



Division of Purchasing  
Request For Proposal No. 1697

## STATEWIDE MASTER LEASE PURCHASE PROGRAM

Release Date: July 21, 2009  
Deadline for Submission and Opening Date and Time: September 2, 2009 @ 2:00 P.M. PT

For additional information, please contact:  
Annette Morfin, Senior Buyer  
(775) 684-0185  
(TTY for the Deaf or Hard of Hearing: 1-800-326-6868.  
Ask the relay agent to dial 1-775-684-0185/V.)

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

**See Page 16, for instructions on submitting proposals.**

### Contact Information

Company Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Prices contained in this proposal are subject to acceptance within \_\_\_\_\_ calendar days.

Contact Person \_\_\_\_\_

Print Name & Title \_\_\_\_\_

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**A Request for Proposal process is different from an Invitation to Bid. The State expects vendors to propose creative, competitive solutions to the agency's stated problem or need, as specified below. Vendors may take exception to any section of the RFP. Exceptions should be clearly stated in Attachment B (Certification of Indemnification and Compliance with Terms and Conditions of RFP) and will be considered during the evaluation process. The State reserves the right to limit the Scope of Work prior to award, if deemed in the best interest of the State NRS §333.350(1).**

## **1. OVERVIEW OF PROJECT**

- 1.1 The State of Nevada, Purchasing Division, on behalf of the State Treasurer, implemented a Statewide Master Lease Purchase Program to provide lease purchase financing to governmental entities to finance their acquisition of needed goods or make improvements to existing lessee owned buildings, such as re-carpeting, re-roofing, HVAC systems, energy retrofits, etc. For many years, State agencies and political subdivisions entered into lease purchase contracts with individual lessors. In 1994 the Nevada State Treasurer initiated the Nevada Master Lease Program (NMLP) through the Nevada Master Lease Corporation. The NMLP was offered as a financing alternative to Nevada political subdivisions and others authorized by law. The current program combines these two activities under a Statewide Master Lease Purchase Program.
- 1.2 The term of the contract in the Statewide Lease Purchase Program shall be for a four (4) year period, and is anticipated to start January 2, 2010 subject to Board of Examiners approval and will expire December 31, 2013. A specific Master Lease Purchase Agreement or Lease Schedule may begin at any time during the term of any contract in the Statewide Lease Purchase Program and extend beyond the term of that contract.
- 1.3 The State Purchasing Division will facilitate all resulting transactions. Agencies and Political Subdivisions will be responsible for the ongoing transaction management and payment.

## **2. ACRONYMS/DEFINITIONS**

For the purposes of this RFP, the following acronyms/definitions will be used:

<b><i>Awarded Vendor</i></b>	The organization/individual that is awarded and has an approved contract with the State of Nevada for the services identified in this RFP.
<b><i>Bank Qualified</i></b>	Under current provisions of the Internal Revenue Code, commercial banks may deduct 80% of their interests costs on funds used to acquire or “carry” tax-exempt obligations (bonds and leases) of governments that borrow no more than \$10 million in a calendar year; otherwise the interest cost is not deductible.
<b><i>Cross-Collateralization Clause</i></b>	Permits collateral to secure any other indebtedness of debtor to the secured party.

<b><i>Cross-Default Clause</i></b>	Permits creditor to declare condition of default on any and all obligations based upon default on any single obligation.
<b><i>Confidential Information</i></b>	Any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost or price submitted in support of a bid or proposal. The term does not include the amount of a bid or proposal. See NRS §333.020(5)(b).
<b><i>Division</i></b>	Department of Administration, Division of Purchasing.
<b><i>Essential Use Property</i></b>	Goods (within the definition of NRS 104.1205) which are of a critical nature and purpose to a Lessee's daily operations.
<b><i>Evaluation Committee</i></b>	An independent committee comprised of a majority of State officers or employees established to evaluate and score proposals submitted in response to the RFP pursuant to NRS §333.335.
<b><i>Event of Non-appropriation</i></b>	The failure of a Lessee's government body to appropriate money for any fiscal year of Lessee sufficient for the continued performance by lessee of all Lessee's obligations under any Master Lease Purchase Agreement.
<b><i>Governmental Entity</i></b>	The State of Nevada or a political subdivision of the State enumerated in NRS 226.110.
<b><i>Lease Schedule</i></b>	A schedule in the form of Exhibit A to the Master Lease Purchase Agreement which has been completed with respect to a Property Group.
<b><i>Lessee</i></b>	Any governmental entity obtaining lease purchase financing through the Statewide Master Lease Purchase Program through the execution of a Master Lease Purchase Agreement.
<b><i>Lessor</i></b>	The organization/individual that is awarded and has an approved contract with the State of Nevada to provide lease purchase financing through the Statewide Master Lease Purchase Program through the execution of a master Lease Purchase Agreement.
<b><i>LOI</i></b>	Letter of Intent - notification of the State's intent to award a contract to a vendor, pending successful negotiations; all information remains confidential until the issuance of the formal notice of award.
<b><i>Master Lease Purchase Agreement</i></b>	Separately binding contract between Lessor and Lessee to finance the acquisition of specific goods or improvements to existing lessee owned buildings through the State Master Lease Purchase Program (Attachment F).
<b><i>May</i></b>	Indicates something that is not mandatory but permissible.
<b><i>NAC</i></b>	Nevada Administrative Code
<b><i>NRS</i></b>	Nevada Revised Statutes

