

Item # 5-3G

**City of Carson City
Agenda Report**

Date Submitted: May 6, 2008

Agenda Date Requested: May 15, 2008

Time Requested: Consent

To: Mayor and Supervisors

From: Purchasing & Contracts

Subject Title: Action to determine that Lyn Marie Trucking, Inc. is the lowest responsive and responsible bidder pursuant to N.R.S. Chapter 338 and to award Contract No. 0708-147 Wildlife Habitat Improvement Project - Phase I to Lyn Marie Trucking, Inc., for a not to exceed cost of \$81,042.75 and a contingency amount of \$16,957.25 to be funded from the USDA WHIP Grand Funds as provided in FY 2007/2008.

Staff Summary: The Wildlife Habitat Improvement Project consists of constructing rock structures in the Premier and Slide Canyons watersheds above the Carson City Water Treatment Plant. Work includes check dams, rock down drains, a construction access road, temporary erosion control and re-vegetation to rehabilitate existing habitat.

An additional check dam structure was bid as an additive alternate item; and is included in the bid award.

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 Lyn Marie Trucking, Inc. is the lowest responsive and responsible bidder pursuant to N.R.S. Chapter 338 and to award Contract No. 0708-147 Wildlife Habitat Improvement Project - Phase I to Lyn Marie Trucking, Inc. pursuant to the time indicated in the Notice to Proceed for a not to exceed cost of \$81,042.75 and a contingency amount of \$16,957.25 to be funded from the USDA WHIP Grand Funds as provided in FY 2007/2008.

Explanation for Recommended Board Action: *NOTICE TO CONTRACTORS* were mailed on April 18, 2008 and the *NOTICE TO CONTRACTORS* was published in the Nevada Appeal on April 20, 2008.

The bids were opened at approximately 11:10 a.m. on April 28, 2008 at 201 North Carson Street, Carson City, Nevada 89701. Present during the bid opening were: John Bird with Wilson Construction, Dee Westmoreland with Wilson Construction, Rob McQueary with Canyon Creek Construction, Jerry Burgess with Marv McQueary Excavating, Lindsey Green with RaPiD

Construction, Mark Guss with Lyn Marie Trucking, Ron McIntosh with Concord Cornerstone, Robert D. Fellows, Chief Stormwater Engineer, Cheryl Adams, Purchasing & Contracts Manager, and Sandy Scott, Purchasing & Contracts Management Assistant.

Proposals were received from the below listed bidders: Please refer to the **BID TABULATION** for specifics.

| Company Name | Total Bid Amount |
|--|------------------|
| Lyn Marie Trucking Inc. 43 Cash Drive Mound House, Nevada 89706 | \$81,042.75 |
| RaPiD Construction Inc. 355 Gentry Way, Suite A Reno, Nevada 89502 | \$93,039.00 |
| Canyon Creek Construction, Inc. P.O. Box 21270 Carson City, Nevada 89701 | \$124,725.50 |
| Concord Cornerstone, Inc. P.O. Box 19925 Reno, Nevada 89511 | \$136,310.00 |
| Marv McQueary Excavating, Inc. P.O. Box 1841 Carson City, Nevada 89702 | \$145,623.00 |
| Wilson Construction 812 Short Court Gardnerville, Nevada 89460 | \$159,340.00 |

Staff recommends award to Lynn Marie Trucking, Inc., as the lowest responsive and responsible bidder pursuant to N.R.S. Chapter 338.

Applicable Statue, Code, Policy, Rule or Regulation: N.R.S. Chapter 338 Public Works

Engineers Estimate: \$100,000.00

Fiscal Impact: Not to exceed \$98,000.00


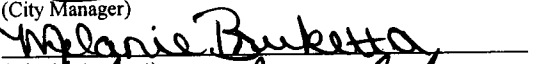
Explanation of Impact: If approved the above referenced account could be decreased by \$98,000.00.

