

LATE MATERIAL

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
Contract No. 0708-105 MEETING DATE 5/7/09
ITEM # 18

Contract.

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

19.3 **General Requirements:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 COMMERCIAL GENERAL LIABILITY INSURANCE:

20.1 Minimum Limits required:

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

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

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

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

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

21 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

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

22 PROFESSIONAL LIABILITY INSURANCE:

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

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

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

22.4 A certified copy of this policy may be required.

23 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

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

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

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

24 BUILDER'S ALL RISK INSURANCE:

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

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

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

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

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

25 UMBRELLA OR EXCESS LIABILITY INSURANCE:

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

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

26 BUSINESS LICENSE AND NEVADA CONTRACTOR'S LICENSE:

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

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

27 COMPLIANCE WITH LEGAL OBLIGATIONS:

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

28 WAIVER OF BREACH:

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

29 SEVERABILITY:

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

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

30 ASSIGNMENT/DELEGATION:

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

31 CITY OWNERSHIP OF PROPRIETARY INFORMATION:

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

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

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

32 PUBLIC RECORDS:

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

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

33 CONFIDENTIALITY:

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

34 LOBBYING:

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

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

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

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

35 PROPER AUTHORITY:

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

36 ARBITRATION:

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

37 GOVERNING LAW; JURISDICTION:

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

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

38 ENTIRE CONTRACT AND MODIFICATION:

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

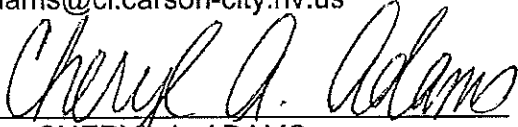
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39 ACKNOWLEDGMENT AND EXECUTION:

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

CARSON CITY

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

By: 
CHERYL A. ADAMS
Purchasing & Contracts Manager

DATED 2/26/08

CITY'S LEGAL COUNSEL

Neil A. Rombardo, District Attorney


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

By: 
Deputy District Attorney

DATED 2-26-08

CITY'S ORIGINATING DEPARTMENT

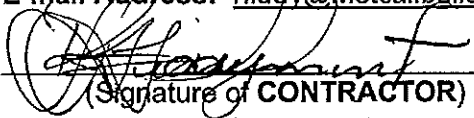
BY: Andy Burnham, Public Works Director
Public Works
3505 Butti Way
Carson City, NV 89701
Telephone: 775-887-2355
Fax: 775-887-2112
ABurnham@ci.carson-city.nv.us


DATED 2/26/08

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

CONTRACTOR
BY: Russ Fiddymment
TITLE: Director of Operations
FIRM: Metcalf Builders, Inc.
CARSON CITY BUSINESS LICENSE #: 08-00007793
NEVADA CONTRACTOR'S LICENSE #: 0037475
CLASSIFICATION: B **LIMIT:** Unlimited
Address: 751 Basque Way
City: Carson City **State:** NV **Zip Code:** 89706
Telephone: 775-885-1844/ **Fax #:** 775-885-0178
E-mail Address: rfiddy@Metcalfbuilders.com



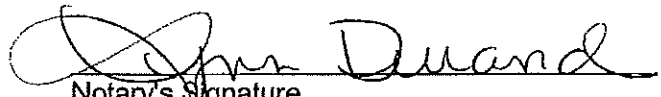
(Signature of **CONTRACTOR**)

DATED 2/19/08 _____.

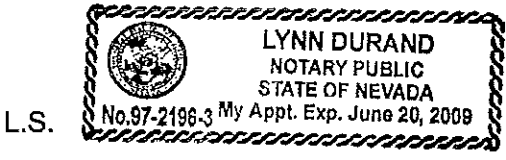
STATE OF Nevada)
County of Carson) ss

On this 19 day of February, in the year 2008, before me, Lynn Durand Notary Public, personally appeared Russ Fiddymment, 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 20, 2009

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SAMPLE INVOICE

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

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

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

Invoice shall be submitted to:

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

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

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

ENCLOSE COPIES OF RECEIPTS & INVOICES FOR EXPENSES & OUTSIDE SERVICES

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CONTRACT ACCEPTANCE AND EXECUTION:


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

CARSON CITY, NEVADA


MARV TEIXEIRA, MAYOR

DATED this 6th day of March, 2008.

ATTEST:


ALAN GLOVER, CLERK-RECORDER

DATED this 6th day of March, 2008.

From: Tom Grundy
To: Young, Jonathan
CC: Moellendorf, Roger
Date: 4/2/2009 10:06 AM
Subject: Carson City Indoor Rec Center

Hi Jon,

After reviewing the latest revenue forecasts for the Quality of Life Initiative monies, City staff has made the difficult decision to recommend to the Carson City Board of Supervisors that the construction of the Carson City Recreation Center be delayed until economic conditions improve to the point that Carson City is able to secure funding to construct and operate the rec center. City staff feels that we should complete the design of the rec center, and then put the project on hold until economic conditions improve to the point that we can continue with the project.

As a result of this decision, please stop all work on the Carson City Recreation Center Project (Contract 0708-105) aside from archiving documents until we have received direction from the Board of Supervisors regarding our recommendation. I would expect that archiving would be complete by 4/3/2009.

Please call me if you have any questions.

Thomas B. Grundy P.E.
Project Manager
Carson City Public Works Department
Capital Projects
3505 Butti Way
Carson City, NV 89701
Phone: (775) 887-2000 ext. 30081
Fax: (775) 887-2164
email: tgrundy@ci.carson-city.nv.us

QOL SALES TAX REVENUES 254-0000-314-2500

<u>ACCOUNT</u>	<u>FY 03/04</u>	<u>FY 04/05</u>	<u>FY 05/06</u>	<u>FY 06/07</u>	<u>FY 07/08</u>	<u>FY 08/09</u>	<u>FY 09/10</u>
TOTAL REVENUE EARNED	\$ 2,258,422.30	\$ 2,427,960.20	\$ 2,525,823.76	\$ 2,444,404.76	\$ 2,266,502.19	\$ 1,956,266.00	\$ 1,956,266.00
MAINT. 254-5012-452 (20%)	\$ 451,684.46	\$ 485,592.04	\$ 505,164.75	\$ 488,860.95	\$ 453,300.44	\$ 391,253.20	\$ 391,253.20
CAPITAL 254-5046-452 (40%)	\$ 903,368.92	\$ 971,184.08	\$ 1,010,329.50	\$ 977,761.90	\$ 906,600.88	\$ 782,506.40	\$ 782,506.40
OPEN SPACE 254-5047-452 (40%)	\$ 903,368.92	\$ 971,184.08	\$ 1,010,329.50	\$ 977,761.90	\$ 906,600.88	\$ 782,506.40	\$ 782,506.40