<b>NOA</b>	Notice of Award- formal notification of the State’s decision to award a contract, pending Board of Examiners’ approval of said contract, any non-confidential information becomes available upon written request.
<b>Property Group</b>	Goods or improvements to existing lessee owned buildings financed through the execution of a Master Lease Purchase Agreement.
<b>Proprietary Information</b>	Any trade secret or confidential business information that is contained in a bid or proposal submitted on a particular contract.
<b>Public Record</b>	All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential (see NRS §333.333 and NRS §600A.030(5)) 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.
<b>Related Entity</b>	A corporation, partnership, partnership trust or similar entity in which the Lessor holds at least an 80% ownership interest.
<b>RFP</b>	Request for Proposal - a written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection NRS §333.020(7).
<b>Shall/Must/Will</b>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
<b>Should</b>	Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the information.
<b>Soft Costs</b>	Incidental to the cost of goods, including, without limitation, costs such as installation, maintenance and other related services, wiring, taxes and shipping. Soft costs should not exceed more than 10% of the total amount financed. This is intended as a guideline and not as an absolute and will apply to any equipment financed.
<b>State</b>	The State of Nevada and any agency identified herein.
<b>Statewide Master Lease Purchase Program</b>	Multiple vendor contracts awarded to provide lease purchase financing to government entities to finance their acquisition of needed goods or improvements to existing lessee owned buildings under the terms of this RFP through the execution of a Master Lease Purchase Agreement.
<b>Subcontractor</b>	Third party, not directly employed by the vendor, who will provide services identified in this RFP. This does not include third parties who provide support or incidental services to the vendor.
<b>Trade Secret</b>	Means 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.

**Vendor** Organization/individual submitting a proposal in response to this RFP.

### **3. SCOPE OF WORK**

- 3.1 It is the intention of the State of Nevada to provide a mechanism for lease purchase financing of goods, or improvements to existing Lessee owned buildings, regardless of cost amount per acquisition, made by or on behalf of any governmental entity. Lessees will execute the Master Lease Purchase Agreement with Lessors for the financing of specific goods or improvements to existing lessee owned buildings through lease purchase.
- 3.2 The Statewide Master Lease Purchase Program will be administered by the Purchasing Division. Governmental entities with lease purchase financing needs must contact the Purchasing Division to facilitate their transactions through the Statewide Master Lease Purchase Program. Lessors will have discretion to lease to political subdivisions based on credit quality, but not on the size of the transaction. The term and mode of payment for leases with political subdivisions (but **not** with the State Agencies) will be subject to agreement between the Lessor and the Lessee.
- 3.3 The Purchasing Division is requesting proposals from respondents interested in becoming Lessors under the Statewide Master Lease Purchase Program. Lessors will provide funds necessary to finance or refinance the lease purchase of goods or improvements to existing lessee owned buildings under the Statewide Master Lease Purchase Program. This Program is recommended for lease purchasing requirements of the State, excluding the lease purchase of real property; the Program is also recommended for future lease purchasing requirements of political subdivisions. Since the State cannot compel any political subdivision to use the Statewide Master Lease Purchase Program, it cannot be guaranteed that such entities will use the program for lease purchase financing of their goods, acquisitions or improvements to existing lessee owned buildings.
  - 3.3.1 The State anticipates selecting a maximum of three (3) Lessors to participate in the Statewide Master Lease Purchase Program. Each lease purchase transaction will be submitted to the Lessor(s) for credit approval and pricing under the required pricing index.
  - 3.3.2 Awarded vendors must contract with the State of Nevada to provide lease purchase financing to governmental entities through the Statewide Master Lease Purchase Program. Governmental entities will execute Master Lease Purchase Agreements with the awarded vendors for the financing of specific goods or improvements to existing lessee owned buildings through lease purchase. Each executed Master Lease Purchase Agreement will be a separately binding contract

between the awarded vendor as Lessor and governmental entity as Lessee. All Master Lease Purchase Agreements executed through the Statewide Master Lease Purchase Program are subject to all terms and conditions of the Awarded Vendor's contract with the State of Nevada to provide lease purchase financing to governmental entities through the Statewide Master Lease Purchase Program. The termination of any contract with the State of Nevada to provide lease purchase financing to governmental entities through the Statewide Master Lease Purchase Program will not operate as a termination or rescission of any outstanding Master Lease Purchase Agreements with individual governmental entities. Each separate Master Lease Purchase Agreement will constitute an on-going obligation (subject to the event of non-appropriation) of the governmental entity as Lessee. Vendors should set forth exceptions to contract terms and insurance requirements in their proposals.