Funding Source: \$98,000.00 to be funded from 254-5047-452-1209 USDA WHIP Grant as provided in FY 2007/2008.

Alternatives: Determine another bidder is the lowest and most responsible and responsive bidder pursuant to N.R.S. Chapter 338 or do not award contract.

Supporting Material: Bid Tabulation Report and Bid Response from Lyn Marie Trucking, Inc.

Prepared By: Sandy Scott, Purchasing & Contracts Management Assistant

Reviewed By:  Date: 5/6/08
(Public Works)
 Date: 5-6-08
(City Manager)
Melanie Burketta Date: 5-6-08
(District Attorney)
Ullrich Shouder Date: 5-6-08
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

THIS CONTRACT, made and entered into this 15th day of May, 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 Lyn Marie Trucking, 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 Statutes Chapter 332, Nevada Revised Statutes Chapter 338, and Carson City Purchasing Resolution #1990-R71, to approve and accept this Contract as set forth in and by the following provisions; and

WHEREAS, it is deemed that the services of **CONTRACTOR** for **CONTRACT No. 0708-147 Wildlife Habitat Improvement Project - Phase I** are both necessary and in the best interests of **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 **CONTRACTOR** agrees to complete the **WORK** on or before the date specified in the **NOTICE TO PROCEED** or any executed Change Orders to the entire satisfaction of **CITY** before final payment is made, unless sooner terminated by either party as specified in **Section 7 Contract Termination**.

3 **NOTICE:**

3.1 Unless otherwise specified, termination shall not be effective until thirty (30) 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.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

| | |
|-----------------------------|-------|
| For P&C Use Only | |
| CCBL expires | _____ |
| NVCL expires | _____ |
| GL expires | _____ |
| AL expires | _____ |
| WC expires | _____ |

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

Mark Guss, President
Lyn Marie Trucking, Inc.
43 Cash Drive
Mound House, Nevada 89706
775-883-4999 / 775-883-2001
Xxmguss@aol.com

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

Carson City Purchasing & Contracts
Sandy Scott, Management Assistant
201 North Carson Street Suite 11
Carson City, NV 89701
775-887-2133 extension 30137 / FAX 775-887-2107
SScott@ci.carson-city.nv.us

4 SCOPE OF WORK:

4.1 The parties agree that the scope of work shall be specifically described and hereinafter referred to as the "**WORK**". This Contract incorporates the following attachments, in descending order of constructive precedence; a **CONTRACTOR'S** Attachment shall not contradict or supersede any **CITY** specifications and/or terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

4.1.1 ATTACHMENT AA: Bid # 0708-147 Wildlife Habitat Improvement Project – Phase I which includes, but is not limited to the following documents: Notice to Contractors; Table of Contents; Terms & Conditions; General Conditions; Prevailing Wage Rates for Carson City; Special Conditions; Specifications; Plans; Addenda, if any; Notice of Award; Permits(s); Notice to Proceed; Executed Change Orders, Davis- Bacon Wages, Required Contract Provisions, Additional Contract Provisions; Executive Order 11246; Ethnic Codes; Minority Business Enterprise Contract Provisions; and all supplementary documents that are intended to be complete and complementary and are intended to describe a complete Work, Davis- Bacon .

4.1.2 ATTACHMENT BB: **CONTRACTOR'S** Bid Response; **CONTRACTOR'S** Bid Bond; **CONTRACTOR'S** Performance Bond; **CONTRACTOR'S** Labor and Material Payment

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

Bond; **CONTRACTOR'S** insurance certificates; Affidavit 112; Lobbying Form; and **CONTRACTOR'S** Carson City Business License.

4.2 **CONTRACTOR** represents that it and/or the persons it may employ possess all skills and training necessary to perform the **WORK** described herein and required hereunder. **CONTRACTOR** shall perform the **WORK** 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 **WORK** furnished by **CONTRACTOR** to **CITY**.

