

Item # 10A

**City of Carson City  
Agenda Report**

**Date Submitted:** September 9, 2008

**Agenda Date Requested:** September 18, 2008

**Time Requested:** 10 Minutes

**Labor Commissioner PWP #** CC-2008-400

**To:** Mayor and Supervisors

**From:** Purchasing & Contracts

**Subject Title:** Action to determine that \_\_\_\_\_ is the lowest responsive and responsible bidder pursuant to N.R.S. Chapter 338, and to award Contract No. 0809-072 Carson City Arsenic Water Treatment Plant and Water Line Project to \_\_\_\_\_, for a bid amount of \$ \_\_\_\_\_ and an additional amount of \$ \_\_\_\_\_ for Additive Alternates 2, 3, and 4, if needed plus a contingency amount not to exceed \$260,000.00 to be funded from the 2007 Carson City Arsenic Level Reduction Project 520-3505-7870 as provided in FY 2007/2008.

**Staff Summary:** The Carson City accepted sealed bids for all labor, materials, tools, and equipment necessary for the Carson City Arsenic Water Treatment Plant. The project consists of;

**Arsenic Treatment Plant:**

The Treatment Plant portion of the project will consist of providing all tools, materials, labor and equipment necessary to install an owner provided arsenic treatment unit including all associated appurtenances. The project will also include new AC pavement, concrete slabs, surface drainage improvements, swing gates, yard piping, new utilities services, backwash tank, all plant piping, vaults, fittings, valves, electrical equipment as shown on the drawings.

**Existing Building Architectural Improvements:**

The Architectural portion of the Arsenic Water Treatment Project consists of providing all tools, materials, labor and equipment necessary to install a new exterior siding system, replace exterior man doors, roll up doors, windows, skylights, exterior lighting and new signs.

**Existing Building Structural Improvements:**

The Structural Portion of the Arsenic Water Treatment Project consists of providing all tools, materials, labor and equipment necessary to install new internal and external concrete slabs, structural steel supports, masonry work and new wood framed walls.

**New Raw Water Transmission Pipeline:**

The pipeline portion of the project consists of the installation of approximately 700' of new 8" PVC, 4023' of 12" PVC and 60' of 12" Ductile Iron water line into Little Lane between Stewart Street and Saliman Road from Carson City Well #49 to the new Arsenic Treatment Plant. Work includes, but is not limited to, trench excavation, placement of new pipes and related appurtenances, trench backfill and asphalt replacement.

Carson City has until January 2009, to become compliant with the new Arsenic level requirements implemented by the Environmental Protection Agency.

**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 \_\_\_\_\_ is the lowest responsive and responsible bidder pursuant to N.R.S. Chapter 338, and to award Contract No. 0809-072 Carson City Arsenic Water Treatment Plant and Water Line Project to \_\_\_\_\_, for a bid amount of \$ \_\_\_\_\_ and an additional amount of \$ \_\_\_\_\_ for Additive Alternates 2, 3, and 4, if needed plus a contingency amount not to exceed \$260,000.00 to be funded from the 2007 Carson City Arsenic Level Reduction Project 520-3505-7870 as provided in FY 2007/2008.

**Explanation for Recommended Board Action:** *NOTICE TO CONTRACTORS* were distributed on July 25, 2008 and the *NOTICE TO CONTRACTORS* was published in the Nevada Appeal on July 27, 2008.

The bids were opened at approximately 11:10 a.m. on August 28, 2008 at 201 North Carson Street, Carson City, Nevada 89701. Present during the bid opening were: Mark Brethauer, Senior Project Manager; Andy Burnham, Public Works Director; and Sandy Scott, Purchasing & Contracts Coordinator.

Bids were received from the following bidders. Please refer to the *BID TABULATION* for specifics.

<b>Name of Bidder</b>	<b>Total Award Amount</b>	
RaPiD Construction, Inc.	Base Bid	\$2,578,875.20
	Add/Alt 2	\$700.00
	Add/Alt 3	\$527.00
	Add/Alt 4	\$3,556.00
	<b>Total</b>	<b>\$2,583,658.00</b>
Q & D Construction, Inc.	Base Bid	\$2,599,714.00
	Add/Alt 2	\$10,500.00
	Add/Alt 3	\$10,013.00
	Add/Alt 4	\$64,008.00
	<b>Total</b>	<b>\$2,684,235.00</b>

