullest extent permitted by law, as reasonably required for the **CONTRACTOR** to perform the **SERVICES**.

7.3 **CITY** shall examine all reports, correspondence, and other documents presented by the **CONTRACTOR** upon request of **CITY**, and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the work of the **CONTRACTOR**.

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7.4 It is expressly understood and agreed that all work done by the **CONTRACTOR** shall be subject to inspection and acceptance by **CITY** and approval of work shall not forfeit the right of **CITY** to require correction, and nothing contained herein shall relieve the **CONTRACTOR** of the responsibility of the work required under the terms of this Contract until all work has been completed and accepted by **CITY**.

7.5 **CITY** shall provide full information regarding the requirements for the Project, including a program which shall set forth **CITY'S** objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

7.6 **CITY** shall establish and update an overall budget for the Project based on consultation with **CONTRACTOR** and the Architect, which shall include the Construction Cost, **CITY'S** other costs and reasonable contingencies related to all of these costs.

7.7 **CITY** shall designate a representative authorized to act on **CITY'S** behalf with respect to the Project. **CITY** or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by **CONTRACTOR** in order to avoid unreasonable delay in the order and sequential progress of **CONTRACTOR'S** services.

7.8 **CITY** shall retain an Architect to design the Project. The Architect's services, duties, and responsibilities will be as described in Contract No. 0708-075 Recreation Center Conceptual Planning and Design Study at Boys & Girls Clubs of Western Nevada Project Site with Valentiner Crane Architects.

7.9 **CITY** shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

7.10 **CITY** shall furnish **CONTRACTOR** with a sufficient quantity of Construction Documents.

7.11 Prompt written notice shall be given by **CITY** to **CONTRACTOR** and Architect if **CITY** becomes aware of any fault or defect in the Project or nonconformance with the Contract Document.

8 CONSTRUCTION COSTS:

8.1 Definition:

8.1.1 The Construction Cost shall be the total estimated cost to **CITY** of all elements of the Project designed or specified by the Architect.

8.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by **CITY** and equipment designed, specified, selected, or specially provided for by the Architect, plus a reasonable allowance for the trade contractor's overhead



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and profit. In addition, reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the work during construction. Construction Cost shall also include the compensation of **CONTRACTOR** and **CONTRACTOR'S** consultants.

8.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, costs of the land, rights-of-way, financing or other costs which are the responsibility of the City as provided in **Section 7 CITY'S Responsibilities**.

8.2 Responsibility for Construction Costs:

8.2.1 Evaluations of **CITY'S** Project budget, preliminary estimates of Construction Cost, and detailed estimates of Construction Cost prepared by **CONTRACTOR** represent **CONTRACTOR'S** best judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither **CONTRACTOR** nor **CITY** has control over the cost of labor, materials, or equipment, over trade contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, **CONTRACTOR** cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by **CITY**, or from any cost estimate or evaluation prepared by **CONTRACTOR**.

8.2.2 If the Bidding or Negotiation Phase has not commenced within ninety (90) calendar days after submittal of the Construction Documents to **CITY**, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to **CITY** and the date on which proposals are sought.

9 CONSTRUCTION SUPPORT ACTIVITIES:

9.1 Construction support activities, if provided by **CONTRACTOR**, shall be governed by separate trade contracts.

10 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS:

10.1 The Drawings, Specifications, and other documents prepared by the Architect are instruments of the Architect's service through which the work to be executed by the trade contractors is described. **CONTRACTOR** may retain one record set. **CONTRACTOR** shall not own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated, the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except **CONTRACTOR'S** record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Project. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to **CONTRACTOR**, are for use solely with respect to this Project. They are not to be used by



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CONTRACTOR on other projects or for additions to this Project outside the scope of work without the specific written consent of **CITY** and Architect. **CONTRACTOR** is granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the performance of **CONTRACTOR'S** services under this Contract. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

11 **CONSIDERATION:**

11.1 The parties agree that **CONTRACTOR** will provide the **SERVICES** specified in **Section 4 Scope of Work** and **CITY** agrees to pay **CONTRACTOR** for Basic Compensation, Construction Management Fees, Reimbursable Expenses, and Additional Services, as described hereinafter for a not to exceed maximum amount of Nine Hundred Ninety-One Thousand, Seven Hundred Sixty-Four Dollars and no cents (\$991,764.00).