4.3 **CONTRACTOR** represents that neither the execution of this Contract nor the rendering of services by **CONTRACTOR** hereunder will violate the provisions of or constitute a default under any other contract or agreement to which **CONTRACTOR** is a party or by which **CONTRACTOR** is bound, or which would preclude **CONTRACTOR** from performing the **WORK** required of **CONTRACTOR** hereunder, or which would impose any liability or obligation upon **CITY** for accepting such **WORK**.

4.4 **CONTRACTOR** shall within ten (10) calendar days of issuance of the Notice of Award obtain all necessary permits and licenses as may be necessary. Before and during the progress of **WORK** under this Contract, **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 **CONTRACTOR** performs any work that is contrary to any such law, ordinance, rule or regulation, he shall bear all the costs arising therefrom. **CONTRACTOR** shall not commence work before: (1) **CONTRACTOR** has obtained such permits and licenses, and (2) **CITY** has issued the Notice to Proceed.

4.5 **Fair Employment Practices:**

4.5.1 Pursuant to Nevada Revised Statute 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 money, 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.

4.5.2 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.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

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

4.6 **Preferential Employment:**

4.6.1 Pursuant to Nevada Revised Statute 338.130, in all cases where persons are employed in the construction of public works, preference must 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.

4.6.2 In connection with the performance of work under this Contract, **CONTRACTOR** agrees to comply with the provisions of Nevada Revised Statute 338.130 requiring certain preferences to be given to which persons are employed in the construction of a public work. If **CONTRACTOR** fails to comply with the provisions of Nevada Revised Statute 338.130, pursuant to the terms of Nevada Revised Statute 338.130(3), this Contract is void, and any failure or refusal to comply with any of the provisions of this section renders this Contract void.

4.7 **Arbitration:**

4.7.1 Pursuant to Nevada Revised Statute 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.

4.7.2 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.

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

4.8 Pursuant to Nevada Revised Statute 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.

4.9 **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

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

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 CONSIDERATION:

5.1 The parties agree that **CONTRACTOR** will provide the **WORK** specified in **Section 4 Scope of Work** and **CITY** will pay **CONTRACTOR** the **CONTRACT SUM** of Eighty One Thousand Forty Two Dollars and Seventy Five Cents (\$81,042.75).

5.1.1 **CITY** will pay **CONTRACTOR** progress payments and the final payment computed from the actual quantities of work performed and accepted and the materials furnished at the unit and lump sum prices shown in **CONTRACTOR'S** Bid Proposal and any executed Change Orders.

5.2 **CONTRACT SUM** represents full and adequate compensation for the completed **WORK**, and includes the furnishing of all materials; all labor, equipment, tools, and appliances; and all expenses, direct or indirect, connected with the proper execution of the **WORK**.

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

5.4 **CITY** does not agree to reimburse **CONTRACTOR** for expenses unless otherwise specified.

6 TIMELINESS OF BILLING SUBMISSION:

6.1 The parties agree that timeliness of billing is of the essence to this Contract and recognize that **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 **CITY** no later than the first Friday in August of the same year. A billing submitted after the first Friday in August will subject **CONTRACTOR** to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to **CITY** of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to **CONTRACTOR**.

7 CONTRACT TERMINATION:

7.1 Termination Without Cause:

7.1.1 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.

7.2 Termination for Nonappropriation:

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

7.2.1 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. **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.

7.3 Cause Termination for Default or Breach:

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

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

7.3.2.1 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

7.3.2.2 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

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

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

7.3.2.5 If it is found by **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 **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

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

7.4 Time to Correct:

7.4.1 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

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

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.

7.5 Winding Up Affairs Upon Termination:

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

7.5.1.1 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;

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

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

7.5.1.4 **CONTRACTOR** shall preserve, protect, and promptly deliver into **CITY** possession all proprietary information in accordance with **Section 26 City Ownership of Proprietary Information**.