<b>Name of Bidder</b>	<b>Total Award Amount</b>	
K.G. Walters Construction Company, Inc.	Base Bid	\$2,845,057.00
	Add/Alt 2	\$9,800.00
	Add/Alt 3	\$7,378.00
	Add/Alt 4	\$49,784.00
	<b>Total</b>	<b>\$2,912,019.00</b>
Edstrom Construction, Inc.	Base Bid	\$2,703,410.00
	Add/Alt 2	\$6,860.00
	Add/Alt 3	\$5,164.60
	Add/Alt 4	\$34,848.80
	<b>Total</b>	<b>\$2,750,283.40</b>
A & K Earth Movers, Inc.	Base Bid	\$3,485,000.00
	Add/Alt 2	\$14,000.00
	Add/Alt 3	\$12,648.00
	Add/Alt 4	\$67,564.00
	<b>Total</b>	<b>\$3,579,212.00</b>
Z7 Development	Base Bid	\$3,476,899.00
	Add/Alt 2	\$10,500.00
	Add/Alt 3	\$7,905.00
	Add/Alt 4	\$53,340.00
	<b>Total</b>	<b>\$3,548,644.00</b>

Although RaPiD Construction was the lowest bidder, the License Classification provided by RaPiD Construction has been determine by the City Building Official not to be adequate for the project scope, therefore staff recommends award to Q & D Construction 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:** \$2,500,000.00

**Project Budget:** \$3,000,000.00

**Fiscal Impact:** Not to exceed \$ \_\_\_\_\_

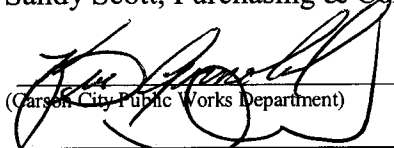
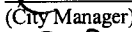


**Explanation of Impact:** If approved the below referenced account could be decreased by \$ \_\_\_\_\_.

**Funding Source:** 2007 Carson City Arsenic Level Reduction Project 250-3505-435-7870 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, Contract for Services of Independent Contractor No. 0809-072, Signed and Executed Contract Assignment with Hungerford & Terry, Inc.

**Prepared By:** Sandy Scott, Purchasing & Contracts Management Assistant

**Reviewed By:**  Date: 9/9/08  
(Carson City Public Works Department)  
 Date: 9-9-08  
(City Manager)  
 Date: 9-9-08  
(District Attorney)  
 Date: 9-9-08  
(Finance Director)

**Board Action Taken:**

Motion: \_\_\_\_\_ 1) \_\_\_\_\_ Aye/Nay  
2) \_\_\_\_\_ \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
**Contract No. 0809-072**

**THIS CONTRACT** made and entered into this 18th day of September, 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 Q & D Construction, Inc., hereinafter referred to as the "**CONTRACTOR**".

**WITNESSETH:**

**WHEREAS**, the Purchasing & Contracts Coordinator for the City and County of Carson City is authorized, pursuant to Nevada Revised Statutes Chapter 332, Nevada Revised Statutes 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. 0809-072 Carson City Arsenic Water Treatment Plant and Water Line Project** 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 6 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.

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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:

Lance Semenko, Vice President  
Q & D Construction, Inc.  
PO Box 10865  
Reno, Nevada 89510  
775-786-2677/FAX 775-786-5136  
lsemenko@qdconstruction.com

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

Carson City Purchasing & Contracts  
Sandy Scott, Purchasing & Contracts 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; 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 # 0809-072 Carson City Arsenic Water Treatment Plant and Water Line Project 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; Technical Specifications; Drawings; Standard Specifications; Standard Plans; Contract with Hungerford and Terry, Inc.; Addenda, if any; Notice of Award; Permits(s); Notice to Proceed; Executed Change Orders, if any; and all supplementary documents that are intended to be complete and complementary and are intended to describe a complete Work.

4.1.2 ATTACHMENT BB: **CONTRACTOR'S** Bid Response; **CONTRACTOR'S** Bid Bond; **CONTRACTOR'S** "Certificate of Eligibility" issued by the State of Nevada Contractors' Board as proof of compliance with the provisions of Nevada Revised Statute 338.147, if any; **CONTRACTOR'S** Performance Bond; **CONTRACTOR'S** Labor and Material Payment Bond;

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**CONTRACTOR'S** insurance certificates; **CONTRACTOR'S** signed copy of contract with Hungerford and Terry, Inc., 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 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 all required permits and submitted all documents required by the Notice of Award, and (2) **CITY** has issued the Notice to Proceed.

4.5 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.