11.2 **CONTRACT SUM** represents full and adequate compensation for the completed **SERVICES**, and includes the furnishing of all materials; all labor, equipment, tools, and appliances; and all expenses, associated with and necessary with the proper execution of the **SERVICES**.

11.3 **CITY** has provided a sample invoice and **CONTRACTOR** shall submit its request for payment using said sample invoice.

11.4 Payment by **CITY** for the **SERVICES** rendered by **CONTRACTOR** shall be due within thirty (30) calendar days from the date **CITY** acknowledges that the performance meets the requirements of this Contract or from the date the correct, complete, and descriptive invoice is received by **CITY** employee designated on the sample invoice, whichever is the latter date.

11.5 The **CITY** does not agree to reimburse **CONTRACTOR** for expenses unless otherwise specified in this Contract.

11.6 **Payments to CONTRACTOR:**

11.6.1 **Direct Personnel Expense:**

11.6.1.1 Direct Personnel Expense is defined as the billing rate of **CONTRACTOR'S** personnel engaged on the Project.

11.6.2 **Reimbursable Expense:**

11.6.2.1 Reimbursable Expenses, are in addition to compensation for Basic and Additional Services, when approved by **CITY** and not otherwise part of the Basic Services, and include

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expenses incurred by **CONTRACTOR** and **CONTRACTOR'S** employees and subconsultants in the interest of Project, as identified in the following clauses:

11.6.2.1.1 Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

11.6.2.1.2 Expense of reproductions, postage, and handling of Drawings, Specifications, and other documents.

11.6.2.1.3 If authorized in advance by **CITY**, expense of overtime work requiring higher than regular rates.

11.6.2.1.4 Expense of renderings, models, and mock-ups requested by **CITY**.

11.6.2.1.5 Expenses for provision of miscellaneous labor and related expenses directly related to meeting project requirements.

11.6.2.1.6 Expenses for job trailers, fit-out requirements of **CITY**, and cellular phones.

11.6.3 Payments of Account of Basic Services:

11.6.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service.

11.6.3.2 If and to the extent that the time initially established in **Section 2 Contract Term** is exceeded or extended through no fault of **CONTRACTOR**, compensation for any services rendered during the additional period of time may be computed in the manner set forth in **Section 11 Consideration**, or as otherwise agreed to by the parties of this Contract.

11.6.3.3 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subsection 11.6.7, based on: 1) the lowest bona fide bid or negotiated proposal, or 2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

11.6.4 Payments on Account of Additional Services and Reimbursable Expenses:

11.6.4.1 Payments on account of **CONTRACTOR'S** approved Additional Services and Reimbursable Expenses, unless otherwise included as performance under Basic Services, shall be made monthly upon presentation of **CONTRACTOR'S** statement of services rendered or expenses incurred.

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11.6.5 Basic Compensation:

11.6.5.1 For Basic Services, as described in Subsection 6.2 **CONTRACTOR'S** Basic Services. Basic Compensation shall be computed as follows:

Pre-Construction Manager	170 hours x \$89.00/hour	\$15,130.00
Senior Estimator	142 hours x \$89.00/hour	\$12,638.00
Estimator	120 hours x \$69.00/hour	\$8,280.00
Construction Manager	1,828 hours x \$89.00/hour	\$162,692.00
Superintendent	2,624 hours x \$79.00/hour	\$207,296.00
Assistant Superintendent	1,360 hours x \$69.00/hour	\$93,840.00
Project Engineer	1,652 hours x \$69.00/hour	\$113,988.00
Administrative Assistant	100 hours x \$59.00/hour	\$5,900.00
	Total Basic Services	\$619,764.00

11.6.5.2 Construction Management Fee:

11.6.5.2.1 Where compensation is based on stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

Construction Management Fee	\$7,400,000 x 3.0%	\$222,000.00
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Fee shall be adjusted upon Final settlement of all construction contracts.

