

## **AGREEMENT TO USE LOCAL GOVERNMENT CONTRACT FOR AMMUNITION**

This Agreement to use the Local Government Contract for Ammunition (“Agreement”) is made and entered into as of \_\_\_\_\_ (the “Effective date”) by the City of North Las Vegas, a Nevada municipal corporation (“City”) and Dooley Enterprises Incorporated, a California corporation (“Provider”).

### **RECITALS**

WHEREAS, the City desires to obtain services from Provider under the terms and conditions set forth in that certain 99SWC-S2253 ammunition entered into between State of Nevada and Provider effective April 1, 2023, with its attendant contract documents, attachments, and exhibits (collectively, the “Original Contract”) , a copy of which is attached hereto as Exhibit A;

WHEREAS, NRS 332.195 (1) (b) permits the City to enter into a contract pursuant to a solicitation by the State of Nevada or another state with the authorization of the contracting Provider;

WHEREAS, Provider can provide the goods that the City seeks at the rates set forth under the Original Contract; and

WHEREAS, the City and the Provider intend to enter into an agreement using the terms, conditions and specifications of the Original Contract, unless otherwise amended as provided herein.

NOW THEREFORE, for the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency the parties acknowledge, the parties agree as follows:

### **SECTION ONE AFFIRMATION OF ORIGINAL CONTRACT**

1.1. The City and the Provider agree to use the Original Contract so that the City may purchase the services under the same terms and provisions as the Original Contract, provided that to the extent the terms of the Original Contract conflict with the terms of this Agreement, the terms of this Agreement shall govern and the conflicting terms of the Original Contract shall be considered null and void and not applicable to this Agreement.

1.2. As required pursuant to NRS 332.195, the Provider hereby authorizes and consents to the City using the terms, conditions and covenants of the Original Contract as the basis for this Agreement.

1.3. Wherever the term “State of Nevada” appear in the Original Contract, the parties deem such terms to mean the “City” or “City of North Las Vegas.”

**SECTION TWO**  
**ADDITIONAL PROVISIONS TO ORIGINAL CONTRACT**

The Parties agree to be bound by the following provisions:

2.1. The term of this Agreement shall commence on the Effective Date and will continue in effect until March 31, 2024 (“Term”), unless earlier terminated in accordance with the terms herein. The City shall purchase the goods according to the prices and fees described in Exhibit A (The “Original Contract”) in an amount not to exceed Two Hundred Thousand Dollars and 00/100 (\$200,000.00) per fiscal year. The prices in the Original Contract shall remain in effect for the duration of this Agreement. No additional compensation shall be paid, and no increase in the time of performance shall be awarded to the Provider for changes referenced in this Agreement without the prior written authorization of the City to proceed with such changes.

2.2. Payment to the Provider shall be made within thirty (30) calendar days after the City receives each invoice provided by the Provider to the City, provided that such invoice is complete, correct, and undisputed by the City, and that it contains the following information: a detailed description of the services and/or goods provided and any additional information requested by the City. Upon reconciliation of all errors, corrections, credits, and disputes, payment to the Provider will be paid in full within 30 calendar days. Invoices received without a valid purchase order number will be returned unpaid. The Provider shall submit the original invoice to:

City of North Las Vegas  
Attention: Accounts Payable  
2250 Las Vegas Blvd. North, Suite 710  
North Las Vegas, NV 89030

2.3. Notices. All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to this Agreement shall be in writing and signed by the notifying party, or officer, agent or attorney of the notifying party, and shall be deemed to have been effective upon delivery in writing if served personally, including but not limited to delivery by personal delivery, by overnight courier service, by facsimile or by overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City:	City of North Las Vegas Attention: Joy Yoshida 2250 Las Vegas Blvd., North, Suite 820 North Las Vegas, NV 89030 Phone: 702-633-1745
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To Provider: Dooley Enterprises Incorporated  
Attention: Chris Dooley, President  
1198 North Grove Street, Suite A  
Anaheim, CA 92806  
Phone: 714-630-3910  
Email: chris@dooleyenterprises.com

2.4. The address to which any notice, demand or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

2.5. The Provider agrees that it has procured and maintained the general liability insurance and all other insurance required pursuant to the Original Contract, including general liability insurance with no less than \$1,000,000 policy limits per occurrence.

2.6. The Provider shall defend, indemnify, and hold harmless the City, and its officers, agents, and employees from any liabilities, claims, damages, losses, expenses, proceedings, actions, judgments, reasonable attorneys' fees, and court costs which the City suffers or its officers, agents or employees suffer, as a result of, or arising out of, the negligent or intentional acts or omissions of the Provider, its subcontractors, agents, and employees, in performance of this Agreement until such time as the applicable statutes of limitation expire. This section survives default, expiration, or termination of this Agreement or excuse of performance.

## 2.7. Safety

2.7.1. Obligation to Comply with Applicable Safety Rules and Standards. Provider shall ensure that it is familiar with all applicable safety and health standards promulgated by state and federal governmental authorities including, but not limited to, all applicable requirements of the Occupational Safety and Health Act of 1970, including all applicable standards published in 29 C.F.R. parts 1910, and 1926 and applicable occupational safety and health standards promulgated under the state of Nevada. Provider further recognizes that, while Provider is performing any work on behalf the City, under the terms of this Agreement, Provider agrees that it has the sole and exclusive responsibility to assure that its employees and the employees of its subcontractors comply at all times with all applicable safety and health standards as above-described and all applicable City safety and health rules.