- 3.4 Award of a contract resulting from this RFP does constitute a commitment to provide financing to any Lessee for goods or improvements to existing Lessee owned buildings, subject only to the Lessor's right to approve the credit worthiness of the Lessee and to approve the goods or improvements to existing Lessee owned buildings and the related lease rate and term.
- 3.5 Neither the Statewide Master Lease Purchase Program nor any individual Master Lease Purchase Agreement shall constitute or create public debt within the ambit of article 9, section 3 of the Nevada Constitution, nor a contractual obligation in excess of the amounts appropriated thereof in each biennium. Any Master Lease Purchase Agreement executed through the Statewide Master Lease Purchase Program shall be executory only to the extent moneys are appropriated and no liability on account thereof shall be incurred by the Lessee beyond the amount of such moneys.
- 3.6 Neither the Statewide Master Lease Purchase Program nor any Master Lease Purchase Agreement shall create a general obligation of the State. Neither the full faith and credit nor the taxing power of the State is pledged to the payment of any amount due or to become due under any Master Lease Purchase Agreement.
- 3.7 The Lessor will be secured by the Lessee's obligation to make lease payments, which is subject to termination in the event of non-appropriation, and by a security interest in the leased goods or improvements to existing lessee owned buildings. Such security interest will be perfected in accordance with the Uniform Commercial Code. In order to avoid the imposition of State sales or use tax and local property taxes in Nevada, title to the leased goods will remain with the Lessee. THERE WILL BE NO CROSS-COLLATERIZATION OR CROSS-DEFAULT CLAUSES ALLOWED UNDER THE STATEWIDE MASTER LEASE PURCHASE PROGRAM. The State requires each lease to stand alone.
- 3.8 Governmental entities of the State are intended third party beneficiaries of any contract resulting from this RFP and any Master Lease Purchase Agreements executed between Lessor and governmental entities through the Statewide Master Lease Purchase Program are subject to all terms and conditions of any contract resulting from this RFP. THE STATE OF NEVADA WILL NOT ACT AS A GUARANTOR OR SURETY UNDER ANY MASTER LEASE PURCHASE AGREEMENT EXECUTED BETWEEN

LESSOR AND ANY GOVERNMENTAL ENTITY THROUGH THE STATEWIDE MASTER LEASE PURCHASE PROGRAM. A GOVERNMENTAL ENTITY IS SOLELY RESPONSIBLE FOR THE PERFORMANCE OF ALL OBLIGATIONS AS LESSEE UNDER A MASTER LEASE PURCHASE AGREEMENT.

3.9 It is expected that this proposal will continue to accomplish the following objectives:

3.9.1 Establish the Statewide Master Lease Purchase Program with selected, qualified Lessors to:

- Be available to governmental entities as a purchasing alternative;
- Obtain the best rates and other terms and conditions for the lease purchase of goods or improvements to existing lessee owned buildings; and
- Provide flexibility of financing options to governmental entities.

3.9.2 Streamline the competitive bidding process and subsequent lease purchase agreement development and negotiation required for each Lessee resulting in savings in administrative time and efforts.

3.9.3 Ensure that only qualified firms provide lease purchase financing services consistent with performance standards and lease documentation applied throughout the State.

3.9.4 Achieve savings through the combined volume of borrowing of many governmental entities and the use of standard documentation using the Master Lease Purchase Agreement.

3.9.5 Make more uniform the State's contracting practices and standards for goods or improvements to existing lessee owned buildings financing.

3.9.6 **CATEGORIES OF GOODS AND IMPROVEMENTS TO EXISTING LESSEE OWNED BUILDINGS**

3.9.6.1 The Statewide Master Lease Purchase Program will include Essential Use Property and improvements to existing Lessee owned buildings. Lessors will have the option to finance Essential Use Property, related Soft Costs, and improvements to existing lessee owned buildings included, **but not limited** to the following:

- Computer equipment – mainframes, peripherals, office automation, personal computers and software (which may be included as part of a system. If required, software license will be assigned to the Lessor.) Assignment of the software license will occur **only** if permitted by the vendor;
- Telecommunications or telephone systems;
- Photocopy/duplication and office equipment;
- Printing and typesetting equipment;
- Vehicles (including fire and emergency vehicles);



- Construction equipment;
- Laboratory and medical equipment;
- Energy management systems;
- Modular buildings;
- Used equipment;
- Security systems;
- Other goods approved by the Lessor which are Essential Use Property and which has an average useful life of two (2) years or longer; and
- Improvements to existing lessee owned buildings, including but not limited to re-carpeting, replacement of HVAC systems, re-roofing, energy retrofits or other operational cost saving measures.