<u>GRAND TOTAL BASIC COMPENSATION</u>	<u>\$841,764.00</u>
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11.6.6 Compensation for Additional Services:

11.6.6.1 For Additional Services of **CONTRACTOR**, as described in Subsection 6.3 **CONTRACTOR'S** Additional Services compensation shall be computed as follows:

11.6.6.1.1 For Additional Construction Services: the rates per hour as identified in Subsection 11.6.5.1

11.6.6.1.2 For **CITY** requested change orders: the additional construction services hourly rates as identified in Subsection 11.6.5.1 plus three percent (3.0%) of the change order (as negotiated between **CITY** and **CONTRACTOR**).

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11.6.7 Reimbursable Expenses:

11.6.7.1 For Reimbursable Expenses, as described in Subsection 11.6.2 Reimbursable Expenses a multiplier of 1.05 times the expense incurred by the **CONTRACTOR**, **CONTRACTOR'S** employees and consultants in the interest of the Project for a not to exceed amount of One Hundred Fifty Thousand Dollars and no cents (\$150,000.00).

11.6.8 Additional Provisions:

11.6.8.1 If the Basic Services covered by this Contract have not been completed by December 31, 2009, through no fault of **CONTRACTOR**, extension of **CONTRACTOR'S** services beyond that time shall be compensated as provided in Subsection 11.6 Payment to **CONTRACTOR**.

11.6.8.2 Payments are due and payable thirty (30) calendar days from the date of **CONTRACTOR'S** invoice.

12 TIMELINESS OF BILLING SUBMISSION:

12.1 The parties agree that timeliness of billing is of the essence to the Contract and recognize that the **CITY** is on a fiscal year which is defined as the period beginning July 1 and ending June 30 of the following year. All billings for dates of service prior to July 1 must be submitted to the **CITY** no later than the first Friday in August of the same year. A billing submitted after the first Friday in August will subject the **CONTRACTOR** to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to the **CITY** of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the **CONTRACTOR**.

13 CONTRACT TERMINATION:

13.1 Termination Without Cause:

13.1.1 Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

13.2 Termination for Nonappropriation:

13.2.1 The continuation of this Contract beyond June 30, 2008 is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Carson City Board of Supervisors. The **CITY** may terminate this Contract, and **CONTRACTOR** waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the funding is not appropriated or is withdrawn, limited, or impaired.

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13.3 Cause Termination for Default or Breach:

13.3.1 A default or breach may be declared with or without termination.

13.3.2 This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

13.3.2.1 If **CONTRACTOR** fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

13.3.2.2 If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **CONTRACTOR** to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

13.3.2.3 If **CONTRACTOR** becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

13.3.2.4 If the **CITY** materially breaches any material duty under this Contract and any such breach impairs **CONTRACTOR'S** ability to perform; or

13.3.2.5 If it is found by the **CITY** that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by **CONTRACTOR**, or any agent or representative of **CONTRACTOR**, to any officer or employee of the **CITY** with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such Contract; or

13.3.2.6 If it is found by the **CITY** that **CONTRACTOR** has failed to disclose any material conflict of interest relative to the performance of this Contract.

13.4 Time to Correct:

13.4.1 Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in **Section 3 Notice**, and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

13.5 Winding Up Affairs Upon Termination:

13.5.1 In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

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13.5.1.1 The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

13.5.1.2 **CONTRACTOR** shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the **CITY**;

13.5.1.3 **CONTRACTOR** shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the **CITY**;

13.5.1.4 **CONTRACTOR** shall preserve, protect, and promptly deliver into **CITY** possession all proprietary information in accordance with **Section 31 City Ownership of Proprietary Information**.

14 **REMEDIES:**

14.1 Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. The parties agree that, in the event a lawsuit is filed and a party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour. The **CITY** may set off consideration against any unpaid obligation of the **CONTRACTOR** to the **CITY**.

15 **LIMITED LIABILITY:**

15.1 The **CITY** will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any **CITY** breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to **CONTRACTOR**, for the fiscal year budget in existence at the time of the breach. **CONTRACTOR'S** tort liability shall not be limited.

