

Item # 3-1B

**City of Carson City
Agenda Report**

Date Submitted: September 26, 2006

Agenda Date Requested: October 5, 2006

Time Requested: Consent

To: Mayor and Supervisors

From: Purchasing & Contracts

Subject Title: Action to approve Contract No. 0607-036 a request for professional services to be provided by MacWest Marketing to provide professional level marketing services to the City's fixed-route transit system – Jump Around Carson (JAC) through October 4, 2007 for a not to exceed cost of \$77,000 from the Transit Fund

Staff Summary: On August 23, 2006, the Carson City Regional Transportation Commission (RTC) recommended that Carson City enter into a contract for these services. MacWest Marketing has extensive marketing expertise and extensive experience in the Carson City area.

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 approve Contract No. 0607-036 a request for professional services to be provided by MacWest Marketing to provide professional level marketing services to the City's fixed-route transit system – Jump Around Carson (JAC) through October 4, 2007 for a not to exceed cost of \$77,000 from the Transit Fund

Explanation for Recommended Board Action: At the direction of the City Manager's Office, the City's Public Information Team developed a preliminary plan for the marketing of JAC service and sought proposals for services from qualified marketing firms. Two proposals were received. After reviewing the proposals, the Public Information Team selected MacWest Marketing based on the firm's proven capabilities and recent positive experiences completing other work for Carson City. MacWest Marketing then developed a detailed scope of work that was reviewed by City staff for presentation to the RTC. MacWest Marketing presented the proposed scope of work and cost to the RTC, which formally recommended a one-year contract for \$70,000 with a 10% contingency for a total contract amount not to exceed \$77,000.

The work to be provided by MacWest Marketing will be a specialized, professional service. The firm has extensive marketing capabilities that do not exist currently within the City staff. In the proposed scope of work presented to the RTC, MacWest Marketing shared information about many of its planned marketing activities that will promote JAC service and raise awareness of the service over the next year. JAC service has been operating for a year without an active marketing program in place and City staff believes that as a new system, JAC would benefit from such a marketing program.

Pursuant to **NRS 332.115 subsection 1 (b)**, staff is requesting the Board of Supervisors declare that this contract is not adapted to award by competitive bidding.

NRS 332.115 Contracts not adapted to award by competitive bidding; purchase of equipment by local law enforcement agency or other local governmental agency; purchase of goods commonly used by hospital.

1. Contracts which by their nature are not adapted to award by competitive bidding, including contracts for:
 - (b) Professional services;are not subject to the requirements of this chapter for competitive bidding as determined by the governing body or its authorized representative.

Applicable Statue, Code, Policy, Rule or Regulation: NRS 332.115 subsection 1 (b)


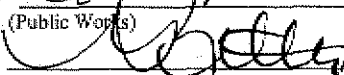

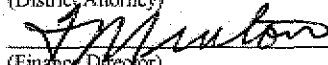
Fiscal Impact: Amount of Contract

Explanation of Impact: Amount of Contract

Funding Source: \$77,000.00 budgeted in Transit Fund for FY 06-07

Supporting Material: MacWest Marketing Strategic Marketing Plan for JAC and Contract for Services of Independent Contractor Contract No. 0607-036

Prepared By: Cheryl Adams, Purchasing & Contracts Manager

Reviewed By: 	Date: <u>9-26-06</u>
(Public Works)	
	Date: <u>9-26-06</u>
(City Manager)	
	Date: <u>9-26-08</u>
(District Attorney)	
	Date: <u>9/26/06</u>
(Finance Director)	

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0607-036

THIS CONTRACT, made and entered into this 5th day of October, 2006, 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 MacWest Marketing hereinafter referred to as the "**CONTRACTOR**".