4.6 **Fair Employment Practices:**

4.6.1 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

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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.

4.6.2 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.

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

**4.7 Preferential Employment:**

4.7.1 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.

4.7.2 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.

**4.8 Arbitration:**

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

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 employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.



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**5      CONSIDERATION:**

5.1      The parties agree that **CONTRACTOR** will provide the **WORK** specified in **Section 4 Scope of Work** at the **CONTRACT AMOUNT** of Two Million, Five Hundred Ninety Nine Thousand, Seven Hundred Fourteen Dollars and No Cents (\$2,599,714.00) for the base bid and Eighty Four Thousand, Five Hundred Twenty One Dollars and No Cents (\$84,521.00) for Additive Alternates 2, 3, and 4, if the City determines this work is needed after the start of construction.

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 Response and any executed Change Orders.

5.2      **CONTRACT AMOUNT** 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** does not agree to reimburse **CONTRACTOR** for expenses unless otherwise specified.

**6      CONTRACT TERMINATION:**

**6.1      Termination Without Cause:**

6.1.1      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.

6.1.2      **CITY** reserves the right to terminate this Contract for convenience whenever it considers termination, in its sole and unfettered discretion, to be in the public interest. In the event that the Contract is terminated in this manner, payment will be made for work actually completed. In no event if termination occurs under this provision shall **CONTRACTOR** be entitled to anticipated profits on items of work not performed as of the effective date of the termination or compensation for any other item, including but not limited to, unabsorbed overhead. **CONTRACTOR** shall assure that all subcontracts which he enters related to this Contract likewise contain a termination for convenience clause which precludes the ability of any subcontractor to make claims against **CONTRACTOR** for damages, due to breach of contract, of lost profit on items of work not performed or of unabsorbed overhead, in the event of a convenience termination.

**6.2      Termination for Nonappropriation:**

6.2.1      The continuation of this Contract beyond June 30, 2009 is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the

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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.

**6.3 Cause Termination for Default or Breach:**

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

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

6.3.2.1 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

6.3.2.2 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

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

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

6.3.2.5 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

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

6.3.3 **CITY** may terminate this Contract if **CONTRACTOR**:

6.3.3.1 Fails to maintain bonding, Nevada State Contractors' Board License, State Industrial Insurance requirements or insurance policies for limits as defined in this Contract;

6.3.3.2 Persistently or repeatedly refuses or fails to supply properly skilled workers or proper materials;

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6.3.3.3 Fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between **CONTRACTOR** and the subcontractors;

6.3.3.4 Persistently disregards laws, ordinances, or rules, regulations or order of a public authority having jurisdiction;

6.3.3.5 Otherwise makes a material breach of a provision of this Contract; or

6.3.3.6 **CONTRACTOR** fails to maintain safe working conditions.

6.3.4 When any of the above reasons exist, **CITY** may provide, without prejudice to any other rights or remedies of **CITY** and after giving **CONTRACTOR** and **CONTRACTOR'S** Surety, seven (7) calendar days written notice, terminate employment of **CONTRACTOR** and may, subject to any prior rights of the surety:

6.3.4.1 Take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by **CONTRACTOR**;

6.3.4.2 Accept assignment of subcontractors pursuant to this Contract (Contingent Assignment of Subcontracts to Carson City if this Contract is terminated); and,

6.3.4.3 Finish the Work by whatever reasonable method **CITY** may deem expedient.

6.3.5 If **CITY** terminates this Contract for one of the reasons stated in Subsection 6.3.3, **CONTRACTOR** shall not be entitled to receive further payment until the Work is finished.

6.3.5.1 If the unpaid balance of the Contract Amount exceeds the cost of finishing the Work including expenses made necessary thereby, such excess shall be paid to **CONTRACTOR**. If the costs of finishing the Work exceed the unpaid balance, **CONTRACTOR** shall pay the difference to **CITY**. The amount to be paid to **CONTRACTOR** or **CITY**, as the case may be, shall survive termination of this Contract.

6.3.5.2 In the event of such termination, all monies due **CONTRACTOR** or retained under the terms of this Contract shall be held by **CITY**; however, such holdings will not release **CONTRACTOR** or its sureties from liability for failure to fulfill this Contract. Any excess cost over and above the Contract Amount incurred by **CITY** arising from the termination of the operations of this Contract and the completion of the Work by **CITY** as provided above shall be paid for by any available funds held by **CITY**. **CONTRACTOR** will be so credited with any surplus remaining after all just claims for such completion have been paid.