2.7.2. Safety Equipment. Provider will supply all of its employees and subcontractors with the appropriate Safety equipment required for performing functions at the City facilities.

## 2.8. Miscellaneous.

2.8.1. Nevada and City Law. The laws of the State of Nevada and the North Las Vegas Municipal Code govern the validity, construction, performance and effect of this Agreement, without regard to conflicts of law.

2.8.2. Assignment. Any attempt to assign this Agreement by Provider without the prior written consent of the City shall be void. Any attempt to assign this Agreement by the City without the prior written consent of the Provider shall be void.

2.8.3. Non-Waiver. The failure to enforce or the delay in enforcement of any provision of this Agreement by a party hereto shall in no way be construed to be a waiver of such provision or right unless such party expressly waives such provision or right in writing.

2.8.4. Attorney's Fees. In the event any action is commenced by either party against the other in connection with this Agreement, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, as determined by the court, including without limitation, fees for the services of the City Attorney's Office. This Section 2.8.4. shall survive the completion of this Agreement until the applicable statutes of limitation expire.

2.8.5. Time of Essence. Time is of the essence in the performance of this Agreement and all terms, provisions, covenants and conditions hereof.

2.8.6. Effect of Agreement Termination. In the event this Agreement is terminated, all rights and obligations of the parties hereunder shall cease, other than indemnity obligations and matters that by their terms survive the termination hereof.

2.8.7. Fiscal Funding Out. The City reasonably believes that sufficient funds can be obtained to make all payments during the term of this Agreement. Pursuant to NRS Chapter 354, if the City does not allocate funds to continue the function performed by the Provider under this Agreement, this Agreement will be terminated when appropriate funds expire.

2.8.8. Public Record. Pursuant to NRS 239.010 and other applicable legal authority, each and every document provided to the City may be a "Public Record" open to inspection and copying by any person, except for those documents otherwise declared by law to be confidential. The City shall not be liable in any way to the Provider for the disclosure of any public record, including but not limited to documents provided to the City by the Provider. In the event the City is required to defend an action with regard to a public records request for documents submitted by the Provider, the Provider agrees to indemnify, hold harmless, and defend the City from all damages, costs, and expenses, including court costs and reasonable attorney's fees related to such public records request. This section shall survive the expiration or early termination of the Agreement.

2.8.9. Electronic Signatures. For purposes of this Agreement, the use of facsimile, email or other electronic medium shall have the same force and effect as original signatures.

2.8.10. Federal Funding. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, in receipt

of a notice of proposed debarment 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.

2.8.11. Boycott of Israel. Pursuant to NRS 332.065(4), Provider certifies that the Provider is not currently engaged in a boycott of Israel, and Provider agrees not to engage in a boycott of Israel during the Term.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

City of North Las Vegas,  
a Nevada municipal corporation

Dooley Enterprises Incorporated,  
a California corporation

By: \_\_\_\_\_  
Pamela A. Goynes-Brown, Mayor

By: Chris Dooley  
Title: President  
Name: Chris Dooley

Attest:

By: \_\_\_\_\_  
Jackie Rodgers, City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Micaela Rustia Moore, City Attorney

EXHIBIT A

Contract Number 99SWC-S2253

Please see attached page(s).

04/01/23 - 03/31/24

State of Nevada

Fixed Term Pricing



99SWC-S2253

1198 N Grove St, Ste A Anaheim, CA 92806

Ph: (714) 630-6436 Fax: (714) 630-3910

ammo@dooleyenterprises.com



ITEM #	PRODUCT #	PRODUCT DESCRIPTION	RDS/ CS	PRICES	
				PER CASE	PER 1000
PISTOL					
5	RA9124N	9mm 124gr. Ranger Full Metal Jacket	500	\$124.05	\$248.10
13	RA9124TP	9mm 124gr. Ranger T-Series JHP +P	500	\$166.26	\$332.52
20	RA9B	9mm 147gr. Ranger Bonded JHP	500	\$211.60	\$423.20
19	RA9BA	9mm 124gr. Ranger Bonded JHP +P	500	\$211.60	\$423.20
4	RA9T	9mm 147gr. Ranger T-Series JHP	500	\$166.26	\$332.52
12	RA9TA	9mm 127gr. Ranger T-Series JHP +P+	500	\$166.26	\$332.52
23	USA9MM1	9mm 147gr. Full Metal Jacket - Flat Nose	500	\$138.43	\$276.86
6	Q4238	40 S&W 180gr. Full Metal Jacket	500	\$145.35	\$290.70
21	RA40B	40 S&W 180gr. Ranger Bonded JHP	500	\$232.76	\$465.52
8	RA40BA	40 S&W 165gr. Ranger Bonded JHP	500	\$232.76	\$465.52
7	RA40T	40 S&W 180gr. Ranger T-Series JHP	500	\$193.46	\$386.92
15	RA40TA	40 S&W 165gr. Ranger T-Series JHP	500	\$193.46	\$386.92
14	USA40SW	40 S&W 165gr. Full Metal Jacket - Flat Nose	500	\$139.42	\$278.84
9	Q4170	45 Auto 230gr. Full Metal Jacket	500	\$169.08	\$338.16
22	RA45B	45 Auto 230gr. Ranger Bonded JHP	500	\$256.94	\$513.88
10	RA45T	45 Auto 230gr. Ranger T-Series JHP	500	\$217.64	\$435.28
2	Q4171	38 Sp 130gr. Full Metal Jacket	500	\$156.46	\$312.92
1	RA38B	38 Special 130gr. Ranger Bonded JHP +P	500	\$219.51	\$439.02
18	Q4309	357 Sig 125gr. Full Metal Jacket	500	\$224.25	\$448.50
17	RA357SIGT	357 Sig 125gr. Ranger T-Series JHP	500	\$259.96	\$519.92
16	Q4206	380 Auto 95gr. Full Metal Jacket	500	\$131.71	\$263.42
RIFLE					
30	Q3131K	5.56mm 55gr. Full Metal Jacket	1000	\$418.75	\$418.75
34	RA223BSTAY	223 55 gr Ranger Supreme Ballistic Silvertip	1000	\$868.14	\$868.14
29	RA223RY	223 55gr Ranger Pointed Soft Point	1000	\$623.46	\$623.46
40	RA223R2Y	223 64gr Ranger Power-Point Knurl	1000	\$623.46	\$623.46
37	RA556B	5.56mm 64gr. Bonded Solid Base	1000	\$997.32	\$997.32
44	RA556M	5.56mm 77gr. Match Boattail Hollow Point (BTHP)	1000	\$854.67	\$854.67
35	USA223R1K	223 55gr. Full Metal Jacket	1000	\$418.75	\$418.75
32	S308M	308 Win 168 gr. Match Boattail Hollow Point (BTHP)	200	\$229.24	\$1,146.20
42	USA3081	308 Win 147gr. Full Metal Jacket Boat Tail	200	\$158.84	\$794.20
SHOTGUN					
51	RA12005	12ga. 9 Pellets 00 Buck, Low Recoil (5rds/bx)	250	\$164.76	\$659.04