16 **FORCE MAJEURE:**

16.1 Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

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17 INDEMNIFICATION:

17.1 To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this paragraph.

17.2 Except as otherwise provided in Subsection 17.4 below, the indemnifying party shall not be obligated to provide a legal defense to the indemnified party, nor reimburse the indemnified party for the same, for any period occurring before the indemnified party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party, along with:

17.2.1 a written request for a legal defense for such pending claim(s) or cause(s) of action; and

17.2.2 a detailed explanation of the basis upon which the indemnified party believes that the claim or cause of action asserted against the indemnified party implicates the culpable conduct of the indemnifying party, its officers, employees, and/or agents.

17.3 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party, including counsel through which the indemnified party might voluntarily choose to participate in its defense of the same matter.

17.4 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified party during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.

18 INDEPENDENT CONTRACTOR:

18.1 An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished.

18.2 It is mutually agreed that **CONTRACTOR** is associated with the **CITY** only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract. **CONTRACTOR** is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this



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18.3 Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the **CITY** whatsoever with respect to the indebtedness, liabilities, and obligations of **CONTRACTOR** or any other party.

18.4 **CONTRACTOR** shall indemnify and hold **CITY** harmless from, and defend **CITY** against, any and all losses, damages, claims, costs, penalties, liabilities, expenses arising out of or incurred in any way because of, but not limited to, **CONTRACTOR'S** obligations or legal duties regarding any taxes, fees, assessments, benefits, entitlements, notice of benefits, employee's eligibility to work, to any third party, subcontractor, employee, state, local or federal governmental entity.

18.5 Neither **CONTRACTOR** nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the **CITY**.

19 INSURANCE REQUIREMENTS:

19.1 Unless expressly waived in writing by the **CITY**, **CONTRACTOR**, as an independent contractor and not an employee of the **CITY**, must carry policies of insurance in amounts specified and pay all taxes and fees incident hereunto. The **CITY** shall have no liability except as specifically provided in the Contract. The **CONTRACTOR** shall not commence work before:

19.1.1 **CONTRACTOR** has provided the required evidence of insurance to Carson City Purchasing & Contracts, and

19.1.2 **CITY** has approved the insurance policies provided by the **CONTRACTOR**. Prior approval of the insurance policies by the **CITY** shall be a condition precedent to any payment of consideration under this Contract and the **CITY'S** approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the **CITY** to timely approve shall not constitute a waiver of the condition.

19.2 Insurance Coverage:

19.2.1 The **CONTRACTOR** shall, at the **CONTRACTOR'S** sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the **CITY**, the required insurance shall be in effect prior to the commencement of work by the **CONTRACTOR** and shall continue in force as appropriate until the latter of:

19.2.1.1 Final acceptance by the **CITY** of the completion of this Contract; or

19.2.1.2 Such time as the insurance is no longer required by the **CITY** under the terms of this

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Contract.

19.2.2 Any insurance or self-insurance available to the **CITY** shall be in excess of and non-contributing with any insurance required from **CONTRACTOR**. **CONTRACTOR'S** insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the **CITY**, **CONTRACTOR** shall provide the **CITY** with renewal or replacement evidence of insurance no less than thirty (30) calendar days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as **CONTRACTOR** has knowledge of any such failure, **CONTRACTOR** shall immediately notify the **CITY** and immediately replace such insurance or bond with an insurer meeting the requirements.

19.3 **General Requirements:**

19.3.1 **Certificate Holder:** Each liability insurance policy shall list Carson City Purchasing & Contracts, 201 N. Carson Street Suite 11, Carson City, NV 89701 as a certificate holder.

19.3.2 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by **CONTRACTOR**, The City and County of Carson City, Nevada, its officers, employees and immune contractors shall be named as additional insureds for all liability arising from the Contract.

19.3.3 **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.

19.3.4 **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

19.3.5 **Deductibles and Self-Insured Retentions:** Insurance maintained by **CONTRACTOR** shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the **CITY**. Such approval shall not relieve **CONTRACTOR** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the Carson City Risk Management Division.