6.3.5.3 If at any time before completion of the Work under this Contract, the Work shall be stopped by an injunction of a court of competent jurisdiction or by order of any competent authority, **CITY** may give notice to **CONTRACTOR** to discontinue the Work and terminate this Contract. **CONTRACTOR** shall discontinue the Work in such manner, sequence, and at such times as **CITY** may direct. **CONTRACTOR** shall have no claim for damages for such

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discontinuance or termination, nor any claim for anticipated profits on the Work thus dispensed with, nor for any claim for penalty, nor for any other claim such as unabsorbed overhead, except for the work actually performed up to the time of discontinuance, including any extra work ordered by **CITY** to be done.

**6.4 Time to Correct:**

6.4.1 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 five (5) calendar days of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

**6.5 Winding Up Affairs Upon Termination:**

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

6.5.1.1 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;

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

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

6.5.1.4 **CONTRACTOR** shall preserve, protect, and promptly deliver into **CITY** possession all proprietary information in accordance with **Section 25 City Ownership of Proprietary Information**.

**7 REMEDIES:**

7.1 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**.

**8 LIMITED LIABILITY:**

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8.1 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.

9 **FORCE MAJEURE:**

9.1 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.

10 **INDEMNIFICATION:**

10.1 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.

10.2 Except as otherwise provided in Subsection 10.4 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:

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

10.2.2 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.

10.3 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

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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.

10.4 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.

### 11 INDEPENDENT CONTRACTOR:

11.1 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.

11.2 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.

11.3 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.

11.4 **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.

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

### 12 PERFORMANCE BOND & LABOR AND MATERIAL PAYMENT BOND:

12.1 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 AMOUNT** 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.

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
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12.2 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 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.

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

12.4 **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.

12.5 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.

12.6 **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.

12.7 **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.

13 **INSURANCE REQUIREMENTS:**

13.1 **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.

13.2 **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.

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
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13.3 **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**.

13.4 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.

13.5 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.

13.6 **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**.

13.7 **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.

**13.8 Insurance Coverage:**

13.8.1 **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:

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

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

13.8.2 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



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notify **CITY** and immediately replace such insurance or bond with an insurer meeting the requirements.

**13.9 General Requirements:**

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

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

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

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

**13.9.5 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**.

**13.9.6 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.

**13.9.7 Approved Insurer:** Each insurance policy shall be 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 currently rated by A.M. Best as "A-VII" or better.

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

# CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

## Contract No. 0809-072

13.9.8.1 **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**.

13.9.8.2 **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 13.5.2.

13.9.8.3 **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.

13.9.9 **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.

### 14 COMMERCIAL GENERAL LIABILITY INSURANCE:

14.1 Minimum Limits required:

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

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

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

14.2 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).

### 15 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

15.1 Minimum Limit required:

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
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15.1.1 One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage

15.2 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.

**16 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:**

16.1 **CONTRACTOR** shall provide workers' 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.

**17 INSTALLATION FLOATER:**

17.1 **CONTRACTOR** shall provide an installation floater insuring property of **CITY** including machinery and equipment that **CONTRACTOR** has agreed to install. The insured amount must equal the full replacement value of such property of Eight Hundred Fifty Thousand Dollars and No Cents (\$850,000.00).

**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:**

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
**Contract No. 0809-072**

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:**

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

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
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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 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,

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
**Contract No. 0809-072**

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;

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:**

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
**Contract No. 0809-072**

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 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. 0809-072**

**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, Purchasing &  
Contracts Management Assistant  
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](mailto:SScott@ci.carson-city.nv.us)

By:  \_\_\_\_\_  
SANDY SCOTT

DATED 9-9-08 \_\_\_\_\_.

**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 9-9-08 \_\_\_\_\_.

**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](mailto:ABurnham@ci.carson-city.nv.us)

By:  \_\_\_\_\_  
ANDY BURNHAM  
Public Works Director

DATED 9/9/08 \_\_\_\_\_.



**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
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Lance Semenko deposes and says: That he is the **CONTRACTOR** or authorized agent of the **CONTRACTOR**; that he has read the foregoing Contract; and that he understands the terms, conditions, and requirements thereof.