WITNESSETH:

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

WHEREAS, it is deemed that the services of **CONTRACTOR** for **CONTRACT No. 0607-036 Strategic Marketing Plan for JAC** are both necessary and in the best interests of the **CITY**; and

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

1 REQUIRED APPROVAL:

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

2 CONTRACT TERM:

2.1 This Contract shall be effective from October 5, 2006 subject to Carson City Board of Supervisors' approval (anticipated to be October 5, 2006) to October 4, 2007, unless sooner terminated by either party as specified in **Section 8 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.

For P&C Use Only	
BL expires	_____
GL expires	_____
PL expires	_____
WC expires	_____

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3.2 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.

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

Miya MacKenzie, Partner
MacWest Marketing
4130 Kings Canyon Road
Carson City, NV 89703
775-885-1434 / FAX #775-546-9835
miya@macwestmarketing.com

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

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

4 SCOPE OF WORK:

4.1 The parties agree that the scope of work for the **CONTRACTOR** shall be as follows for the JAC 2006-2007 Marketing, Advertising and Public Relations Budget:

4.1.1 Initial Strategy and Creative Creation - \$13,850.00

4.1.1.1 Project Strategy--creative concepting and key messaging, includes overall strategy creation and honing, creative looks and key messaging for advertising and promotions, kick off meeting and subsequent meetings in this phase, approvals & edits, revise map/schedule - \$6,000.00

4.1.1.2 Print Ad creation (includes resizes for 3 publications) - \$2,150.00

4.1.1.3 Radio advertising script - \$300.00

4.1.1.4 TV commercial, script and art direction - \$2,800.00

4.1.1.5 Media Recommendation, advertising negotiations and account management set up - \$1,000.00

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4.1.1.6 Presentation creation (both powerpoint and script and visuals for presenting to target groups/organizations) - \$1,600.00

4.1.2 Media Buys - \$14,400.00

4.1.2.1 Ad costs for light advertising in print, radio & tv, \$1,200.00/mo

4.1.3 Monthly Retainer, \$3,000.00/month = \$36,000.00/year

4.1.3.1 Project management - regular communications, approvals, arranging presentation opportunities, coordination

4.1.3.2 Special Events - 18 special events have been identified to coordinate. Please note, special event coordination does not include attendance at events.

4.1.3.3 Population Targets - identified 8 months with specialized activities for specific target populations

4.1.3.4 Press releases(average of 1.5/mo)/PSAs(1-2/month)/media relations (ongoing) – to focus on special events, seasonality, some type of news (such as mayor rides bus), improvements to route or schedule or a feel good story (shut-in senior finds new life/freedom by riding JAC)

4.1.4 Additional items - \$5,750.00

4.1.4.1 Banner across Carson Street (banner creation and printing) - \$1,400.00

4.1.4.2 Spanish language map/schedule - \$1,500.00

4.1.4.3 Additional items to be determined – as agreed by **CONTRACTOR AND CITY** (probably professional recording of "Hit the Road JAC song") - \$2,850.00

5 CONSIDERATION:

5.1 The parties agree that **CONTRACTOR** will provide the services specified in **Section 4 Scope of Work** at a cost of Seventy-Seven Thousand Dollars (\$77,000.00) as follows:

5.1.1 **Summary**

5.1.2 Initial Strategy and Creative - \$13,850.00

5.1.2.1 Media Buys (ad costs) - \$14,400.00

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5.1.2.2 Monthly retainer - \$36,000.00

5.1.2.3 Additional Items - \$5,750.00

5.1.2.4 10% contingency of \$7,000.00

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

7 INSPECTION & AUDIT:

7.1 Books and Records:

7.1.1 **CONTRACTOR** agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the City, State of Nevada, or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all city, state, and federal regulations and statues.

7.2 Inspection & Audit:

7.2.1 **CONTRACTOR** agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of **CONTRACTOR** or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of **CONTRACTOR** where such records may be found with or without notice by the **CITY**, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

7.2.2 All subcontracts shall reflect requirements of this paragraph.

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7.3 Period of Retention:

7.3.1 All books, records, reports, and statements relevant to this Contract must be retained a minimum of three years and for five years if any federal funds are used in the Contract.