Prices assume Winchester dropship of 5 or more cases

Prices exclude Federal Excise and sales/use taxes

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April 1, 2023 thru March 31, 2024

52	<b>RA120085</b>	12ga. 8 Pellets 00 Buck, Low Recoil (5rds/bx)	250	<b>\$164.76</b>	<b>\$659.04</b>
46	<b>RA1200HD</b>	12ga. 9 Pellets 00 Buck, Standard	250	<b>\$164.76</b>	<b>\$659.04</b>
48	<b>RA12RS15</b>	12ga. 1oz. Slug, Low Recoil	250	<b>\$166.28</b>	<b>\$665.12</b>
47	<b>X12RS15</b>	12ga. 2 3/4" 1oz. Super-X® Rifled Slugs	250	<b>\$166.28</b>	<b>\$665.12</b>
49	<b>TRGT127</b>	12 ga. 2 3/4" 1 1/8 oz. #7 1/2 shot Super-Target™	250	<b>\$84.75</b>	<b>\$339.00</b>
50	<b>TRGT128</b>	12 ga. 2 3/4" 1 1/8 oz. #8 shot Super-Target™	250	<b>\$84.75</b>	<b>\$339.00</b>

Prices assume Winchester dropship of 5 or more cases

Prices exclude Federal Excise and sales/use taxes

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April 1, 2023 thru March 31, 2024

## **AMMUNITION REQUIREMENTS – Updated 1/24/23**

This solicitation is for the procurement of various calibers of ammunition.

1. The ammunition must be of all new brass construction. No re-loads will be accepted.
2. This will be a multiple-award. Any awards made shall be for a one year period starting 04/01/2023 and ending 3/31/2024 with the option of three (1) one year extension if deemed to be in the best interest of the State.
3. Any subsequent award(s) from this solicitation shall be deemed for the Good of the State. As such all State Agencies, Cities, Counties, Universities and all political subdivisions within the State of Nevada may use these award(s) if deemed in their best interest.
4. Vendors are requested to list any allowances for expended brass.

Vendors are requested to **list** any collection plans or incentives for expended brass available with this bid. This may be a factor in awards generated from this solicitation.

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### **Balance of the Vendor's Product Line:**

In addition to the item(s) being requested, purchasing entities of the State of Nevada will be allowed to order from the successful vendor's regular product line for delivery F.O.B. destination to any point within the State of Nevada. Bidders shall state the discount percentage from their product line's list price for other items. This discount percentage may be considered during the award of this contract. A copy of the bidder's catalog(s) if available or a list of product lines should be submitted with the bid.

Balance of the Line Discount Percentage \_\_\_\_\_ %

Does your extended product line include rubber pellet rounds, beanbag rounds or other types of less than lethal ammunition types?

Yes \_\_\_\_\_ No \_\_\_\_\_

List these less than lethal ammunition types:

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## Quarterly Administrative Fee and Usage Reporting and Submission Requirements

### 1. Administrative Fee:

- 1.1 Contractor shall pay a quarterly administrative fee payable to the “State of Nevada Purchasing Division.” The administrative fee is one percent (1%) and applies to all payments (net of returns, credits, or adjustments) received by the Contractor for all products and services provided under the contract during the quarter beginning the date of execution of this contract.
- 1.2 Applicable administrative fees shall not be included on the invoice as an individual line item.
- 1.3 All administrative fee payments shall include the contract number on the required documents. If submitting an administrative fee payment for more than one contract, then a separate payment and associated documents shall be submitted by the Contractor for each contract.
- 1.4 The State will not issue an invoice for the administrative fee owed to the State. It is the responsibility of the Contractor to pay the administrative fee with no prompting from the State. Contractor shall pay the quarterly administrative fee within forty five (45) calendar days of quarter end (refer to Section 1.4).
- 1.5 The template for the required Quarterly Administrative Fee & Usage Report outlined below in Sections 2 and 3 may be downloaded from the Purchasing Division website <http://purchasing.nv.gov/vendors/DBINV/>. The report must be submitted via email to: [NVQtlyReport@admin.nv.gov](mailto:NVQtlyReport@admin.nv.gov)