8 REMEDIES:

8.1 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. **CITY** may set off consideration against any unpaid obligation of **CONTRACTOR** to **CITY**.

9 LIMITED LIABILITY:

9.1 **CITY** will not waive and intends to assert available Nevada Revised Statutes 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.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

10 FORCE MAJEURE:

10.1 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 this Contract after the intervening cause ceases.

11 INDEMNIFICATION:

11.1 To the extent permitted by law, including, but not limited to, the provisions of Nevada Revised Statutes 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.

11.2 Except as otherwise provided in Subsection 11.4 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:

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

11.2.2 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.

11.3 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.

11.4 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.

12 INDEPENDENT CONTRACTOR:

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

12.1 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 subsection 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.

12.2 It is mutually agreed that **CONTRACTOR** is associated with **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 Contract.

12.3 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 **CITY** whatsoever with respect to the indebtedness, liabilities, and obligations of **CONTRACTOR** or any other party.

12.4 **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.

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

13 PERFORMANCE BOND & LABOR AND MATERIAL PAYMENT BOND:

13.1 A Performance Bond & a Labor and Material Payment Bond, pursuant to the requirements of Nevada Revised Statute 339.025, in the amount of one hundred percent (100%) of the **CONTRACT SUM** must be provided by **CONTRACTOR** to Carson City Purchasing & Contracts within ten (10) calendar days of the issuance of the Notice of Award. Said bonds shall remain in full force and effect for a period of not less than one (1) year from the date of Final Acceptance of this **WORK** by the Carson City Board of Supervisors.

13.2 Surety companies issuing bonds must be licensed to issue surety by the State of Nevada Insurance Division pursuant to Nevada Revised Statute 683A.090 and issued by an appointed agent pursuant to Nevada Revised Statute 683A.280. Performance Bond & Labor and Material Payment Bond must be on the forms supplied by Carson City Purchasing & Contracts and issued by a reputable solvent surety company properly licensed and authorized to conduct business in the State of Nevada. All Bonding Companies must have an "A" rating or better with Moody's or A.M. Best Company, and/or be included on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bond and as

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

Acceptable Reinsuring Companies" as published in circular 570 (as amended) by the audit staff, Bureau of Accounts, U.S. Treasury Department. (In other words, the company is T-listed.) Said bonds shall be issued and made payable to Carson City, 201 North Carson Street Suite 11, Carson City, Nevada 89701.

13.3 Bonds issued by an individual surety are not acceptable to **CITY**.

13.4 **CONTRACTOR** shall require any resident agent who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney.

13.5 A Performance Bond or Labor and Material Payment Bond prepared by a licensed non-resident agent must be countersigned by a resident agent in accordance with the provisions of Nevada Revised Statute 680A.300.

13.6 **CONTRACTOR** agrees that any required bonding or guarantee shall not be considered as the exclusive remedy of **CITY** for any default in any respect by **CONTRACTOR**, but such bonding or guarantee shall be considered to be in addition to any right or remedy hereunder or allowed by law, equity, or statute.

13.7 **CONTRACTOR** shall not commence work before: (1) **CONTRACTOR** has provided the required bonds to Carson City Purchasing & Contracts, and (2) **CITY** has issued the Notice to Proceed.

14 INSURANCE REQUIREMENTS:

14.1 **CONTRACTOR**, as an independent contractor and not an employee of **CITY**, must carry policies of insurance in amounts specified and pay all taxes and fees incident hereunto. **CITY** shall have no liability except as specifically provided in this Contract.

14.2 **CONTRACTOR** shall not commence work before: (1) **CONTRACTOR** has provided the required evidence of insurance to Carson City Purchasing & Contracts, (2) **CITY** has approved the insurance policies provided by **CONTRACTOR**, and (3) **CITY** has issued the Notice to Proceed.

14.3 **CONTRACTOR** shall not allow any subcontractors to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and verified by **CONTRACTOR**.