3.9.6.2 VOLUME: Although exact quantities for financing are not predictable, and may in part be a function of the duties of the Lessor, it is expected that financing activity will approach or exceed \$5,000,000.00 over the term of the contract. Vendors must be aware that this is an estimate only and that there is no guarantee of any Lessor securing any minimum level of financing by entering into a contract in the Statewide Master Lease Purchase Program. Vendors should decide for themselves if their offered pricing should be based on the estimated amount. Payments will be based on individual leases and lease schedules. There is no minimum takedown for either the State or Governmental Entities.

3.9.6.3 INTERNAL REVENUE SERVICE REPORTING: Following preparation by Lessor, the appropriate representative of the Lessee will be responsible for execution of the necessary Internal Revenue Service Form 8038 G or 8038 GC to be filed in conjunction with each lease purchase acquisition. The Lessor will complete the form, send the form to the appropriate representative of the lessee for signature. The lessee will return the form to the Lessor for submission to the IRS.

3.9.6.4 INCLUDED COSTS: The lease purchase financing proposed shall include interest rates, repayment schedules and prepayment terms applicable to goods acquisition or improvements to existing Lessee owned buildings. The State requires that there be no penalty for either early payment or prepayment of a schedule under the Master Lease Purchase Agreement. In either case, the Lessor should factor those possible situations in their cost of doing business. **No additional cost to Lessees such as document fees, legal fees, etc., will be acceptable.**

3.9.6.5 FIRST LEASE PAYMENTS: First lease payments must not be until thirty (30) days after the execution of a specific Master Lease Purchase Agreement. The thirty (30) day period shall commence after the delivery and State acceptance of the Property Group or improvements

to existing lessee owned buildings. State acceptance of the Property Group or improvements to existing Lessee owned buildings will be an explicit action evidenced by a signed delivery and acceptance document (or similar, mutually agreeable document). The installation of equipment is not considered acceptance by the State. Remainder of the lease terms is subject to negotiation between the State and the Lessor. The State reserves the right to award a contract in the Statewide Master Lease Purchase Program based upon both favorable financial and favorable contractual terms provisions.

- 3.9.6.6 The State requires that interim payments required under any Master Lease Purchase Agreement and/or Lease Schedule, and resulting from Lessor's goods down payments, progress payments or any other cause, shall be calculated as the actual Interest Rate applied against such down payments, progress payments, etc., from the time such payments are made until such Lease and or Lease Schedule commences its fixed term. INTERIM RENTS, WHICH ARE CALCULATED AS THE DAILY EQUIVALENT OR SCHEDULED LEASE PAYMENTS, ARE PROHIBITED.

The State would not foresee this as a common occurrence, other than in the case of progress payments. There may, however, be unknown circumstances (individual case driven) where the entire lease amount is not paid at one time (i.e. construction). To the best of the State's knowledge this has not happened in the past.

- 3.9.6.7 Buy-out of lease purchased goods at the end of the lease term shall be at no cost. This applies only if all contractual lease payments have been made.

- 3.9.6.8 TOTAL OBLIGATION: The total obligation to the Lessee shall be the amount of the lease payments, consisting only of principle and interest, subject to termination in the event of non-appropriation. To the best of the State's knowledge, the State of Nevada has never non-appropriated a lease in the past.

- 3.9.6.9 METHOD OF PAYMENT: Lessor will be required to prepare and submit to Purchasing any amortization schedule which will serve as an invoice for payments due under each Master Lease Purchase Agreement. Lessor will be required to initiate and invoice according to payment frequency established by each Master Lease Purchase Agreement. Payment frequency will not be more often than monthly, but may be quarterly, semi-annually or annually. The Lessee will be responsible for timely payment of the invoice by a periodic warrant or electronic funds transfer. The State of Nevada has Electronic Funds Transfer (EFT) capabilities that can only be initiated by the State. A merchant cannot initiate an Automated Clearing House (ACH) debit to the State's account; however, the State can initiate a debit to transmit

funds through the ACH system and credit (Direct Deposit) the lessor's bank account.

It is the obligation of the Lessee to encumber funds and arrange for payments according to the payment schedule.

Payments made by governmental entities shall be the sole responsibility of such entities.