### 2. Nevada Purchasing Division Statewide Contract Quarterly Administrative Fee Report:

Contractor shall complete the Statewide Contract Quarterly Administrative Fee Report. The report shall identify total payments (minus returns and credits) received by Contractor from state agencies, the university and community college system, the Legislative Counsel Bureau, political subdivisions, and other authorized entities that were made pursuant to the contract.

### 3. Nevada Purchasing Division Statewide Contract Quarterly Usage Report:

Contractor shall complete the Statewide Contract Quarterly Usage Report to include at a minimum the data element information listed below:

Data Element	Description
Customer Name	Name of entity making the purchase—if customer has multiple locations, please use the main entity name.
Customer Type	Indicate the type of entity making the purchase: S=State Agency E=University and Community College

## Quarterly Administrative Fee and Usage Reporting and Submission Requirements

	P=Political Subdivision O=Other Entity
PO # or Other Authorization Type	Number provided by the customer to authorize the purchase. If purchase was made with a credit card enter P-Card.
Purchase Description	Description of the product or service purchased.
Quantity	Quantities (excluding returns) of products delivered—enter a quantity of one (1) for a service.
Unit Price	Unit price charged (excluding credits) for the product or service purchased.
Total Cost	Total cost of the purchase—quantity delivered x unit price charged.

### 4. Fee Payment and Report Schedule:

Contractor shall pay the administrative fee quarterly, if owed, and provide the Quarterly Administrative Fee & Usage Report to the Purchasing Division even if no payments are made in a quarter in accordance with the following schedule:

<b>Period End</b>	<b>Report Due</b>
March 31	May 15
June 30	August 14
September 30	November 14
December 31	February 14

### 5. Report Modifications:

The Purchasing Division reserves the right to modify the requested format and contents of the Quarterly Administrative Fee & Usage Report by providing thirty (30) calendar days written notice to Contractor. The Purchasing Division may unilaterally amend the contract, with (30) calendar days written notice to the Contractor to change the timing for submission of the Quarterly Administrative Fee & Usage Report. Contractor understands and agrees that if such an amendment is issued by the Purchasing Division, Contractor shall comply with all contract terms, as amended.

### 6. Timely Reports and Fees:

If the administrative fee is not paid and quarterly report is not received within forty five (45) calendar days of quarter end, then Contractor will be in material breach of this contract.



STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
*Purchasing Division*

515 East Musser Street, Suite 300 | Carson City, NV 89701  
Phone: 775-684-0170 | Fax: 775-684-0188

THE NEVADA STATE PURCHASING DIVISION

TERMS AND CONDITIONS FOR STATEWIDE COMMODITIES

1. REQUIREMENTS

- 1.1 A Nevada based business may apply for a five percent (5%) preference on its Quote. A Nevada based business is defined as a business which certifies that a 'majority of goods provided for the contract are produced' in Nevada. The preference will be applied to the Quote price. This preference cannot be combined with any other preference, granted for the award of a contract using federal funds, or granted for the award of a contract procured on a multi-state basis. **To claim this preference a business must submit a letter with its Quote showing it qualifies for the preference.**
- 1.2 Bidders are especially cautioned to recheck Quote prices for errors prior to submitting Quote as changes in Quote prices after opening date and hour of Bid Solicitation due to an error shall not be permitted or accepted. Bidders shall be required to furnish equipment at Quote price or prices or be penalized by being removed from bidders' list for a period of one year.
- 1.3 Equipment shall be *new* only; used, refurbished, demo, prototype or gray market equipment shall not be accepted.
- 1.4 Bidders are required to submit descriptive data or printed specifications describing items bidding. Failure to comply with this request may be cause for non-acceptance of Quote.
- 1.5 *Brand Names*: Unless otherwise stated "**No Exceptions**", brand names mentioned in these specifications are for reference only and are intended for the purpose of assisting in describing the need, use, and quality of the item. Bidders shall identify any alternate item(s) and it is the State's prerogative to either accept or reject any alternative item(s).
- 1.6 Proof, satisfactory to the State, shall be provided by bidders to show that any alternate article is equal to, or exceeds the Bid Solicitation specifications in design and performance. Complete and detailed comparative documentation for equipment other than requested in this Bid Solicitation is *required* to be submitted as an attachment with the Quote. Equivalent items may be subject to performance testing.
- 1.7 For purposes of addressing questions concerning this Bid Solicitation, the sole contact shall be the Purchasing Division's designee. Upon issuance of this Bid Solicitation,

employees and representatives of the agencies identified herein shall not answer questions or otherwise discuss the contents of this request with any prospective bidders or their representatives. Failure to observe this restriction may result in disqualification of any Quote. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