19.3.6 **Policy Cancellation:** Except for ten (10) calendar days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) calendar days prior written notice to Carson City Purchasing & Contracts, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to Carson City Purchasing & Contracts, 201 N. Carson Street Suite 11, Carson City, NV 89701.

19.3.7 **Approved Insurer:** Each insurance policy shall be:

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19.3.7.1 Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and

19.3.7.2 Currently rated by A.M. Best as "A-VII" or better.

19.3.8 **Evidence of Insurance:** Prior to the start of any work, **CONTRACTOR** must provide the following documents to Carson City Purchasing & Contracts, 201 North Carson Street Suite 11, Carson City, NV 89701:

19.3.8.1 Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Carson City Purchasing & Contracts to evidence the insurance policies and coverages required of **CONTRACTOR**.

19.3.8.2 Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Carson City Purchasing & Contracts to evidence the endorsement of the **CITY** as an additional insured per Subsection 19.3.2.

19.3.8.3 Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

19.3.9 **Review and Approval:** Documents specified above must be submitted for review and approval by Carson City Purchasing & Contracts prior to the commencement of work by **CONTRACTOR**. Neither approval by the **CITY** nor failure to disapprove the insurance furnished by **CONTRACTOR** shall relieve **CONTRACTOR** of **CONTRACTOR'S** full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of **CONTRACTOR** or its sub-contractors, employees or agents to the **CITY** or others, and shall be in addition to and not in lieu of any other remedy available to the **CITY** under this Contract or otherwise. The **CITY** reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

20 COMMERCIAL GENERAL LIABILITY INSURANCE:

20.1 Minimum Limits required:

20.1.1 Two Million Dollars (\$2,000,000.00) - General Aggregate

20.1.2 Two Million Dollars (\$2,000,000.00) - Products & Completed Operations Aggregate

20.1.3 One Million Dollars (\$1,000,000.00) - Each Occurrence

20.2 Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996

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form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

21 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

21.1 **CONTRACTOR** shall procure and maintain, during the term of this Contract, business automobile liability insurance in the amount of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. Coverage shall be for "any auto", including owned, non-owned and hired vehicles. The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

22 PROFESSIONAL LIABILITY INSURANCE:

22.1 Minimum Limit required: One Million Dollars (\$1,000,000.00)

22.2 Retroactive date: Prior to commencement of the performance of the contract

22.3 Discovery period: Three (3) years after termination date of contract.

22.4 A certified copy of this policy may be required.

23 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

23.1 **CONTRACTOR** shall provide proof of worker's compensation insurance as required by Nevada Revised Statutes Chapters 616A through 616D inclusive.

23.2 Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

23.3 **CONTRACTOR** may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that **CONTRACTOR** is a sole proprietor; that **CONTRACTOR** will not use the services of any employees in the performance of this Contract; that **CONTRACTOR** has elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive; and that **CONTRACTOR** is otherwise in compliance with the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive.

24 BUILDER'S ALL RISK INSURANCE:

24.1 All risk basis excluding earthquakes, flood, act of God, war, nuclear war, etc.

24.2 Maximum deductible of \$5,000 to be paid by **CITY** should a loss ensue.

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24.3 Policy to remain in effect from ground breaking to completion of project and issuance of Certificate of Occupancy.

24.4 Coverage of Eight Million Dollars (\$8,000,000.00) minimum.

24.5 Policy shall be obtained by **CONTRACTOR** as a Reimbursable item per Subsection 11.6.2 Reimbursable Expenses.

25 UMBRELLA OR EXCESS LIABILITY INSURANCE:

25.1 May be used to achieve the above minimum liability limits.

25.2 Shall be endorsed to state it is "As Broad as Primary Policy"

26 BUSINESS LICENSE AND NEVADA CONTRACTOR'S LICENSE:

26.1 **CONTRACTOR** shall obtain a Carson City business license and provide a copy of same to Carson City Purchasing & Contracts, 201 North Carson Street Suite 11, Carson City, NV 89701 prior to commencing work.