7.3.2 The retention period runs from the date of payment for the relevant goods or services by the **CITY**, or from the date of termination of the Contract, whichever is later.

7.3.3 Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

8 CONTRACT TERMINATION:

8.1 Termination Without Cause:

8.1.1 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.

8.2 Termination for Nonappropriation:

8.2.1 The continuation of this Contract beyond June 30, 2007 is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Carson City Board of Supervisors.

8.2.2 The **CITY** may terminate this Contract, and **CONTRACTOR** waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the funding is not appropriated or is withdrawn, limited, or impaired.

8.3 Cause Termination for Default or Breach:

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

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

8.3.2.1 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

8.3.2.2 If any state, county, city or federal license, authorization, waiver, permit, qualification

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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

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

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

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

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

8.4 Time to Correct:

8.4.1 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 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.

8.5 Winding Up Affairs Upon Termination:

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

8.5.1.1 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.

8.5.1.2 Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

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

8.5.1.4 **CONTRACTOR** shall execute any documents and take any actions necessary to

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effectuate an assignment of this Contract if so requested by the CITY.

8.5.1.5 **CONTRACTOR** shall preserve, protect, and promptly deliver into CITY possession all proprietary information in accordance with **Section 22 City Ownership of Proprietary Information**.

9 **REMEDIES:**

9.1 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.

9.2 It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for CITY-employed attorneys and **CONTRACTOR**-employed attorneys.

9.3 The CITY may set off consideration against any unpaid obligation of the **CONTRACTOR** to the CITY.

10 **LIMITED LIABILITY:**

10.1 The CITY will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases.

10.2 Contract liability of both parties shall not be subject to punitive damages.

10.3 Liquidated damages shall not apply unless otherwise specified in the incorporated attachments.

10.4 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.

10.5 **CONTRACTOR'S** tort liability shall not be limited.

11 **FORCE MAJEURE:**

11.1 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.

11.2 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

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accordance with the terms of the Contract after the intervening cause ceases.

12 INDEMNIFICATION:

12.1 To the fullest extent permitted by law, **CONTRACTOR** shall indemnify, hold harmless and defend (at **CITY'S** option), not excluding the **CITY'S** right to participate, the **CITY** from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent, willful, or unlawful acts or omissions of **CONTRACTOR**, its officers, employees, agents, representatives, volunteers, and any others performing work for **CONTRACTOR**.

12.2 To the fullest extent permitted by law, **CITY** shall indemnify, hold harmless and defend, not excluding the **CONTRACTOR'S** right to participate, the **CONTRACTOR** from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent, willful, or unlawful acts or omissions of **CITY**, its officers, employees, agents, representatives, volunteers, and any others performing work for **CITY**.

13 INDEPENDENT CONTRACTOR:

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

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

13.3 **CONTRACTOR** and **CITY** intend and agree that **CONTRACTOR**, and any of its employees, shall not be considered as an employee for all purposes including, but not limited to, the application of the Fair Labor Standards Act, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code and any Nevada revenue and taxation laws, and that **CONTRACTOR** shall solely be responsible for and the **CITY** shall have no obligation with respect to the following for **CONTRACTOR** and its employees:

13.3.1 withholding of income taxes, FICA, FUTA or any other taxes or fees.

13.3.2 workers compensation and employers liability coverage.

13.3.3 health or other benefit plans.

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- 13.3.4 participation or contribution to any retirement plan.
- 13.3.5 sick leave, vacation leave or any other type of leave.
- 13.3.6 unemployment compensation coverage.
- 13.3.7 wages or overtime compensation due its employees in rendering services pursuant to this contract.

13.4 **CONTRACTOR** shall indemnify and hold **CITY** harmless from, and defend **CITY** against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses, including, without limitation, reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law, arising or incurred because of, incident to, or otherwise with respect to Sections 13.3.1 through 13.3.7.