## **2. PAYMENT**

- 2.1** Prices offered in Quotes are an irrevocable offer for the term of the Contract/Purchase Order and any Contract/Purchase Order extensions.
- 2.2** The State generally pays within 30-45 days upon receipt of invoice and the using agency's approval. Per the State's policy and procedures, payments are not made prior to receipt of goods. Pursuant to NRS 227.185 and NRS 333.450, the State shall pay claims for supplies, materials, equipment and services purchased under the provisions of this Bid Solicitation electronically, unless determined by the State Controller that the electronic payment would cause the payee to suffer undue hardship or extreme inconvenience.
- 2.3** Prompt payment discount periods equal to (or greater than) 30 calendar days shall receive consideration and Quote pricing shall be reduced (for evaluation purposes only) by the amount of that discount(s).
- 2.4** The Quote price is for the specified delivery, and, unless otherwise specified in the Contract/Purchase Order, is Free on Board (FOB) Destination, freight prepaid to the delivery address. FOB requires the seller to, at its own expense and risk, transport the goods to the destination and there tender delivery of them in the manner provided in NRS 104.2503. Unless otherwise specified in the Contract/Purchase Order, the price does not include applicable federal or State sales, use, excise, processing or any similar taxes, or duty charges, which shall be paid by the State, or in lieu thereof, the State shall provide the Vendor with a tax exemption certificate acceptable to the applicable taxing authority. Unless otherwise specified in the Contract/Purchase Order, payment shall be made in accordance with Nevada law to the Vendor.
- 2.5** The State requests Manufacturer's Suggested Retail Prices (MSRP) in effect at the time of Quote submittal for internal statistical purposes.
- 2.6** Purchasing Card Acceptance

In an effort to streamline the purchasing and payment process, the State is encouraging agencies to use the State contracted purchasing card to facilitate small dollar purchases. While at the present time it is not mandatory that a Vendor accept credit card purchases; bidders are encouraged to consider this alternate payment process. The current card available for State agency use is a MasterCard product.

## **3. BID SOLICITATION, EVALUATION AND AWARD PROCESS**

- 3.1** This procurement is being conducted in accordance with NRS Chapter 333 and NAC Chapter 333.
- 3.2** Quotes shall conform to all terms, conditions and specifications in this Bid Solicitation.

3.3 Vendor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA) as may be amended, and certifies that all items furnished and purchased under this order shall conform to and comply with said standards and regulations. Vendor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Vendor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

3.4 Pursuant to NRS Chapter 613 in connection with the performance of work under this Contract/Purchase Order, the Vendor agrees not to unlawfully discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship.

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

3.5 Pursuant to NRS 333.338, the State of Nevada cannot enter into a contract with a company unless that company agrees for the duration of the contract not to engage in a boycott of Israel. By submitting a proposal or bid, vendor agrees that if it is awarded a contract it will not engage in a boycott of Israel as defined in NRS 333.338(3)(a).

3.6 Every Contract/Purchase Order or order for goods shall be awarded to the lowest responsible bidder (*Refer to NRS 333.340(1)*). To determine the lowest responsible bidder, the Purchasing Division may consider:

- 3.6.1 The location of the using agency to be supplied;
- 3.6.2 The qualities of the articles to be supplied;
- 3.6.3 The total cost of ownership of the articles to be supplied;
- 3.6.4 The conformity of the articles to be supplied with the specifications;
- 3.6.5 The purposes for which the articles to be supplied are required; and
- 3.6.6 The dates of delivery of the articles to be supplied.

The Purchasing Division shall not be obligated to accept low bid, but shall make an award in the best interest of the State after all factors have been evaluated (*Refer to NRS 333.300(2)*).

3.6.7 When the Bid Solicitation includes a statement that Quotes for alternative articles shall be considered, alternative articles shall be considered in as much as they are determined to:

- 3.6.7.1 Meet or exceed the specifications of the article listed in the original Bid Solicitation;
- 3.6.7.2 The purchase of the alternative article results in a lower price; and
- 3.6.7.3 The Administrator or designee deems the purchase of the alternative article to be in the best interests of the State.

- 3.7** For the purpose of awarding a formal Contract/Purchase Order solicited in accordance NRS 333.300(2), if
- 3.7.1** A local business owned and operated by a veteran with a service-connected disability submits a Quote or proposal for a Contract/Purchase Order for which the estimated cost is more than \$50,000 but no more than \$250,000 and is a responsive and responsible bidder, the Quote or proposal shall be deemed to be five (5%) percent lower than the Quote or proposal actually submitted.
- 3.7.2** A local business owned and operated by a veteran with a service-connected disability which is determined to be 50 percent or more by the United States Department of Veterans Affairs submits a Quote or proposal for a Contract/Purchase Order for which the estimated cost is more than \$250,000 but less than \$500,000 and is a responsive and responsible bidder, the Quote or proposal shall be deemed to be five (5%) percent lower than the Quote or proposal actually submitted.
- 3.7.3** The preferences described above may not be combined with any other preference.
- 3.8** NRS 333.290 grants a preference to materials and supplies that can be supplied from a “charitable, reformatory or penal institution of the State” that produces such goods or services through the labor of inmates. The Administrator reserves the right to secure these goods, materials or supplies from any such eligible institution, if they can be secured of equal quality and at prices not higher than those of the lowest acceptable Quote received in response to this Bid Solicitation. In addition, NRS 333.410 grants a preference to commodities or services that institutions of the State are prepared to supply through the labor of inmates. The Administrator shall apply the preferences stated in NRS 333.290 and 333.410 to the extent applicable.
- 3.9** Quotes may be withdrawn by written or facsimile notice received prior to the Bid Solicitation opening time. Withdrawals received after the Bid Solicitation opening time shall not be considered except as authorized by NRS 333.350(3).
- 3.10** The State reserves the right to alter, amend, or modify any provisions of this Bid Solicitation, or to withdraw this Bid Solicitation, at any time prior to the award of a Contract/Purchase Order pursuant hereto, if it is in the best interest of the State to do so.
- 3.11** Any unsuccessful bidders may file an appeal in strict compliance with NRS 333.370.
- 3.12** The Legislature, the Supreme Court, the Nevada Wing of the Civil Air Patrol (NRS 333.469), the Nevada System of Higher Education (NRS 333.470) and local governments (as defined in NRS 332.015) are intended third party beneficiaries of any Contract/Purchase Order resulting from this Bid Solicitation and any local government may join or use any Contract/Purchase Order resulting from this Bid Solicitation subject to all terms and conditions thereof pursuant to NRS 332.195. The State is not liable for the obligations of any local government which joins or uses any Contract/Purchase Order resulting from this Bid Solicitation.