**CONTRACTOR**

**BY:** Lance Semenko  
**TITLE:** Vice President  
**FIRM:** Q & D Construcrtion  
**CARSON CITY BUSINESS LICENSE #:** 08-4129  
**NEVADA CONTRACTOR'S LICENSE #:** 8197 B  
**Address:** P.O. Box 10865  
**City:** Reno **State:** Nevada **Zip Code:** 89510  
**Telephone:** 775-786-2677/ **Fax #:** 775-786-5136  
**E-mail Address:** lsemenko@qdconstruction.com

*Lance Semenko*  
(Signature of **CONTRACTOR**)

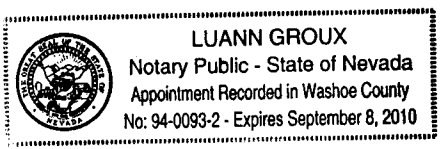
DATED 9/10/08

STATE OF Nevada )  
County of Washoe ) <sup>ss</sup>

Signed and sworn (or affirmed) before me on this 10th day of September, 2008, by Lance Semenko.

*Luann Groux*  
(Signature of Notary)

(Notary Stamp)



**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
**Contract No. 0809-072**

**CONTRACT ACCEPTANCE AND EXECUTION:**

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of September 18, 2008 approved the acceptance of **CONTRACT No. 0809-072 Carson City Arsenic Water Treatment Plant and Water Line Project**. 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**

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**MARV TEIXEIRA, MAYOR**

DATED this 18th day of September, 2008

**ATTEST:**

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**ALAN GLOVER, CLERK-RECORDER**

DATED this 18th day of September, 2008

## AGREEMENT No. 0708-046

THIS AGREEMENT is between the City and County of Carson City, a political subdivision of the State of Nevada ("Buyer") and Hungerford & Terry, Inc. ("Seller").

Buyer and Seller, in consideration of the mutual covenants set forth herein, agree as follows:

### ARTICLE 1 - GOODS AND SPECIAL SERVICES

1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents. The Goods and Special Services to be furnished are described in Section 01010, Summary of Goods and Special Services.

### ARTICLE 2 - THE PROJECT

2.01 The Project for which the Goods and Special Services to be provided under the Contract Documents may be the whole or only a part is generally described as follows:

Provide packaged water treatment plant equipment and Special Services as outlined in the technical specifications.

### ARTICLE 3 - ENGINEER

3.01 The Contract Documents for the Goods and Special Services have been prepared by;

Brown and Caldwell  
3264 Goni Road, Suite 153  
Carson City, NV 89706

who is hereinafter called Engineer and who is to assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the furnishing of Goods and Special Services.

### ARTICLE 4 - POINT OF DESTINATION

4.01 The place where the Goods are to be delivered is defined in the General Conditions as the Point of Destination and is designated as the project site at: 1539 E. Fifth Street, Carson City, Nevada 89701

### ARTICLE 5 - CONTRACT TIMES

5.01 *Time of the Essence*

A. All time limits for Milestones, if any, the delivery of Goods and the furnishing of Special Services as stated in the Contract Documents are of the essence of the Contract.

#### 5.02 *Days for Submittal of Shop Drawings*

A. All Shop Drawings and Samples required by the Contract Documents will be submitted to Buyer for Engineer's review and approval within 60 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions.

#### 5.03 *Days to Achieve Delivery of Goods*

A. The Goods are to be delivered to the Point of Destination and ready for Buyer's receipt of delivery on (or within a period of 15 days prior to) 186 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions.

#### 5.04 *Days for Furnishing Special Services*

A. The furnishing of Special Services to Buyer will commence within 14 days after Buyer's written notice to Seller following Buyer's receipt of delivery of the Goods, and shall be completed within 60 days thereafter. Such notice will be given no later than 240 days after Buyer's receipt of delivery.

#### 5.05 *Liquidated Damages*

A. Buyer and Seller recognize that time is of the essence of this Agreement and that Buyer will suffer financial loss if the Goods are not delivered at the Point of Destination and ready for receipt of delivery by Buyer within the times specified in Paragraph 5.03 above, plus any extensions thereof allowed in accordance with Article 7 of the General Conditions. The parties also recognize that the timely performance of services by others involved in the Project are materially dependent upon Seller's specific compliance with the requirements of Paragraph 5.03. Further, they recognize the delays, expense and difficulties involved in proving the actual loss suffered by Buyer if complete acceptable Goods are not delivered on time. Accordingly, instead of requiring such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer \$750 for each day that expires after the time specified in Paragraph 5.03 for delivery of acceptable Goods.