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

13.6 It is specifically understood and agreed that

13.6.1 the **CITY** does not have the right to require control of when, where and how the **CONTRACTOR** is to work;

13.6.2 the **CITY** will not be providing training to the **CONTRACTOR**;

13.6.3 the **CITY** will not be furnishing the **CONTRACTOR** with worker's space, equipment, tools, supplies or travel expenses;

13.6.4 none of the workers who assist the **CONTRACTOR** in performance of his/her duties are employees of the **CITY**;

13.6.5 the arrangement with the **CONTRACTOR** does not contemplate continuing or recurring work;

13.6.6 the **CITY** will not incur any employment liability if the **CONTRACTOR** is terminated for failure to perform; and

13.6.7 the **CONTRACTOR** is not restricted from offering his/her services to the general public while engaged in this work relationship with the **CITY**.

14 **GENERAL LIABILITY INSURANCE:**

14.1 Unless waived in writing by the **CITY**, the **CONTRACTOR** agrees, as a condition

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precedent to any duty of the **CITY** to make any payment under this Contract, to furnish and maintain throughout the term of the Contract at no cost to the **CITY**, such general liability and property damage insurance as shall protect him and any subcontractor performing work covered by the Contract from claims for, but not limited to, bodily injury, sickness, disease, death, or property damage arising or resulting from the **CONTRACTOR'S** performance, or by any subcontractor, person, firm or employee directly or indirectly employed by him.

14.1.1 Insurance shall contain limits of not less than One Million Dollars (\$1,000,000.00).

14.2 The City's Risk Management Department must be consulted prior to any waiver of insurance.

14.3 **CONTRACTOR** agrees that Carson City shall be listed as an additional insured on such insurance policy, that such insurance shall be primary as respects Carson City, and that any "other insurance" provision shall not apply to the additional insured.

14.4 Carson City Purchasing & Contracts shall be listed as a certificate holder.

14.5 **CONTRACTOR** shall furnish to Carson City Purchasing & Contracts, 201 North Carson Street Suite 11, Carson City, Nevada 89701, a certificate of said insurance prior to commencing work.

14.6 In the event the **CITY** must pay any premium(s) on behalf of the **CONTRACTOR**, after the execution of this Contract, **CONTRACTOR** shall reimburse the **CITY** for all such payment(s). Said payment(s) shall be deducted from any compensation due, or about to become due **CONTRACTOR** by the **CITY**.

15 PROFESSIONAL LIABILITY:

15.1 Unless waived in writing by the **CITY**, **CONTRACTOR** agrees, as a condition precedent to any duty of the **CITY** to make any payment under this Contract, to furnish and maintain throughout the term of the Contract at no cost to the **CITY**, professional liability insurance as shall protect the **CONTRACTOR**, subcontractors, agents, and employees thereof for the performance of this Contract.

15.1.1 Insurance shall contain limits of not less than One Million Dollars (\$1,000,000.00).

15.2 The City's Risk Management Department must be consulted prior to any waiver of insurance.

15.3 The **CONTRACTOR** agrees that Carson City Purchasing & Contracts shall be listed as a certificate holder.

15.4 The **CONTRACTOR** shall furnish to Carson City Purchasing & Contracts, 201 North

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Carson Street Suite 11, Carson City, Nevada 89701, a certificate of said insurance prior to commencing work.

15.5 In the event the **CITY** must pay any premium(s) on behalf of the **CONTRACTOR**, after the execution of this Contract, **CONTRACTOR** shall reimburse the **CITY** for all such payment(s). Said payment(s) shall be deducted from any compensation due, or about to become due **CONTRACTOR** by the **CITY**.