- 3.9.6.10 CERTIFICATES OF PARTICIPATION: Lessor represents and warrants that "Certificates of Participation" shall not be issued under the Statewide Master Lease Purchase Program. The issuance of such certificates will be a material breach of that specific Master Lease Purchase Agreement and the contract resulting from this RFP.
- 3.9.6.11 If requested, the Nevada Attorney General will render a legal opinion to the Purchasing Division regarding a specific lease purchase transaction involving the State in the form provided in the SAMPLE OPINION OF COUNSEL (Attachment G). Governmental entities may seek a legal opinion regarding a specific lease purchase transaction from counsel at their own expense.
- 3.9.6.12 The State shall **not** be required to submit to Lessor any financial statements or copies of budgets. The State anticipates credit approval of leases with State Agencies as a matter of course based on the State's public bond ratings. Governmental entities may be required to submit to Lessor any financial statements or copies of budgets.
- 3.9.6.13 The Purchasing Division internet web page will serve as a source of lease purchase financing information to be made available to all State agencies and using governmental entities.
- 3.9.6.14 Maintenance costs cannot be included in the Statewide Master Lease Purchase Program. The State anticipates that there will be no state sales or use taxes or local property taxes, based on the structure of the Program. To the extent there are any such taxes, such costs will be borne by the Lessor. In the event of non-appropriation, the costs, if any, of equipment return and de-installation will be borne by the Lessor. There is state law to the extent that if the State has a non-appropriation there is no money to pay for the cost of de-installation. Without money specifically appropriated for the de-installation, the State would have no money and therefore would need the Lessor to bear the cost.
- 3.9.6.15 In the bond issuance process, the State asks for and receives "Forms of Approving Opinions of Bond Counsel". Within these opinions on a particular bond issue, it is represented that the "interest on the Bonds is not included in gross income under present federal income tax laws pursuant to Section 103 of the Internal Revenue Code of 1986, as

amended (the “Tax Code”), and interest on the bonds is not included in alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code under present federal income tax laws except that such interest is required to be included in calculating the adjusted current earnings adjustment applicable to corporations for purposes of computing the alternative minimum taxable income of corporation;”. These opinions can be found in the Official Statements issued relative to any particular State of Nevada General Obligation issue.

3.9.6.16 Under Nevada law a lease purchase contract subject to termination in the event of non-appropriation falls outside the scope of Nevada Constitution article 9, section 3, see *Business Computer Rentals v. State Treasurer*, 114 Nev. 63, 953 P.2d 13 (1998). Pursuant to NRS 226.1109(11), the State Treasurer may organize and facilitate statewide pooled financing programs, including lease purchases, for the benefit of the State and any political subdivision, including districts organized pursuant to NRS 450.550 to 450.750, inclusive, and chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS. Pursuant to NRS 333.165, the Purchasing Division may contract for lease purchase financing services on behalf of the State Treasurer to benefit the public.

3.9.6.17 Governmental entities contacting the State Purchasing Division to inquire about lease purchase financing should complete a Document Request Form with all required information concerning the proposed transaction. State Purchasing transmits the information needed to acquire an amortization schedule to its awarded contractors by e-mail. Awarded contractors shall respond to the State Purchasing Division with rate quotes before the deadline set forth in the e-mail (not less than three working days). Rates shall not exceed those set forth in Attachment H. The State Purchasing Division shall notify the successful contractor of the schedule award via e-mail. **Awarded contractor shall prepare all necessary documents to commence lease-purchase transaction.** Political subdivisions are not required to use the financing services of the State’s contractors. The State Purchasing Division will facilitate all transactions relating to the awarded contracts.

#### **4. COMPANY BACKGROUND AND REFERENCES**

##### **4.1 PRIMARY VENDOR INFORMATION**

Vendors must provide a company profile. Information provided shall include:

4.1.1 Company ownership (sole proprietor, partnership, etc).

4.1.1.1 Incorporated companies must identify the state in which the company is incorporated and the date of incorporation. **Please be advised**, pursuant to NRS §80.010, incorporated companies must register with the State of Nevada, Secretary of State’s Office as a foreign corporation before a

contract can be executed between the State of Nevada and the awarded vendor, unless specifically exempted by NRS §80.015.

- 4.1.1.2 The selected vendor, prior to doing business in the State of Nevada, must be appropriately licensed by the Department of Taxation, in accordance with NRS §360.780.
- 4.1.2 Disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigation pending which involves the vendor or in which the vendor has been judged guilty or liable with the State of Nevada.
- 4.1.3 Location(s) of the company offices and location of the office that will provide the services described in this RFP.
- 4.1.4 Is your firm a resident of Nevada or a resident of another state? If so, please list the state of residence. Does your resident state apply a preference, which is not afforded to bidders or vendors who are residents in the state of Nevada? This information may be utilized in determining whether an inverse preference applies pursuant to NRS §333.336.
- 4.1.5 Number of employees both locally and nationally.
- 4.1.6 Location(s) from which employees will be assigned.
- 4.1.7 Name, address and telephone number of the vendor's point of contact for a contract resulting from this RFP.
- 4.1.8 Company background/history and why vendor is qualified to provide the services described in this RFP.
- 4.1.9 Length of time vendor has been providing services described in this RFP to the **public and/or private sector**. Please provide a brief description.
- 4.1.10 Has the vendor ever been engaged under contract by any State of Nevada agency?  
[ ] Yes [ ] No If "Yes," specify when, for what duties, and for which agency.
- 4.1.11 Is the vendor or any of the vendor's employees employed by the State of Nevada, any of its political subdivisions or by any other government?  
[ ] Yes [ ] No If "Yes," is that employee planning to render services while on annual leave, compensatory time, sick leave, or on his own time?
- 4.1.12 Resumes for key staff to be responsible for performance of any contract resulting from this RFP.
- 4.1.13 **Financial information and documentation to be included in Part III of your response in accordance with the Submittal Instructions.**
  - 4.1.13.1 Dun and Bradstreet number
  - 4.1.13.2 Federal Tax Identification Number