- 3.13** A Vendor who enters into a Contract/Purchase Order with the State of Nevada and who sells tangible personal property in the State of Nevada is required to obtain a permit in accordance with NRS 372.125, and required to collect and pay the taxes imposed by law on the sale of tangible personal property in this State.
- 3.14** When applicable, submission of a Quote shall include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements, and the bidder's standard contract language. A review of these documents shall be necessary to determine if a Quote is in the best interest of the State.
- 3.15** *Subcontractor:* Third party, not directly employed by the Vendor, who shall provide goods and/or services identified in this Bid Solicitation. This does not include third parties who provide support or incidental services to the Vendor.
- 3.16** *Proprietary Information:* Any trade secret or confidential business information that is contained in a Quote submitted on a particular Contract. *Refer NRS 333.020(5) (a); NRS 333.333.*
- 3.17** *Public Record:* All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. *Refer to NRS 333.333; NRS 600A.030(5).*
- 3.18** *Trade Secret:* Information including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain commercial or economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. *Refer to NRS 600A.030(5).*
- 3.19** In accordance with NRS 333.350(1), a contract may be awarded for separate items, portions or groups of items in the best interests of the State, as required.
- 3.20** *Vendor Authorization:* By submitting a Quote the Vendor is duly organized, validly existing, and in good standing under the appropriate laws with full power and authority to conduct the business that it presently conducts in the State of Nevada. The Vendor has the legal power and right to enter into and perform the Contract. Consummation of the transactions contemplated by the Contract shall not violate any provision of law, or any of the Vendor's governing documents (articles of incorporation, partnership Contract, etc). Execution of the Contract and all documents provided for in the Contract by the Vendor and its delivery to the State have been duly authorized by the board of directors or managing agents of the Vendor and no further action is necessary on the Vendor's part to make the Contract valid and binding on the Vendor in accordance with its terms. The Vendor has obtained all licenses and permits to perform all of its requirements under the Contract, and is current on all tax obligations to the State of Nevada or any other governmental entity in Nevada.

#### **4. TERMS AND CONDITIONS FOR PURCHASE OF GOODS**

- 4.1 *Goods:* As defined in NRS 104.2105, and as specifically identified in this Bid Solicitation.
- 4.2 *Purchase Order:* Buyer-generated document that authorizes a purchase transaction. It sets forth the descriptions, quantities, prices, discounts, payment terms, date of performance or shipment, other associated terms and conditions, and identifies a specific seller. When accepted by the seller, it becomes a contract binding on both parties; also called order.
- 4.3 *Incorporated Documents:* The Contract/Purchase Order shall consist of this Bid Solicitation, any amendments to this Bid Solicitation if applicable, the Vendor Quote and all documentation contained therein, together with any subsequently issued Purchase Order(s) executed by a person with full power and authority to issue same on behalf of the State. A Vendor Quote shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in the Contract/Purchase Order.
- 4.4 *Administrative Fee:* The State shall implement an administrative fee of not more than 1% on contracts procured or negotiated by the Purchasing Division. This fee shall be assessed over the time of the contract period. Fees shall be paid quarterly, 45 days after the close of the quarter, on all purchases under the contract.
- 4.5 *Notice:* 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/Purchase Order shall be in writing and shall be deemed to have been duly given if delivered via email, personally in hand, by telephonic facsimile, regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
- 4.6 **TERMINATION:**
- 4.6.1 *Termination Without Cause:* Any discretionary or vested right of renewal notwithstanding, this Contract/Purchase Order may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.
- 4.6.2 *State Termination for Nonappropriation:* The continuation of the Contract/Purchase Order beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate the Contract/Purchase Order, and the Vendor 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 Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- 4.6.3 *Cause Termination for Default or Breach:* A default or breach may be declared with or without termination. The Contract/Purchase Order may be terminated by either party upon written notice of default or breach to the other party as follows:
- 4.6.3.1 If the Vendor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by the Contract/Purchase Order within the time requirements specified in the

Contract/Purchase Order or within any granted extension of those time requirements; or

- 4.6.3.2 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 the Vendor to provide the goods or services required by the Contract/Purchase Order is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- 4.6.3.3 If the Vendor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- 4.6.3.4 If the State materially breaches any material duty under the Contract/Purchase Order and any such breach impairs the Vendor's ability to perform; or
- 4.6.3.5 If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by the Vendor, or any agent or representative of the Vendor, to any officer or employee of the State of Nevada with a view toward securing a Contract/Purchase Order or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such Contract/Purchase Order; or
- 4.6.3.6 If it is found by the State that the Vendor has failed to disclose any material conflict of interest relative to the performance of the Contract/Purchase Order.