16 INDUSTRIAL INSURANCE:

16.1 Unless waived in writing by the **CITY**, **CONTRACTOR** agrees, as a condition precedent to any duty of the **CITY** to make any payment under this Contract, to furnish and maintain throughout the term of the Contract at no cost to the **CITY**, worker's compensation insurance as required by the provisions of Chapters 616A through 616D of the NRS.

16.2 The City's Risk Management Department must be consulted prior to any waiver of insurance.

16.3 **CONTRACTOR** agrees that Carson City Purchasing & Contracts shall be listed as a certificate holder.

16.4 **CONTRACTOR** shall furnish to Carson City Purchasing & Contracts, 201 North Carson Street Suite 11, Carson City, Nevada 89701, a certificate of said insurance prior to commencing work.

16.5 In the event the **CITY** must pay any premium(s) on behalf of **CONTRACTOR**, after the execution of this Contract, **CONTRACTOR** shall reimburse the **CITY** for all such payment(s). Said payment(s) shall be deducted from any compensation due, or about to become due **CONTRACTOR** by the **CITY**.

17 BUSINESS LICENSE:

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

18 COMPLIANCE WITH LEGAL OBLIGATIONS:

18.1 **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.

18.2 **CONTRACTOR** will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law.

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18.3 Real property and personal property taxes are the responsibility of **CONTRACTOR** in accordance with NRS 361.157 and 361.159.

18.4 **CONTRACTOR** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

18.5 The **CITY** may set-off against consideration due any delinquent government obligation.

19 **WAIVER OF BREACH:**

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

20 **SEVERABILITY:**

20.1 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.

21 **ASSIGNMENT/DELEGATION:**

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

22 **CITY OWNERSHIP OF PROPRIETARY INFORMATION:**

22.1 Any files, reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer programs, computer codes, and computer records (which are intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by **CONTRACTOR** (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the **CITY** and all such materials shall be delivered into **CITY** possession by **CONTRACTOR** upon completion, termination, or cancellation of this Contract.

22.2 **CONTRACTOR** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **CONTRACTOR'S** obligations under this Contract without the prior written consent of the **CITY**.

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

23 PUBLIC RECORDS:

23.1 Pursuant to NRS 239.010, information or documents received from **CONTRACTOR** may be open to public inspection and copying.

23.2 The **CITY** will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

23.3 **CONTRACTOR** may clearly label individual documents as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that **CONTRACTOR** thereby agrees to indemnify and defend the **CITY** for honoring such a designation.

23.4 The failure to so label any document that is released by the **CITY** shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

24 CONFIDENTIALITY:

24.1 **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.

25 FEDERAL FUNDING:

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

25.1.1 **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.

25.1.2 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.

25.1.3 This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

25.1.4 **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,

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0607-036

inclusive, and any relevant program-specific regulations.

25.1.5 **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.)

26 **LOBBYING:**

26.1 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:

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

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

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

27 **GENERAL WARRANTY:**

27.1 **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.

28 **PROPER AUTHORITY:**

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

29 **GOVERNING LAW; JURISDICTION:**

29.1 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.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
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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.

30 ENTIRE CONTRACT AND MODIFICATION:

30.1 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.

30.2 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.

30.3 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. 0607-036

31 ACKNOWLEDGMENT AND EXECUTION:

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

CARSON CITY

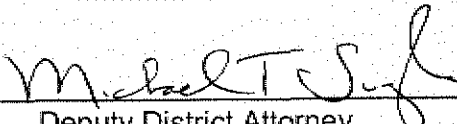
Finance Director
Attn: Cheryl A. Adams, Purchasing &
Contracts Manager
201 North Carson Street Suite 11
Carson City, Nevada 89701
Telephone: 775-887-2027 extension 1100
Fax: 775-887-2107
CAdams@ci.carson-city.nv.us

CITY'S LEGAL COUNSEL

Noel S. Waters, District Attorney

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

By: _____
CHERYL A. ADAMS
Purchasing & Contracts Manager

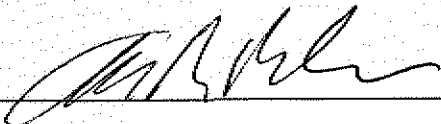
By:  _____
Deputy District Attorney

DATED this ____ day of September, 2006.