## 4.2 REFERENCES

Vendors should provide a minimum of three (3) references from similar projects performed for private, state and/or large local government clients within the last three years. **Vendors are required to submit Attachment D, Reference Form to the business references they list. The business references must submit the Reference Form directly to the Purchasing Division.** It is the vendor's responsibility to ensure that completed forms are received by the Purchasing Division on or before the proposal submission deadline for inclusion in the evaluation process. Business References not received, or not complete, may adversely affect the vendor's score in the evaluation process. The Purchasing Division may contact any or all business references for validation of information submitted.

- 4.2.1 Client name;
- 4.2.2 Project description;
- 4.2.3 Project dates (starting and ending);
- 4.2.4 Staff assigned to reference engagement that will be designated for work per this RFP;
- 4.2.5 Client project manager name, telephone number, fax number and e-mail address.

### 4.3 SUBCONTRACTOR INFORMATION

4.3.1 Does this proposal include the use of subcontractors?

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

If “Yes”, vendor must:

4.3.1.1 Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.

4.3.1.2 Provide the same information for any proposed subcontractors as requested in the Primary Vendor Information section.

4.3.1.3 References as specified above must be provided for any proposed subcontractors.

4.3.1.4 The State may require that the awarded vendor provide proof of payment to any subcontractors used for this project. Proposals should include a plan by which, at the State’s request, the State will be notified of such payments.

4.3.1.5 Primary vendor shall not allow any subcontractor to commence work until all insurance required of the subcontractor is provided to the using agency.

4.3.1.6 Primary vendor must notify the using agency of the intended use of any subcontractors not identified within their response and receive agency approval prior to subcontractor commencing work.

## 5. COST

**Note: All Cost Proposals shall be submitted to the State as a separate, sealed package and clearly marked: “Cost Proposal in Response to RFP No. 1697”, please refer to the Submittal Instructions for further instruction.**

5.1 INTEREST RATE FOR PROPOSALS: The rates quoted for the purpose of a proposal in response to this RFP are to be represented as the percentage of yield to maturity quoted for the lowest yielding U.S. Treasury Note for the same maturity as the lease term (Rate Index).

The Rate Index can be an item subject to negotiation of the renewal of the Statewide Master Lease Purchase Program. The actual interest rate for any Master Lease Purchase Agreement and/or Lease Schedule will be the quoted percentage indexed to the yield on the applicable Note as published in the Wall Street Journal thirty (30) days (or other time frame as mutually agreed upon) before the date on which payment is made to the equipment supplier, including each progress payment.

5.1.1 **Rates will be fixed for each schedule** based on a percentage of like-term Treasuries. **The State is not requesting floating or variable rates.** Rate quotes will consist of two (2) formulae, as follows:

5.1.1.1 The percentage of same maturity U.S. Treasury Notes assuming Master Lease Purchase Agreements and Lease Schedules subject to the quote are “bank qualified”; and

5.1.1.2 The percentage of same maturity U.S. Treasury Notes assuming Master Lease Purchase Agreements and Lease Schedules subject to the quote are **not** “bank qualified”.

5.1.2 Rate quotes will further consist of the following divisions **only**:

5.1.2.1 Investment Grade Rated

5.1.2.2 Rated, but Not Investment Grade

5.1.2.3 Not Rated

5.1.2.4 The State assumes that Lessors will base lease pricing, in part, on credit standing. While vendors may not submit pricing for more than the number of categories on the bid proposal form, vendors may submit the same pricing for two or more of the categories.

5.1.3 The Rate Index will apply for the entire term of the contract.

5.1.4 Proposal pricing is to be provided in accordance with Attachment H, Cost Proposal Forms.

5.1.5 In addition, identify whether rate quotes will vary by Lessee, i.e. State of Nevada or Political Subdivision.

## 6. **PAYMENT**

6.1 Payment by the Lessor to the Vendor supplying the goods or improvements to existing lessee owned buildings will be made in full within 30 days upon receipt of invoice and the using agency’s approval.

First lease payments must not be until thirty (30) days after the execution of a specific Master Lease Purchase Agreement. The thirty (30) day period shall commence after the delivery and State acceptance of the Property Group or improvements to existing lessee owned buildings. The timing gap between the execution of the lease and a delivery and

acceptance certificate is anticipated to be a 30 day minimum with no maximum. State acceptance of the Property Group or improvements to existing lessee owned buildings will be an explicit action evidenced by a signed delivery and acceptance document (or similar, mutually agreeable document). The remainder of the lease terms is subject to final amortization schedule negotiated between the State and the Lessor.