### **ARTICLE 6 - CONTRACT PRICE**

6.01 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents in current funds as follows:

A. A Lump Sum of Eight Hundred Thirty-Four Thousand, Six Hundred Sixty-Five Dollars and no cents (\$834,665.00).

## **ARTICLE 7 - PAYMENT PROCEDURES**

### *7.01 Submittal and Processing of Payments.*

A. Seller shall submit Applications for Payment in accordance with Article 10 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### *7.02 Progress Payments.*

A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment as follows:

1. Upon receipt of the first Application for Payment for approved shop drawing submittals, submitted in accordance with Paragraph 10.01.A.1 of the General Conditions and accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.02.A of the General Conditions, an amount equal to 20 percent of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.

2. Upon receipt of the second such Application for Payment for acknowledged receipt of goods, accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.01.A.2 of the General Conditions, an amount sufficient to increase total payments to Seller to 90 percent of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.

### *7.03 Final Payment*

A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.06 of the General Conditions, Buyer shall pay the remainder of the Contract Price as recommended by Engineer.

## **ARTICLE 8 - INTEREST**

8.01 All monies not paid when due as provided in Article 10 of the General Conditions shall bear interest at the rate of 1.5 percent per annum.

## **ARTICLE 9 - SELLER'S REPRESENTATIONS**

9.01 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:

A. Seller has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. If specified or if, in Seller's judgment, any local condition may affect cost, progress or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and become familiar with and is satisfied as to the local conditions that may affect cost, progress or the furnishing of the Goods and Special Services.

C. Seller is familiar with and is satisfied as to all local federal, state and local Laws and Regulations that may affect cost, progress and the furnishing of the Goods and Special Services.

D. Seller has carefully studied and correlated the information known to Seller, and information and observations obtained from Seller's visits, if any, to the Point of Destination, with the Contract Documents.

E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Seller.

F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

## **ARTICLE 10 - CONTRACT DOCUMENTS**

### *10.01 Contents*

A. The Contract Documents consist of the following:

1. This Agreement 00520 (10 pages);
2. Standard General Conditions for Procurement Contracts 00700 (18 pages);
3. Supplementary Conditions 00800 (6 pages);
4. Specifications as listed in table of contents of the Project Manual dated 9/10/07;
5. Drawings, consisting of a cover sheet and sheets numbered Figure 1 through Figure 3, inclusive, with each sheet bearing the following general title: Carson City Public Works, Arsenic Treatment Plant (3 pages);
6. Addenda (Numbers 1 to 3, 15 pages inclusive);
7. Exhibits to this Agreement (enumerated as follows):
  - a. Exhibit A-1 to Agreement between Buyer and Seller dated \_\_\_\_\_, Assignment of Contract; Consent to Assignment; and Acceptance of Assignment.

b. Exhibit A-2 to Agreement between Buyer and Seller dated \_\_\_\_\_, Agreement to Assignment by Seller's Surety.

c. Seller's Bid (60 pages);

10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

a. Performance Bond for Procurement Contracts 00610;

b. Payment Bond for Procurement Contracts 00615;

c. Notice to Proceed 00550;

d. Written Amendment(s);

e. Change Order(s);

f. Field Order(s);

g. Engineer's Written Interpretation(s).

B. The documents listed in paragraph 10.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 10.

D. The Contract Documents may only be amended, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 11 - MISCELLANEOUS**

### **11.01 *Defined Terms***

A. Terms used in this Agreement will have the meanings indicated in the General Conditions and the Supplementary Conditions.

### **11.02 *Assignment***

A. Buyer has the right to assign the Contract for furnishing Goods and Special Services hereunder and Seller shall accept such assignment. Forms documenting the assignment of the Contract, and consent of Seller's surety to the assignment are attached as exhibits to this Agreement.

1. The Contract will be executed in the name of Buyer initially, and will be assigned to a construction contractor designated by Buyer. The assignment will occur on the effective date of the agreement between Buyer and the construction contractor, which is expected to

occur on or about May 2008, or after Buyer approval of the Seller's Shop Drawings, if this has not yet occurred. As of the date of acceptance of assignment by the construction contractor, all references in the Contract Documents to Buyer shall mean the designated contractor whose responsibilities will include the installation of the Goods.

2. The assignment of the Contract shall relieve Buyer from all further obligations and liabilities under the Contract. After assignment, Seller shall become a subcontractor or supplier to the assignee and, except as noted herein, all rights, duties, and obligations of Buyer under the Contract shall become the rights, duties and obligations of the assignee.