26.2 **CONTRACTOR** shall obtain a State of Nevada Contractor's License and provide a copy of same to Carson City Purchasing & Contracts, 201 North Carson Street Suite 11, Carson City, NV 89701 prior to commencing work.

27 COMPLIANCE WITH LEGAL OBLIGATIONS:

27.1 **CONTRACTOR** shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **CONTRACTOR** to provide the goods or services of this Contract. **CONTRACTOR** will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of **CONTRACTOR** in accordance with NRS 361.157 and 361.159. **CONTRACTOR** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The **CITY** may set-off against consideration due any delinquent government obligation.

28 WAIVER OF BREACH:

28.1 Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

29 SEVERABILITY:

29.1 If any provision contained in this Contract is held to be unenforceable by a court of law

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or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

30 ASSIGNMENT/DELEGATION:

30.1 To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by **CITY**, such offending portion of the assignment shall be void, and shall be a breach of this Contract. **CONTRACTOR** shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written approval of the **CITY**.

31 CITY OWNERSHIP OF PROPRIETARY INFORMATION:

31.1 Any files, reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer programs, computer codes, and computer records (which are intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by **CONTRACTOR** (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the **CITY** and all such materials shall be delivered into **CITY** possession by **CONTRACTOR** upon completion, termination, or cancellation of this Contract. **CONTRACTOR** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **CONTRACTOR'S** obligations under this Contract without the prior written consent of the **CITY**. Notwithstanding the foregoing, the **CITY** shall have no proprietary interest in any materials licensed for use by the **CITY** that are subject to patent, trademark or copyright protection.

31.2 The **CITY** shall be permitted to retain copies, including reproducible copies, of the **CONTRACTOR'S** drawings, specifications, and other documents for information and reference in connection with the Contract.

31.3 The **CONTRACTOR'S** drawings, specifications and other documents shall not be used by the **CITY** or others without expressed permission of the **CONTRACTOR**.

32 PUBLIC RECORDS:

32.1 Pursuant to NRS 239.010, information or documents received from **CONTRACTOR** may be open to public inspection and copying. The **CITY** will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. **CONTRACTOR** may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that **CONTRACTOR** thereby agrees to indemnify and defend the **CITY** for honoring such a designation. The failure to so label any document that is released by the **CITY** shall constitute a complete waiver of any and



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all claims for damages caused by any release of the records.

33 CONFIDENTIALITY:

33.1 **CONTRACTOR** shall keep confidential all information, in whatever form, produced, prepared, observed or received by **CONTRACTOR** to the extent that such information is confidential by law or otherwise required by this Contract.

34 LOBBYING:

34.1 The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

34.1.1 Any federal, state, county or local agency, legislature, commission, counsel or board;

34.1.2 Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

34.1.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

35 PROPER AUTHORITY:

35.1 The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. **CONTRACTOR** acknowledges that this Contract is effective only after approval by the Carson City Board of Supervisors and only for the period of time specified in the Contract. Any services performed by **CONTRACTOR** before this Contract is effective or after it ceases to be effective are performed at the sole risk of **CONTRACTOR**.

36 ARBITRATION:

36.1 Any controversy of claims arising out of or relating to this Contract, or the breach thereof, provided both parties agree, may be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

37 GOVERNING LAW; JURISDICTION:

37.1 This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. **CONTRACTOR** consents and agrees to the jurisdiction of the courts of the State of Nevada



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located in Carson City, Nevada for enforcement of this Contract.

38 ENTIRE CONTRACT AND MODIFICATION:

38.1 This Contract and its integrated attachment(s) constitute the entire Contract of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other Contracts that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Carson City Board of Supervisors.