**7. SUBMITTAL INSTRUCTIONS**

7.1 In lieu of a pre-proposal conference, the Purchasing Division will accept questions and/or comments in writing, received by e-mail regarding this RFP as follows:

Questions must reference the identifying RFP number in Word format and be addressed to the State of Nevada, Purchasing Division, Attn: Annette Morfin, Senior Buyer, e-mailed to [svrpurch@purchasing.state.nv.us](mailto:svrpurch@purchasing.state.nv.us) The deadline for submitting questions is August 6, 2009 at 5:00 p.m., Pacific Time. All questions and/or comments will be addressed in writing and responses e-mailed or faxed to prospective vendors on or about August 13, 2009. Please provide company name, address, phone number, e-mail address, fax number, and contact person when submitting questions.

7.2 RFP Timeline

<i><b>TASK</b></i>	<i><b>DATE/TIME</b></i>
Deadline for submitting questions	August 6, 2009 @ 5:00 p.m.
Answers to all questions submitted available on or about	August 13, 2009
Deadline for submittal of Reference Questionnaires	August 26, 2009 @ 5:00 p.m.
<b><u>Deadline for submission and opening of proposals</u></b>	<b><u>Sept. 2, 2009 @ 2:00 p.m.</u></b>
Evaluation period	Sept. 3, 2009 – Sept. 17, 2009
Selection of vendor	September 18, 2009

***NOTE: These dates represent a tentative schedule of events. The State reserves the right to modify these dates at any time, with appropriate notice to prospective vendors.***

7.3 Proposal submission requirements:

7.3.1 Vendors shall submit their response in three (3) parts as designated below:

**Part I: Technical Proposal**

- One (1) original marked “MASTER”
- Eight (8) identical copies
- One (1) identical copy on CD (**Note:** CD must be labeled accordingly and in a case.)

THE TECHNICAL PROPOSAL MUST INCLUDE A SEPARATE TAB/SECTION LABELED “**STATE DOCUMENTS**” WHICH SHALL INCLUDE:

- Page 1 of RFP



- All Amendments to the RFP
- All Attachments requiring signature
- Certificate of Insurance

Technical Proposal must not include cost or confidential information.

Technical Proposal shall be submitted to the State in a sealed package and be clearly marked:

**“Technical Proposal in Response to RFP No. 1697”**

**Part II: Cost Proposal:**

- One (1) original marked “MASTER”
- Eight (8) identical copies
- One (1) identical copy on CD (**Note:** CD must be labeled accordingly and in a case.)

Cost Proposal shall be submitted to the State in a sealed package and be clearly marked:

**“Cost Proposal in Response to RFP No. 1697”**

**Part III: Confidential Information:**

- One (1) original marked “MASTER”

Confidential Information shall be submitted to the State in a sealed package and be clearly marked:

**“Confidential Information in Response to RFP No. 1697”**

If the separately sealed proposal, marked as required above, are enclosed in another container for mailing purposes, the outermost container must fully describe the contents of the package and be clearly marked:

REQUEST FOR PROPOSAL NO.: 1697

**PROPOSAL OPENING DATE: September 2, 2009 @ 2:00 P.M.**

FOR: Statewide Master Lease Purchase Program

7.3.2 **Proposal must be received at the address referenced below no later than 2:00 P.M. Pacific Time, on September 2, 2009.** Proposals that do not arrive by proposal opening time and date WILL NOT BE ACCEPTED. Vendors may submit their proposal any time prior to the above stated deadline.

7.3.3 **Proposal shall be submitted to:**

State of Nevada, Purchasing Division  
Annette Morfin, Senior Buyer  
515 E. Musser Street, Suite 300  
Carson City, NV 89701

7.4 The State will not be held responsible for proposal envelopes mishandled as a result of the envelope not being properly prepared. Facsimile, e-mail or telephone proposals will **NOT** be considered; however, at the State’s discretion, the proposal may be submitted all

or in part on electronic media, as requested within the RFP document. Proposal may be modified by facsimile, e-mail or written notice provided such notice is received prior to the opening of the proposals.