3. After assignment:

a. All performances, warranties, and guarantees required by the Contract Documents will continue to run for the benefit of Buyer and, in addition, for the benefit of the assignee.

b. Except as provided in this Paragraph 11.02.A.3.b, all rights, duties and obligations of Engineer to assignee and Seller under this Contract will cease.

1) Engineer will review Seller's Applications for Payment and make recommendations to assignee for payments as provided in Paragraphs 10.02 and 10.06 of the General Conditions.

2) Upon the written request of either the assignee or Seller, Engineer will issue with reasonable promptness such clarifications or interpretations of the Contract Documents, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such written clarifications and interpretations will be final and binding on assignee and Seller unless:

a) an appeal from Engineer's clarification or interpretation is made within the time limits and in accordance with the dispute resolution procedures set forth in Article 13 of the General Conditions; or

b) if no such dispute resolution procedures have been set forth, a written notice of intention to appeal is delivered by assignee or Seller to the other within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision (unless otherwise agreed to in writing by assignee and Seller), to exercise such rights or remedies as the appealing party may have with respect to such clarification or interpretation in accordance with applicable Laws and Regulations.

3) When rendering a clarification or interpretation under Paragraph 11.02.A.3.b.2, Engineer will not show partiality to assignee or Seller and will not be liable in connection with any clarification or interpretation rendered in good faith.

B. No other assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party



sought to be bound. Specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

#### 11.03 *Successors and Assigns*

A. Buyer and Seller each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

#### 11.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Buyer and Seller. The Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Buyer and Seller have signed this Agreement in duplicate. One counterpart each has been delivered to Buyer and Seller. All portions of the Contract Documents have been signed or identified by Buyer and Seller or on their behalf.

This Agreement will be effective on November 15, 2007.

**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

**CITY'S LEGAL COUNSEL**  
Neil A. Rombardo, District Attorney

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

By: *Cheryl A. Adams*  
CHERYL A. ADAMS  
Purchasing & Contracts Manager

By: *Melanie Roubette*  
Deputy District Attorney for J. Benton

DATED this 15<sup>th</sup> day of November, 2007.

DATED this 16<sup>th</sup> day of NOV, 2007.

**CITY'S ORIGINATING DEPARTMENT**  
**BY: Andrew Burnham, Director**  
**Public Works Department**  
3505 Butti Way  
Carson City, NV 89701  
Telephone: 775-887-2355  
Fax: 775-887-2112  
ABurnham@ci.carson-city.nv.us

*Andrew Burnham* **ACTING**

DATED this 16 day of NOVEMBER, 2007.

Buyer: Marv Teixeira

Seller: Kenneth M. Sayell

By: Marv Teixeira, Mayor

By: Kenneth M. Sayell, VP of Sales  
[Corporate Seal]

Attest: Katharine L. McLaughlin  
Deputy for Alan Glover  
Clerk-Recorder

Attest: Frank J. Caligiuri

Address for giving notice:

Address for giving notice:

Carson City Purchasing & Contracts

Hungerford & Terry, Inc.

201 North Carson Street Suite 11

P. O. Box 650

Carson City, NV 89701

Clayton, NJ 08312

775-887-2390 / FAX #775-887-2107

856-881-3200 / FAX #856-881-6859

CAdams@ci.carson-city.nv.us

KSayell@hungerfordterry.com

(If Seller is a corporation or a partnership,  
attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: Cheryl Adams

Name: Frank Caligiuri

Title: Purchasing & Contracts Manager

Title: Sales Department Manager

Address: 201 North Carson Street Suite 11

Address: P. O. Box 650

Phone: 775-887-2390

Phone: 856-881-3200

Facsimile: 775-887-2107

Facsimile: 856-881-6958

CAdams@ci.carson-city.nv.us

FCaligiuri@hungerfordterry.com

ASSIGNMENT OF CONTRACT; CONSENT TO ASSIGNMENT; AND ACCEPTANCE OF  
ASSIGNMENT

This assignment will be effective on *[insert date]*.

The Contract between \_\_\_\_\_ ("Buyer") and  
\_\_\_\_\_ ("Seller")  
for furnishing Goods and Special Services under the Contract Documents entitled

\_\_\_\_\_ is hereby assigned, transferred, and set over to \_\_\_\_\_  
("Construction Contractor"). Construction Contractor shall be totally responsible for the  
performance of Seller and for the duties, rights and obligations of Buyer, not otherwise retained  
by Buyer, under the terms of the Contract between Buyer and Seller.