4.6.4 *Time to Correct:* Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in **Section 4.4, Notice** and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

4.6.5 *Winding Up Affairs Upon Termination:* In the event of termination of the Contract/Purchase Order for any reason, the parties agree that the provisions of this paragraph survive termination:

- 4.6.5.1 The parties shall account for and properly present to each other all claims for fees and expenses and pay those that are undisputed and otherwise not subject to set off under the Contract/Purchase Order. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- 4.6.5.2 The Vendor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency.

#### 4.7 REPRESENTATIONS AND WARRANTIES:

The Vendor represents and warrants to the State:

- 4.7.1 *Bid Representations:* All statements made by the Vendor on any application, Quote, proposal, offer, financial statement, or other document used by the Vendor to induce the State to enter into the Contract/Purchase Order are true, correct, complete, and omit no information which would render them misleading.
- 4.7.2 *Use of Broker:* The Vendor agrees to indemnify the State from any damage, liability, or expense that it may suffer as a result of any claim of a broker or other finder with whom it is determined that the Vendor has dealt in connection with the transactions contemplated under the Contract/Purchase Order.
- 4.7.3 *Express Warranties:* For the period specified in the Contract/Purchase Order, Vendor warrants and represents each of the following with respect to any goods provided under the Contract/Purchase Order:
  - 4.7.3.1 *Fitness for Particular Purpose:* The goods shall be fit and sufficient for the particular purpose set forth in the Contract/Purchase Order.
  - 4.7.3.2 *Fitness for Ordinary Use:* The goods shall be fit for the purpose for which goods of a like nature are ordinarily intended, it being understood that the purpose for the goods covered by the Contract/Purchase Order are ordinarily intended for use in general government administration and operations.
  - 4.7.3.3 *Merchantable, Good Quality, No Defects:* The goods shall be merchantable, of good quality, and free from defects, whether patent or latent, in material and workmanship.
  - 4.7.3.4 *Conformity:* The goods shall conform to the standards, specifications and descriptions set forth in the Contract/Purchase Order. If the Vendor has supplied a sample to the State, the goods delivered shall conform in all respects to the sample and shall be identified by the word "sample" and Vendor's name.
  - 4.7.3.5 *Uniformity:* The goods shall be without variation, and shall be of uniform kind, quality, and quantity within each unit and among all units.
  - 4.7.3.6 *Packaging and Labels:* The goods shall be contained, packaged, and labeled so as to satisfy all legal and commercial requirements applicable to use by a government agency, including without limitation, Occupational Safety and Health Administration material safety data sheets and shall conform to all statements made on the label.
  - 4.7.3.7 *Full Warranty:* The foregoing warranties are "full" warranties within the meaning of the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act, 15 U.S.C. 2301 et seq., and implementing regulations 16 C.F.R. pts. 700-703, if applicable to this transaction.

- 4.7.3.8 *Title:* The Vendor has exclusive title to the goods and shall pass title to the State free and clear of all liens, encumbrances, and security interests.
- 4.7.3.9 *Infringement; Indemnity:* The Vendor warrants the purchase or use of the goods shall not infringe upon any United States or foreign patent, and the Vendor shall indemnify the State against all judgments, decrees, costs, and expenses resulting from any alleged infringement and shall defend, upon written request of the State, at its own expense, any action which may be brought against the State, its vendees, lessees, licensees, or assignees, under any claim of patent infringement in the purchase or use of the Vendor's goods. If the State is enjoined from using such goods, the Vendor shall re-purchase such goods from the State at the original purchase price. The State shall notify the Vendor promptly in writing of any such suit. If the State compromises or settles any such suit without the written consent of the Vendor, the Vendor shall be released from the obligations of this paragraph and from any liability to the State under any statute or other rule of law.
- 4.7.3.10 *Usage of Trade; Course of Dealings; Implied Warranties:* The Vendor shall be bound by any implied warranty that, at the time of execution of the Contract/Purchase Order, prevails in the trade of government in the marketing area in and about the State of Nevada. The Vendor shall also be bound by any other implied warranty arising through course of dealings between the Vendor and the State from and after the execution of the Contract/Purchase Order. The Vendor shall also be bound by all warranties set forth in Nevada's Uniform Commercial Code (NRS Chapter 104) in effect on the date of issuance of the Contract/Purchase Order.
- 4.7.3.11 *Warranties Cumulative:* It is understood that warranties created by the Contract/Purchase Order, whether express or implied, as well as all warranties arising by operation of law that affect the rights of the parties, are cumulative and may be construed in a manner consistent with one another.
- 4.7.3.12 *Priority of Warranties:* If it is held by a court of competent jurisdiction that there is an irreconcilable conflict between or among any of the warranties set forth in the Contract/Purchase Order and any warranties implied by law, the parties agree that the specifications contained in the Contract/Purchase Order shall be deemed technical and mere language of description.
- 4.7.3.13 *Beneficiaries of Warranties:* Benefit of any warranty made in the Contract/Purchase Order shall be in favor of the State, any of its political subdivisions or agencies, employee or licensee thereof who uses the goods, and the benefit of any warranty shall apply to both personal injury and property damage.

