

Item # 4-3B

**City of Carson City
Agenda Report**

Date Submitted: January 9, 2007

Agenda Date Requested: January 18, 2007

Time Requested: Consent

To: Mayor and Supervisors

From: Purchasing & Contracts

Subject Title: Action to approve Contract No. 0607-063 a request for the purchase, installation, and servicing of Alerton products to be provided by Building Control Services, Inc. through December 31, 2007 for a not to exceed cost of \$100,000 from the General Fund exempt from competitive bidding

Staff Summary: This contract will be utilized by the Facilities Division to have Alerton products installed and serviced at City-owned and operated facilities.

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. 0607-063 a request for the purchase, installation, and servicing of Alerton products to be provided by Building Control Services, Inc. through December 31, 2007 for a not to exceed cost of \$100,000 from the General Fund exempt from competitive bidding

Explanation for Recommended Board Action: This contract is for the purchase, installation, and servicing of Alerton products to City-owned and operated facilities by Building Control Services, Inc., 8521 White Fir Street, Suite C-1A, Reno, NV 89523 775-826-8998 FAX #775-826-3524.

The Facilities Division has designated the Alerton line the standard for City facilities because members of their staff have been formally trained in all aspects of the Alerton control systems, the City has an inventory of replacement and repair parts for the Alerton control systems, and they receive a high level of technical support and service from Alerton and Building Control Services, Inc.

Currently, there are Alerton brand direct digital controls in the following City facilities: City Hall; Northgate; Fire Stations 1, 2, & 3; Aquatic Facility, Community Center; Library; Juvenile Probation, Courthouse, Jail, Dispatch Center, Senior Center, the Exhibit Hall at the Fairgrounds / Fuji Park, and the Health and Human Services Building.

Douglas Gedney, Regional Manager for Alerton, has provided a letter which states that Building Control Services is the only authorized installer serving Nevada for all counties except Clark.

Pursuant to NRS 332.115 subsection 1 (a), (c), & (d), staff is requesting the Board of Supervisors declare that the 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:
 - a. Items which may only be contracted from a sole source;
 - c. Additions to and repairs and maintenance of equipment which may be more efficiently added to, repaired or maintained by a certain person;
 - d. Equipment which, by reason of the training of the personnel or of an inventory of replacement parts maintained by the local government is compatible with existing equipment;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 paragraph a, c, & d

Fiscal Impact: \$100,000.00

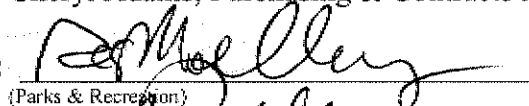
Explanation of Impact: \$100,000.00

Funding Source: \$100,000.00 General Fund FY 0607

Supporting Material: Contract for Services of Independent Contractor No. 0607-063 and Letter from Alerton


Prepared By: Cheryl Adams, Purchasing & Contracts Manager

Reviewed By:


(Parks & Recreation)


Date:

1/9/07


(City Manager)

Date:

1-9-07


(District Attorney)

Date:

1-9-07


(Finance Director)

Date:

1/9/7

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0607-063

THIS CONTRACT, made and entered into this 18th day of January, 2007, 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 Building Control Services, Inc. hereinafter referred to as the "**CONTRACTOR**".

WITNESSETH:

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

WHEREAS, it is deemed that the services of **CONTRACTOR** for **CONTRACT No. 0607-063 Installation and Servicing of Direct Digital Controls to City-Owned and Operated Facilities** 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 January 18, 2007 to December 31, 2007, unless sooner terminated by either party as specified in **Section 7 Contract Termination**.

3 NOTICE:

3.1 Unless otherwise specified, termination shall not be effective until thirty (30) calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by e-mail with simultaneous regular mail, by telephonic facsimile with simultaneous regular mail, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified below.

For P&C Use Only	
BL expires	12/31/07
GL expires	_____
PL expires	waived
WC expires	_____

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

Tom Hulbert, President
Building Control Services, Inc.
8521 White Fir St., Suite C-1A
Reno, NV 89523
775-826-8998 / FAX #775-826-3524
Tom@bcsnv.com

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

Carson City Purchasing & Contracts
Cheryl Adams, Purchasing & Contracts Manager
201 North Carson Street Suite 11
Carson City, NV 89701
775-887-2027 extension 1100 / FAX 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:

4.1.1 **INDEPENDENT CONTRACTOR** shall install and service Alerton direct digital controls, sensors, actuators, variable frequency drives, transformers, relays, micro-processor controllers, etc. in City-owned buildings.