DATED this 26th day of September, 2006.

CITY'S ORIGINATING DEPARTMENT

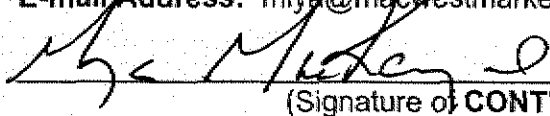
BY: Andrew Burnham, Director
Public Works Department
3505 Butti Way
Carson City, NV 89701
Telephone: 775-887-2355
Fax: 775-887-2112
ABurnham@ci.carson-city.nv.us

 _____
DATED this 26 day of September, 2006.

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

CONTRACTOR
BY: Miya MacKenzie
TITLE: Partner
FIRM: MacWest Marketing
BUSINESS LICENSE #: 06-00020709
Address: 4130 Kings Canyon Road
City: Carson City **State:** NV **Zip Code:** 89703
Telephone: 775-885-1434 / **Fax #:** 775-546-9835
E-mail Address: miya@macwestmarketing.com




(Signature of **CONTRACTOR**)

DATED this 21 day of September, 2006.

STATE OF Nevada)
County of Carson) ss

On this 21st day of September, in the year 2006, before me, Sonja Fischer, Notary Public, personally appeared Miya MacKenzie, 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.

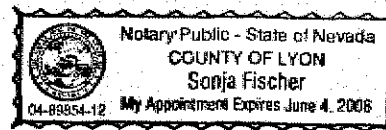
WITNESS my hand and official seal.



Notary's Signature

My Commission Expires: June 4, 2008

L.S.



CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0607-036

CONTRACT ACCEPTANCE AND EXECUTION:

The Board Of Supervisors for Carson City, Nevada at their publicly noticed meeting of October 5, 2006 approved the acceptance of **CONTRACT No. 0607-036**. 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 5th day of October, 2006.

ATTEST:

ALAN GLOVER, CLERK-RECORDER

DATED this 5th day of October, 2006.



MACWEST MARKETING

4130 Kings Canyon Road, Carson City, NV 89703
w 775.885.1434 / c 775.846.0112 / f 775.546.9835
miya@macwestmarketing.com

On August 23, 2006, the Carson City Regional Transportation Commission approved a one year Marketing Plan for the JAC Public Transit System. Their approval included a budget of \$70,000 plus a 10% contingency. The following outlines the Marketing Plan they approved.

Strategic Marketing Plan for



The MacWest Marketing team is pleased to present a plan for a customized, strategic marketing/public relations program for the JAC Transit System. We perceive this as an exciting opportunity due to the fact that Carson City is a progressive, dynamic city that exhibits a strong commitment to the community by maintaining a successful public transit system. MacWest Marketing looks forward to supporting Carson City in fulfilling this commitment. Additionally, this opportunity is a succinct match with our creative skills, marketing, public relations and interactive experience, and passion for winning business through customer experience-driven strategy.

BACKGROUND

Carson City launched their new public transportation system, JAC (Jump Around Carson), in October 2005. It is operated through the Regional Transportation Commission and is funded through federal grants and local tax revenues. To date, the system has not been well-used by Carson City residents and visitors. Many Carson City residents have never been exposed to public transit and do not know how to use a transit system. Not only awareness, but also education should be included in the marketing plan. The goal of this plan is to increase awareness, and most-importantly, increase usage, both in numbers of riders and frequency of use.