ASSIGNMENT DIRECTED BY:

\_\_\_\_\_  
Buyer

(If Buyer is a corporation, attach evidence  
of authority to sign. If Buyer is a public  
body, attach evidence of authority to sign  
and resolution or other documents authorizing  
execution of Buyer-Seller Agreement.)

By: \_\_\_\_\_  
(Signature) (Title)

ASSIGNMENT

ACKNOWLEDGED AND ACCEPTED BY:

\_\_\_\_\_  
Seller

(If Seller is a corporation, attach  
evidence of authority to sign.)

By: \_\_\_\_\_  
(Signature) (Title)

ASSIGNMENT ACCEPTED BY:

Q9D Construction, Inc.  
Construction Contractor

(If Construction Contractor is a  
corporation, attach evidence of authority  
to sign.)

By: James Sembo Sr. V.P. ENGR.

AGREEMENT TO ASSIGNMENT BY SELLER'S SURETY

Surety hereby acknowledges and agrees that the Contract for furnishing Goods and Special Services under the Contract Documents entitled \_\_\_\_\_ by and between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller") may be assigned, transferred, and set over to \_\_\_\_\_ ("Construction Contractor"), in accordance with Paragraph 11.02 of Agreement between Buyer and Seller.

Surety further agrees that, upon assignment of the Contract, the Construction Contractor shall have all the rights of the Buyer under the Performance Bond.

(Corporate Seal)

Surety

Company: \_\_\_\_\_

By: \_\_\_\_\_

Signature and Title  
(Attach Power of Attorney)

September 10, 2007  
Clayton, New Jersey

The Annual meeting of the Directors of Hungerford & Terry, Inc. was held on September 10, 2007 at 1:30 p.m.

With all Directors present, the President, Alan A. Davis, called the meeting to order.

Welcome to our two 12% Directors, John Dukes Hungerford and Morrison Coates Huston, voted in again.

Upon motion of Alan A. Davis, seconded by John Dukes Hungerford, the following Directors were nominated and elected to serve as Officers of the Corporation:

Alan A. Davis -	President
Patricia A. DiFilippo -	Vice President/Secretary & Treasurer
Kenneth Sayell -	Vice President of Sales
Harold Aronovitch -	Vice President/Technical Director
Thomas Carrocino -	Vice President of Operations

Upon motion of Patricia A. DiFilippo, seconded by Kenneth Sayell, the following were nominated and elected to serve on the Profit Sharing Committee:

Patricia A. DiFilippo  
Thomas Carrocino  
Harold Aronovitch  
Frank Caligiuri

Upon motion of Alan A. Davis, seconded by Morrison Coates Huston, it was decided to establish the following signatures:

For writing checks or borrowing money, any one (1):

Alan A. Davis, Kenneth Sayell, Patricia A. DiFilippo

Upon motion of Alan A. Davis, seconded by Morrison Coates Huston, it was decided to establish the following signatures.

Oral Instructions:

Alan A. Davis, Kenneth Sayell, Patricia A. DiFilippo

Upon motion of Alan A. Davis, seconded by Morrison Coates Huston, it was decided to establish the following signatures.

Facsimile:

Patricia A. DiFilippo

Upon motion of Alan A. Davis, seconded by Harold Aronovitch, the following Directors were nominated & elected to serve on the Executive Committee:

Alan A. Davis  
Patricia A. DiFilippo  
Kenneth Sayell

Upon motion of Morrison Coates Huston, seconded by Kenneth Sayell, it was decided to approve the salaries of all Officers & Directors this year and all prior years.

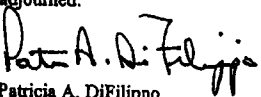
Upon motion of Alan A. Davis, seconded by Patricia A. DiFilippo, it was decided to approve the following to sign contracts on behalf of the Corporation:

Alan A. Davis	Patricia A. DiFilippo
Kenneth M. Sayell	Thomas Carrocino

The Treasurer, Patricia A. DiFilippo, gave her report. A motion to accept this report was made by Thomas Carrocino, seconded by Harold Aronovitch, and unanimously carried.

Patricia A. DiFilippo, presented a Profit Sharing report, stated the total value of our 401K Profit Sharing account is approximately \$ 6,477,705.00 for the year ending 5/31/07. Report attached.

There being no other business to come before the meeting, upon motion of Kenneth Sayell, seconded by Morrison Coates Huston, and duly carried, the meeting was adjourned.

  
Patricia A. DiFilippo  
Vice President/Secretary & Treasurer