14.4 Prior approval of the insurance policies by **CITY** shall be a condition precedent to any payment of consideration under this Contract and **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 **CITY** to timely approve shall not constitute a waiver of the condition.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

14.5 The insurance requirements specified herein do not relieve **CONTRACTOR** of his responsibility or limit the amount of his liability to **CITY** or other persons, and **CONTRACTOR** is encouraged to purchase such additional insurance as he deems necessary.

14.6 **CONTRACTOR** is responsible for and must remedy all damage or loss to any property, including property of **CITY**, caused in whole or in part by **CONTRACTOR**, any subcontractor or anyone employed, directed or supervised by **CONTRACTOR**. **CONTRACTOR** is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the **WORK**.

14.7 **CITY** reserves the right to occupy existing facilities under construction or to use or occupy parts of the **WORK**. Insurance policies shall not restrict or limit such use.

14.8 **Insurance Coverage:**

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

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

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

14.8.2 Any insurance or self-insurance available to **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 **CITY**, **CONTRACTOR** shall provide **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 this 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 **CITY** and immediately replace such insurance or bond with an insurer meeting the requirements.

14.9 **General Requirements:**

14.9.1 **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.

14.9.2 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by **CONTRACTOR**, The City and County of Carson City, Nevada, its officers,

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

employees and immune contractors shall be named as additional insureds for all liability arising from this Contract.

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

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

14.9.5 **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 **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 **CITY**.

14.9.6 **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.

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

14.9.7.1 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

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

14.9.8 **Evidence of Insurance:** Within ten (10) calendar days of issuance of the Notice of Award, **CONTRACTOR** must provide the following documents to Carson City Purchasing & Contracts, 201 North Carson Street Suite 11, Carson City, NV 89701:

14.9.8.1 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**.

14.9.8.2 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 **CITY** as an additional insured per Subsection 14.9.2.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

14.9.8.3 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.

14.9.9 **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 **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 **CITY** or others, and shall be in addition to and not in lieu of any other remedy available to **CITY** under this Contract or otherwise. **CITY** reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

15 COMMERCIAL GENERAL LIABILITY INSURANCE:

15.1 Minimum Limits required:

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

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

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

15.2 Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 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).

16 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

16.1 Minimum Limit required:

16.1.1 One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage

16.2 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.

17 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

17.1 **CONTRACTOR** shall provide worker's compensation insurance as required by Nevada Revised Statutes Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

18 BUSINESS LICENSE AND NEVADA CONTRACTOR'S LICENSE:

18.1 **CONTRACTOR** shall procure a Carson City business license within ten (10) calendar days of the issuance of the Notice of Award.

18.2 **CONTRACTOR** shall not commence work before: (1) **CONTRACTOR** has provided a copy of his Carson City business license to Carson City Purchasing & Contracts, and (2) **CITY** has issued the Notice to Proceed.

18.3 The Carson City business license shall continue in force until the latter of: (1) final acceptance by **CITY** of the completion of this Contract; or (2) such time as the Carson City business license is no longer required by **CITY** under the terms of this Contract.

18.4 **CONTRACTOR** represents that it is duly qualified and licensed in the State of Nevada for the purposes of performing the **WORK** and has the classification(s) of contractor's license stipulated by **CITY** for this particular Work issued by the Nevada State Contractors' Board.

18.5 **CONTRACTOR** and its subcontractors shall comply with all provisions of Nevada Revised Statutes Chapter 624 and Nevada Administrative Code Chapter 624.

19 COMPLIANCE WITH LEGAL OBLIGATIONS:

19.1 **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 Nevada Revised Statutes 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. **CITY** may set-off against consideration due any delinquent government obligation.

20 WAIVER OF BREACH:

20.1 Failure to declare a breach or the actual waiver of any particular breach of this 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.

21 SEVERABILITY:

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

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

22 ASSIGNMENT/DELEGATION:

22.1 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 CITY.