4.1.2 **INDEPENDENT CONTRACTOR** shall also provide HVAC service and repairs including compressors, furnaces, air conditioning equipment, fans, filters, belts, thermostats, etc.

4.1.3 Response time

4.1.3.1 Four (4) hours or less during normal working hours and six (6) hours or less during overtime or holiday working hours.

5 CONSIDERATION:

5.1 The parties agree that **CONTRACTOR** will provide the services specified in **Section 4 Scope of Work** at a cost of One Hundred Thousand Dollars (\$100,000.00) as follows:

5.1.1 Normal Rate

5.1.1.1 Hourly rate of Ninety Dollars (\$90.00) per hour per technician Monday through

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Friday 7 a.m. through 5 p.m. excluding the following holidays:

5.1.1.1.1 New Year's Day, Memorial Day, Independence Day, Labor Day, Nevada Day, Day before Christmas, Christmas Day, any day proceeding a holiday when the holiday falls on a Saturday, and any day following a holiday when the holiday falls on a Sunday.

5.1.2 Overtime Rate

5.1.2.1 Hourly rate of One Hundred Thirty Five Dollars (\$135.00) per hour per technician for any time other than normal hours excluding the following holidays:

5.1.2.1.1 New Year's Day, Memorial Day, Independence Day, Labor Day, Nevada Day, Day before Christmas, Christmas Day, any day proceeding a holiday when the holiday falls on a Saturday, and any day following a holiday when the holiday falls on a Sunday.

5.1.3 Holiday Rate

5.1.3.1 Hourly rate of One Hundred Sixty Dollars (\$160.00) per hour per technician for the following holidays:

5.1.3.1.1 New Year's Day, Memorial Day, Independence Day, Labor Day, Nevada Day, Day before Christmas, Christmas Day, any day proceeding a holiday when the holiday falls on a Saturday, and any day following a holiday when the holiday falls on a Sunday.

5.1.4 The billed hourly rate will either begin when the technician leaves the **INDEPENDENT CONTRACTOR's** Reno office or when the technician leaves his last service call.

5.1.5 **CITY** will be charged a minimum of one (1) hour. Additional time will be billed in thirty (30) minute increments. **CITY** will be not be charged for technician's break and/or lunch time.

5.1.6 A Service report will be provided to **CITY** at the end of the service call identifying all parts, travel time, and labor charges.

5.1.7 There is a \$20.00 flat rate vehicle charge per service call.

5.1.8 Materials

5.1.8.1 Prices for Alerton materials will be computed from the Alerton Catalog which will be provided to the Parks and Recreation Department every six months.

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Example

Alerton Catalog List Price = \$100.00

INDEPENDENT CONTRACTOR's cost = \$100 x .45 = \$45.00

CITY's cost = \$45.00 plus 15% = \$51.75 plus freight

5.2 The **CITY** does not agree to reimburse **INDEPENDENT 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 state claim and that this amount will be deducted from the state claim payment due to the **CONTRACTOR**.

7 CONTRACT TERMINATION:

7.1 Termination Without Cause:

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

7.2 Termination for Nonappropriation:

7.2.1 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. 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.

7.3 Cause Termination for Default or Breach:

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

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

7.3.2.1 If **CONTRACTOR** fails to provide or satisfactorily perform any of the conditions,

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work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

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

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

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

7.3.2.5 If it is found by 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

7.3.2.6 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.

7.4 Time to Correct:

7.4.1 Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in **Section 3 Notice**, and the subsequent failure of the 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.

7.5 Winding Up Affairs Upon Termination:

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

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

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

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

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

8 **REMEDIES:**

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

9 **LIMITED LIABILITY:**

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

10 **FORCE MAJEURE:**

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

11 **INDEMNIFICATION:**

11.1 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**.

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11.2 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**.

12 INDEPENDENT CONTRACTOR:

12.1 An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his or its own methods and without 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.

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

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

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

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

13 INSURANCE REQUIREMENTS:

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

13.1.1 **CONTRACTOR** has provided the required evidence of insurance to Carson City

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Purchasing & Contracts, and

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

13.2 Insurance Coverage:

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

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

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

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

13.3 General Requirements:

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

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

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

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

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

13.3.6 **Policy Cancellation:** Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) 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 mailed to Carson City Purchasing & Contracts, 201 N. Carson Street Suite 11, Carson City, NV 89701.