- 4.8 *Delivery, Inspection, Acceptance, Title, Risk of Loss:* The Vendor agrees to deliver the goods as indicated in the Contract/Purchase Order, and upon acceptance by the State, title to the goods shall pass to the State. The State shall have the right to inspect the goods on arrival and within a commercially reasonable time. The State shall give notice to the

Vendor of any claim or damages on account of condition, quality, or grade of the goods, and shall specify the basis of the claim in detail. Acceptance of the goods described in the Contract/Purchase Order is not a waiver of UCC revocation of acceptance rights or of any right of action that the State may have for breach of warranty or any other cause. Unless otherwise stated above, risk of loss from any casualty, regardless of the cause, shall be on the Vendor until the goods have been accepted and title has passed to the State. If provided by the Vendor, the State agrees to follow reasonable instructions regarding return of the goods.

- 4.9** *No Arrival, No Sale:* The Contract/Purchase Order is subject to provisions of no arrival, no sale terms, but proof of shipment shall be given by the Vendor; each shipment to constitute a separate delivery. A variation of ten (10) days in time of shipment or delivery from that specified in the Contract/Purchase Order does not constitute a ground for rejection. The State may treat any deterioration of the goods as entitling the State to the rights resulting from a casualty to the identified goods without regard to whether there has been sufficient deterioration so that the goods no longer conform to the Contract/Purchase Order.
- 4.10** *Breach, Remedies:* Failure of either party to perform any obligation of the Contract/Purchase Order shall be deemed a breach. In the event of a breach, the party asserting breach may, in addition to any remedies or rights afforded by Nevada law, cancel the Contract/Purchase Order with respect to any executory obligations. All rights and remedies are cumulative with one another and with those provided by law, and exercise of one remedy or right is not a waiver of the right to pursue any other right or remedy afforded. Either party, as a prevailing party to any other action regarding the enforcement of the Contract/Purchase Order, is entitled to reasonable attorney's fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation One Hundred Fifty Dollars (\$150.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of the Vendor to any State agency.
- 4.11** *Limited Liability:* The State shall not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract/Purchase Order liability of both parties shall not be subject to punitive damages.
- 4.12** *Waiver of Breach:* A failure to assert any right or remedy available to a party under the Contract/Purchase Order, or a waiver of the rights or remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under the Contract/Purchase Order, unless such waiver is contained in a writing signed by the waiving party.
- 4.13** *Severability:* If any provision contained in the Contract/Purchase Order is held to be unenforceable by a court of law or equity, the Contract/Purchase Order shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of the Contract/Purchase Order unenforceable.
- 4.14** *Assignment/Delegation:* To the extent that any assignment of any right under the Contract/Purchase Order changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of the Contract/Purchase Order, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of the Contract/Purchase Order. No duties of either party may be delegated without

written consent by the other party, and any such consent does not in any way affect the liability of the delegating party, unless the writing so states.

- 4.15** *Force Majeure:* Neither party shall be deemed to be in violation of this Contract/Purchase Order 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 shall 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/Purchase Order after the intervening cause ceases.
- 4.16** *Governing Law; Jurisdiction:* This Contract/Purchase Order and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, including, without limitation, Nevada's UCC (NRS Chapter 104) in effect on the date of the Contract/Purchase Order. The parties consent to the jurisdiction and exclusive venue of the First Judicial District Court, Carson City, Nevada for enforcement of the Contract/Purchase Order.
- 4.17** *Entire Agreement; Conflict with Other Documents:* The Contract/Purchase Order (including all incorporated attachments) is intended by the parties as the final expression of their agreement and is the complete and exclusive statement of the terms hereof. All prior agreements are superseded and excluded. Prices, quantities, dates, and places of deliveries and means of transportation may be fixed by attachments to the Contract/Purchase Order. Except as previously stated, if any term in any incorporated attachment or in any Vendor's invoice contradicts or negates a term in the Contract/Purchase Order, the Contract/Purchase Order shall control. All amendments shall be in writing and signed by the parties.
- 4.18** In accordance with NRS 333.4611, the State of Nevada, Purchasing Division shall require the purchase of new appliances, equipment, lighting and other devices that use electricity, natural gas, propane or oil, have received the Energy Star label pursuant to the program established pursuant to 42 U.S.C. 6294a or its successor, or meet the requirements established pursuant to 48 C.F.R. 23.203. These standards do not apply insofar as: (a) No items in a given class have been evaluated to determine whether they are eligible to receive the Energy Star label or have been designated by the Federal Government to meet the requirements established pursuant to 48 C.F.R. 23.302 or (b) The purchase of these items that have received the Energy Star label would not be cost-effective in an individual instance, comparing the cost of the items to the cost of the amount of energy that shall be saved over the useful life of the item.
- 4.19** *Term:* In accordance with NRS 333.280, the Purchasing Division may enter into a Contract/Purchase Order for the furnishing of goods for not more than two (2) years. The original terms of a Contract/Purchase Order may be extended annually thereafter if the conditions for extension are specified in this Bid Solicitation, and the Purchasing Division determines that an extension is in the best interest of the State.
- 4.20** *Insurance:* Automobile Liability, as stated below, is required only if the commodity is being delivered to the State by the Vendor. If the commodity is being shipped by common carrier, automobile liability shall not be required. Vendor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required.

The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

#### 4.20.1 Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)      \$1,000,000