MACWEST MARKETING

Target Audiences

The following key targets have been identified by the Carson City Internal Public Information Team

- Seniors (hospital, medical offices, senior center)
- Students/Youth (WNCC transportation, summer & after school transportation)
- Hispanic Community (Spanish-only speaking and ESL)
 - Will target market through spanish-language advertising and spanish language public relations efforts
- Disabled - VA
- Businesses/staff/employees
- Hospital
- Homeless
- Visitors

STRATEGY

A successful approach will combine:

1. Target marketing to specific groups
 2. General awareness to the residential, employee and visitor base of the community
-
1. Target Markets—each month, a concerted effort toward one of the target markets will be made:
 1. For example: Seniors
 - During a given month, presentations would be made at Senior Centers, Senior organizations/communities, etc
 - Provide instruction on how to use system
 - Advertising in Senior newsletters, senior-focused radio & tv.
 - Press release(s) regarding a senior feel-good story, new JAC offering that specifically benefits seniors or senior-focused promotion
 2. General awareness efforts will be made each month:
 - Public Relations
 - Press releases, PSAs & media relations - to focus on special events, seasonality, some type of news (such as mayor rides bus), improvements to route or schedule or a feel good story (shut-in senior finds new life/freedom by riding JAC)
 - Schedule and project manage presentations for target market as well as to other groups such as service organizations, clubs, etc
 - Schedule and arrange details on JAC participation in community events (20 identified)
 - Monthly advertising in print, radio and tv
 - Project manage schedule, update creative, confirm correct placement, negotiate additional opportunities



MACWEST MARKETING

Community Event Opportunities

Nevada Day Parade	Easter Egg Hunt
Children's Museum Halloween Party	Rendezvous
Carson Library's Octoberfest	Taste of Downtown
JAC's first Birthday Party	4 th of July
Holiday Shopping Month	Silver Dollar Car Classic
Hand in Hand Campaign	Sheriff's Office Community Cook-off
Tree Lighting Ceremony	Children's Museum Carnival
Chamber Mixer	Boys & Girl's Club Auction
Earth Day	Salsa y Salsa
Rotary Annual Party	Basque Festival

JAC 2006-2007 Marketing, Advertising and Public Relations Budget

Initial Strategy and Creative Creation

▪ Project Strategy--creative concepting and key messaging, includes overall strategy creation and honing, creative looks and key messaging for advertising and promotions, kick off meeting and subsequent meetings in this phase, approvals & edits	\$6,000
o Revise map/schedule	
▪ Print Ad creation (includes resizes for 3 publications)	\$2,150
▪ Radio advertising script	\$ 300
▪ TV commercial, script and art direction	\$2,800
▪ Media Recommendation, advertising negotiations and account management set up	\$1,000
▪ Presentation creation (both powerpoint and script and visuals for presenting to target groups/organizations)	\$1,600
	\$13,850

Media Buys

Ad costs for light advertising in print, radio & tv, \$1,200/mo	\$14,400
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Monthly Retainer, \$3,000/mo

\$36,000

- Project management
 - o regular communications, approvals, arranging presentation opportunities, coordination
- Special Events
 - o We have identified 18 special events to coordinate
 - o Please note, special event coordination does not include attendance at events. We are happy to attend, and will provide an estimate/event as attendance time will vary.



MACWEST MARKETING

If additional special events are identified, we will need to adjust our estimate

- Population Targets
 - We have identified 8 months with specialized activities for specific target populations
- Press releases(ave of 1.5/mo)/PSAs(1-2/mo)/media relations (ongoing) – to focus on special events, seasonality, some type of news (such as mayor rides bus), improvements to route or schedule or a feel good story (shut-in senior finds new life/freedom by riding JAC)

Calendar—Special Events and Population Targets

October

Special Events (coordinate JAC involvement with organization)

- Halloween Party for Children’s Museum incl
 - Distribute mini-buses and stickers to kids
- Nevada Day festivities incl
 - Enter JAC bus in parade
 - Volunteers to walk in the parade
 - Hand out maps to spectators
- Carson Library’s Octoberfest incl
 - Check out JAC, giveaways