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

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

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

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

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

13.3.8.2 **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Carson City Purchasing & Contracts to evidence the endorsement of the **CITY** as an additional insured per Section 13.3.2.

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

13.3.9 **Review and Approval:** Documents specified above must be submitted for review and approval by Carson City Purchasing & Contracts prior to the commencement of work by

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CONTRACTOR. Neither approval by the **CITY** nor failure to disapprove the insurance furnished by **CONTRACTOR** shall relieve **CONTRACTOR** of **CONTRACTOR'S** full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of **CONTRACTOR** or its sub-contractors, employees or agents to the **CITY** or others, and shall be in addition to and not in lieu of any other remedy available to the **CITY** under this Contract or otherwise. The **CITY** reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

14 COMMERCIAL GENERAL LIABILITY INSURANCE:

14.1 Minimum Limits required:

14.1.1 One Million Dollars (\$1,000,000.00) - General Aggregate

14.1.2 One Million Dollars (\$1,000,000.00) - 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 PROFESSIONAL LIABILITY INSURANCE: - waived by CITY

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

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

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

15.4 A certified copy of this policy may be required.

16 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

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

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

16.3 **CONTRACTOR** may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that **CONTRACTOR** is a sole proprietor; that **CONTRACTOR** will not use the

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services of any employees in the performance of this Contract; that **CONTRACTOR** has elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive; and that **CONTRACTOR** is otherwise in compliance with the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive.

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. **CONTRACTOR** will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of **CONTRACTOR** in accordance with NRS 361.157 and 361.159. **CONTRACTOR** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The **CITY** may set-off against consideration due any delinquent government obligation.

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**.

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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. **CONTRACTOR** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **CONTRACTOR'S** obligations under this Contract without the prior written consent of the **CITY**. Notwithstanding the foregoing, the **CITY** shall have no proprietary interest in any materials licensed for use by the **CITY** that are subject to patent, trademark or copyright protection.

23 PUBLIC RECORDS:

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

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

25.1.3 **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.)

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:

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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. **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. 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.

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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

Neil A. Rombardo, District Attorney

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

By: 

CHERYL A. ADAMS

Purchasing & Contracts Manager


Deputy District Attorney

DATED this 9th day of January, 2007.

DATED this 9th day of January, 2007.

CITY'S ORIGINATING DEPARTMENT

BY: Roger Moellendorf, Director

Parks & Recreation Department

3303 Butti Way Bldg. #9

Carson City, NV 89701

Telephone: 775-887-2115 Ext. 1001

Fax: 775-887-2145

RMoellendorf@ci.carson-city.nv.us



DATED this 9 day of January, 2007.

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Tom Hulbert being first duly sworn, deposes and says: That he is the **CONTRACTOR**; that he has read the foregoing Contract; and that he understands the terms, conditions, and requirements thereof.

CONTRACTOR
BY: Tom Hulbert
TITLE: President
FIRM: Building Control Services, Inc.
BUSINESS LICENSE #: 07 18879
Address: 8521 White Fir St., Suite C-1A
City: Reno **State:** NV **Zip Code:** 89523
Telephone: 775-826-8998/ **Fax #:** 775-826-3524
E-mail Address: Tom@bcsnv.com



(Signature of **CONTRACTOR**)

DATED this 3rd day of January, 2007.

STATE OF Nevada)
County of Washoe) ss

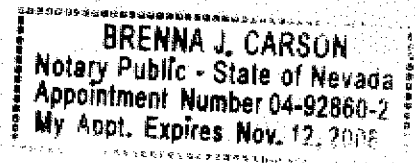
On this 3rd day of January, in the year 2007, before me, Brenna Carson / Notary Public, personally appeared Tom Hulbert, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

WITNESS my hand and official seal.



Notary's Signature

L.S.



My Commission Expires: 11.12.08

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
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CONTRACT ACCEPTANCE AND EXECUTION:

The Board Of Supervisors for Carson City, Nevada at their publicly noticed meeting of January 18, 2007 approved the acceptance of **CONTRACT No. 0607-063**. 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 18th day of January, 2007.

ATTEST:

ALAN GLOVER, CLERK-RECORDER

DATED this 18th day of January, 2007.