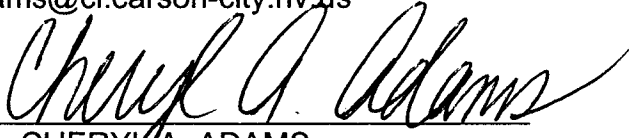
CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
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39 ACKNOWLEDGMENT AND EXECUTION:

39.1 In witness whereof, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

CARSON CITY

Finance Director
Attn: Cheryl A. Adams, Purchasing &
Contracts Manager
201 North Carson Street Suite 11
Carson City, Nevada 89701
Telephone: 775-887-2027 extension 1100
Fax: 775-887-2107
CAdams@ci.carson-city.nv.us

By: 
CHERYL A. ADAMS
Purchasing & Contracts Manager

DATED 2/26/08

CITY'S LEGAL COUNSEL

Neil A. Rombardo, District Attorney


I have reviewed this Contract and approve
as to its legal form.

By: 
Deputy District Attorney

DATED 2-26-08

CITY'S ORIGINATING DEPARTMENT

BY: Andy Burnham, Public Works Director
Public Works
3505 Butti Way
Carson City, NV 89701
Telephone: 775-887-2355
Fax: 775-887-2112
ABurnham@ci.carson-city.nv.us



DATED 2/26/08

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
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Russ Fiddyment being first duly sworn, deposes and says: That he is the **CONTRACTOR**; that he has read the foregoing Contract; and that he understands the terms, conditions, and requirements thereof.

CONTRACTOR

BY: Russ Fiddyment

TITLE: Director of Operations

FIRM: Metcalf Builders, Inc.

CARSON CITY BUSINESS LICENSE #: 08-00007793

NEVADA CONTRACTOR'S LICENSE #: 0037475

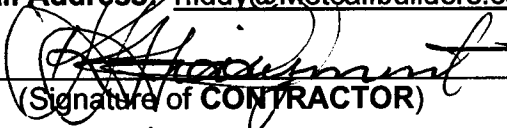
CLASSIFICATION: B **LIMIT:** Unlimited

Address: 751 Basque Way

City: Carson City **State:** NV **Zip Code:** 89706

Telephone: 775-885-1844/ **Fax #:** 775-885-0178

E-mail Address: rfiddy@Metcalfbuilders.com




(Signature of CONTRACTOR)

DATED 2/19/08

STATE OF Nevada)
County of Carson) ss

On this 19 day of February, in the year 2008, before me, Lynn Durand Notary Public, personally appeared Russ Fiddyment, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

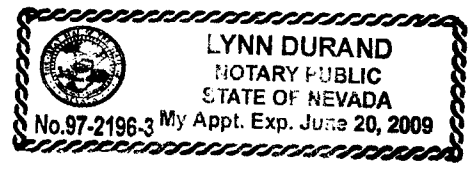
WITNESS my hand and official seal.



Notary's Signature

L.S.

My Commission Expires: June 20, 2009



CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
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SAMPLE INVOICE

Invoice Number: _____
 Invoice Date: _____
 Invoice Period: _____

Carson City Contract Number: 0708-105
 Carson City Contract Name: Construction Manager as agent for the Carson City Indoor Recreation Center/Multi-Purpose Gym

Vendor Number: _____
 Metcalf Builders, Inc.
 751 Basque Way
 Carson City, NV 89706

Invoice shall be submitted to:

Carson City Public Works
 Attn: Karen White
 3505 Butti Way
 Carson City NV 89701

Line Item #	Description	Unit Cost	Units Completed	Total \$\$
Total for this invoice				

Original Contract Sum \$ _____
 Less amount previously billed \$ _____
 = contract sum prior to this invoice \$ _____
 Less this invoice \$ _____
 =Dollars remaining on Contract \$ _____

ENCLOSE COPIES OF RECEIPTS & INVOICES FOR EXPENSES & OUTSIDE SERVICES

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
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CONTRACT ACCEPTANCE AND EXECUTION:

The Board Of Supervisors for Carson City, Nevada at their publicly noticed meeting of March 6, 2008 approved the acceptance of **CONTRACT No. 0708-105**. Further, the Board Of Supervisors authorizes the Mayor of Carson City, Nevada to set his hand to this document and record his signature for the execution of this contract in accordance with the action taken.

CARSON CITY, NEVADA

MARV TEIXEIRA, MAYOR

DATED this 6th day of March, 2008.

ATTEST:

ALAN GLOVER, CLERK-RECORDER

DATED this 6th day of March, 2008.