Target population—Seniors incl

- Meetings/literature distributed at senior centers, retirement homes, rehabilitation centers and assisted living homes
- Press releases with info on JAC’s benefits to Seniors, with testimonials from seniors

November – December

Special Events (coordinate JAC involvement)

- Tree lighting ceremony incl
- Red’s Old 395 Grill Hand in Hand campaign incl
 - Donate a percentage of all fairs to campaign

Target Population—Hispanic Community incl

- Present at all Hispanic community meetings/organizations

January

Special Events (coordinate JAC involvement) incl

- As opportunities arise

Target Population—Low Income Community incl

- Present at organizations that service low income residents, Provide maps & information on receiving waivers for bus passes



MACWEST MARKETING

February

- Special Events (coordinate JAC involvement) incl
- o As opportunities arise
- Target Population—Medical facilities and pharmacies that cater to seniors, low income, Spanish-speaking community
- o Direct marketing campaign – include "about JAC brochure" with copies to be distributed to patients' families and pharmacies

March

- Special Events (coordinate JAC involvement) incl
- o As opportunities arise
- Target Population—Business/Corporate/Public Employees and service industry outreach includes
- o Presentations at business organizations, large companies, public employees at city and state level employment organizations
 - o Include coupons for single way rides for employment organizations to give to job candidates to reach an employer

April

- Special Events (coordinate JAC involvement with organization)
- o Earth Day (April 22) celebration – education, preserving the environment, incl government responsibility, etc. incl
- o Rotary annual party incl
 - o Donate JAC progressive dinner
- o Easter Egg Hunt incl
 - o JAC there to check out
- Target Population—Seniors incl
- o Meetings/literature distributed at senior centers, retirement homes, rehabilitation centers and assisted living homes

May

- Target population—students—start of summer campaign incl
- o Targeted to middle and high school-aged kids
- o Promote June is ride free month for students (with valid ID)

June

- Special Events
- o Carson City Rendezvous incl
 - o JAC to have a special routes to and from hotels/downtown
- o Taste of Downtown incl
 - o JAC provides rides
- Target Population—Hispanic Community incl
- o Present at all Hispanic community meetings/organizations

July

- o PR push to report success of JAC in Fiscal year 2006/07 incl
- o Introduction of 2007-2008 campaign incl



MACWEST MARKETING

- Special Events
- o Silver Dollar Car Classic incl
- o Special routes on JAC, free rides, check out JAC

August

- Special Events
- o Sheriff's office Community Cook-off incl
 - o Donate JAC progressive dinner for auction
- o Children's Museum annual Carnival incl
 - o JAC present at event, check out JAC
- Target population—students (WNCC and high school) incl
 - o Possibility for a presentation at an assembly
 - o Presentation in government classes, other appropriate classes
 - o Distribute JAC map and route info at high school and WNCC
 - o Coordinate DART with JAC so JAC is more usable for WNCC students from Douglas Co.

September

- Special Events (coordinate JAC involvement with organization)
- o Boys & Girls Club Fundraiser incl
 - o Coordinate JAC donation—progressive dinner
- o Salsa y Salsa (Sept 15-17) incl
 - o JAC present at event, check out JAC
- o Basque Festival (Sept 17) incl
 - o JAC present at event, check out JAC
- Target populations—students
- o Some activities, especially at high school level, may fall into Sept

Additional items added to above plan through RTC vote

- Banner across Carson Street (banner creation and printing) \$1,400
- Spanish language map/schedule \$1,500
- Additional items to be determined - as agreed by MacWest Marketing ad Carson City Transportation Manager (probably professional recording of "Hit the Road JAC song") \$2,850
- \$5,750**

Summary

Initial Strategy and Creative	\$13,850
Media Buys (ad costs)	\$14,400
Monthly retainer	\$36,000
Additional Items	<u>\$ 5,750</u>
	\$70,000

Plus 10% contingency

GRAND TOTAL \$77,000