23 CITY OWNERSHIP OF PROPRIETARY INFORMATION:

23.1 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 this 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 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 CITY. Notwithstanding the foregoing, CITY shall have no proprietary interest in any materials licensed for use by CITY that are subject to patent, trademark or copyright protection.

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

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

24 PUBLIC RECORDS:

24.1 Pursuant to Nevada Revised Statute 239.010, information or documents received from **CONTRACTOR** may be open to public inspection and copying. 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

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

secret" or "confidential" in accordance with Nevada Revised Statute 332.061, provided that **CONTRACTOR** thereby agrees to indemnify and defend **CITY** for honoring such a designation. The failure to so label any document that is released by **CITY** shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

25 CONFIDENTIALITY:

25.1 **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.

26 FEDERAL FUNDING:

26.1 In the event federal funds are used for payment of all or part of this Contract:

26.1.1 **CONTRACTOR** certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

26.1.2 **CONTRACTOR** and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

26.1.3 **CONTRACTOR** and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions).

27 LOBBYING:

27.1 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:

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

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

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

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

28 GENERAL WARRANTY:

28.1 **CONTRACTOR** warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications as set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

29 PROPER AUTHORITY:

29.1 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 this 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**.

30 ARBITRATION:

30.1 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.

31 GOVERNING LAW; JURISDICTION:

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

32 ENTIRE CONTRACT AND MODIFICATION:

32.1 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

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

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
Contract No. 0708-147

33 ACKNOWLEDGMENT AND EXECUTION:

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

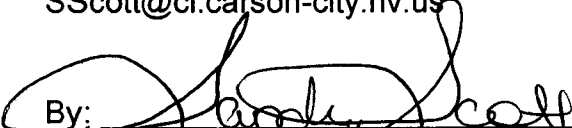
CARSON CITY

Finance Director
Attn: Sandy Scott, Management Assistant
Purchasing & Contracts
201 North Carson Street Suite 11
Carson City, Nevada 89701
Telephone: 775-887-2133 ext. 30137
Fax: 775-887-2107
SScott@ci.carson-city.nv.us

CITY'S LEGAL COUNSEL

Neil A. Rombardo, District Attorney

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

By: 
SANDY SCOTT
Purchasing & Contracts Manager

By: 
Deputy District Attorney

DATED May 6, 2008

DATED 5-6-08

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

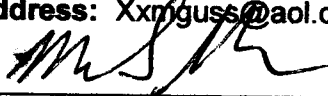
By: 
ANDY BURNHAM
Public Works Director

DATED 5/6/08

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

Mark Guss 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: Mark Guss
TITLE: President
FIRM: Lyn Marie Trucking, Inc.
CARSON CITY BUSINESS LICENSE #: 08-2314
NEVADA CONTRACTOR'S LICENSE #: 37097
CLASSIFICATION: A-12 **LIMIT:** \$200,000.00
Address: 43 Cash Drive
City: Mound House **State:** Nevada **Zip Code:** 89706
Telephone: 775-883-4999/ **Fax #:** 775-883-2001
E-mail Address: Xxmguss@aol.com



(Signature of **CONTRACTOR**)

DATED 5-1-08

STATE OF Nevada)
County of Carson) **ss**

On this 1st day of May, in the year 2008, before me, Amanda Pisa / Notary Public, personally appeared Mark Guss, 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.

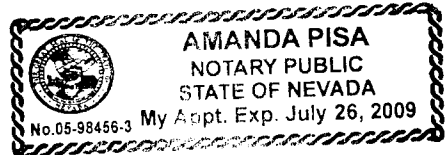
WITNESS my hand and official seal.



Notary's Signature

L.S.

My Commission Expires: July 26th 2009



CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-147

CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of May 15, 2008 approved the acceptance of **CONTRACT No. 0708-147**. 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 15th day of May, 2008.

ATTEST:

ALAN GLOVER, CLERK-RECORDER

DATED this 15th day of May, 2008.