- 7.5 Although it is a public opening, only the names of the vendors submitting proposals will be announced NRS §333.335(6). Technical and cost details about proposals submitted will not be disclosed. Assistance for handicapped, blind or hearing-impaired persons who wish to attend the RFP opening is available. If special arrangements are necessary, please notify the Purchasing Division designee as soon as possible and at least two days in advance of the opening.
- 7.6 If discrepancies are found between two or more copies of the proposal, the master copy will provide the basis for resolving such discrepancies. If one copy of the proposal is not clearly marked "MASTER," the State may reject the proposal. However, the State may at its sole option, select one copy to be used as the master.
- 7.7 For ease of evaluation, the proposal should be presented in a format that corresponds to and references sections outlined within this RFP and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. Exceptions to this will be considered during the evaluation process.
- 7.8 If complete responses cannot be provided without referencing confidential information, such confidential information must be provided in accordance with submittal instructions and specific references made to the tab, page, section and/or paragraph where the confidential information can be located.
- 7.9 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
- 7.10 Descriptions on how any and all equipment and/or services will be used to meet the requirements of this RFP shall be given, in detail, along with any additional information documents that are appropriately marked.
- 7.11 The proposal must be signed by the individual(s) legally authorized to bind the vendor, see NRS §333.337.
- 7.12 For ease of responding to the RFP, vendors are encouraged, but not required, to utilize an electronic copy of the RFP. Electronic copies are available on the State Purchasing Division's website in PDF or Word format at <http://purchasing.state.nv.us>.
- 7.13 Vendors utilizing an electronic copy of the RFP in order to prepare their proposal should place their written response in *an easily distinguishable font* immediately following the applicable question.

7.14 ***For purposes of addressing questions concerning this RFP, the sole contact will be the Purchasing Division. Upon issuance of this RFP, other employees and representatives of the agencies identified in the RFP will not answer questions or otherwise discuss the contents of this RFP with any prospective vendors or their representatives. Failure to observe this restriction may result in disqualification of any subsequent proposal NAC §333.155(3).*** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

7.15 Vendor who believes proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the Purchasing Division. To be considered, a request for review must be **received** no later than the deadline for submission of questions.

The Purchasing Division shall promptly respond in writing to each written review request, and where appropriate, issue all revisions, substitutions or clarifications through a written amendment to the RFP.

Administrative review of technical or contractual requirements shall include the reason for the request, supported by factual information, and any proposed changes to the requirements.

7.16 If a vendor changes any material RFP language, vendor's response may be deemed non-responsive. NRS §333.311.

7.17 Vendors are cautioned that some services may contain licensing requirement(s). Vendors shall be proactive in verification of these requirements prior to proposal submittal. Proposals, which do not contain the requisite licensure, may be deemed non-responsive. However, this does not negate any applicable Nevada Revised Statute (NRS) requirements.

## **8. PROPOSAL EVALUATION AND AWARD PROCESS**

8.1 Proposals shall be consistently evaluated and scored in accordance with NRS §333.335(3) based upon the following criteria:

- Demonstrated competence
- Experience in performance of comparable engagements
- Conformance with the terms of this RFP
- Expertise and availability of key personnel
- Reasonableness of cost

Note: Financial stability will be scored on a pass/fail basis

**Proposals shall be kept confidential until a contract is awarded.**

8.2 The evaluation committee may also contact the references provided in response to the Section identified as Company Background and References; contact any vendor to clarify any response; contact any current users of a vendor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other

information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the State of Nevada NRS § 333.335(5)

- 8.3 Each vendor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigations pending which involves the vendor or in which the vendor has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify any proposal. The State reserves the right to reject any proposal based upon the vendor's prior history with the State or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures. See generally, NRS §333.335.
- 8.4 Clarification discussions may, at the State's sole option, be conducted with vendors who submit proposals determined to be acceptable and competitive NAC §333.165. Vendors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. Such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing vendors.
- 8.5 A Notification of Intent to Award shall be issued in accordance with NAC §333.170. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Board of Examiners, when required. Negotiations shall be confidential and not subject to disclosure to competing vendors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the State upon written notice to all vendors may negotiate a contract with the next highest scoring vendor or withdraw the RFP.
- 8.6 Any contract resulting from this RFP shall not be effective unless and until approved by the Nevada State Board of Examiners (NRS 284.173).

## **9. TERMS, CONDITIONS AND EXCEPTIONS**

- 9.1 Performance of vendors will be rated semi-annually following contract award and then annually for the term of the contract by the using State agency in six categories: customer service; timeliness; quality; technology; flexibility; and pricing. Vendors will be notified in writing of their rating.
- 9.2 In accordance with Nevada Revised Statute 333.336, if a vendor submitting a proposal in response to this solicitation is a resident of another state, and with respect to contracts awarded by that state, applies to vendors who are residents of that state a preference, which is not afforded to vendors or contractors who are residents of the State of Nevada, the State of Nevada, Purchasing Division shall, insofar as is practicable, increase the out of state vendor's proposal by an amount that is substantially equivalent to the preference that the other state of which the vendor is a resident denies to vendors or contractors who are residents of the State of Nevada.

- 9.3 This procurement is being conducted in accordance with NRS chapter 333 and NAC chapter 333.
- 9.4 The State reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the State to do so.
- 9.5 The State reserves the right to waive informalities and minor irregularities in proposals received.
- 9.6 The State reserves the right to reject any or all proposals received prior to contract award (NRS §333.350).
- 9.7 The State shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the State of Nevada after all factors have been evaluated (NRS §333.335).
- 9.8 Any irregularities or lack of clarity in the RFP should be brought to the Purchasing Division designee's attention as soon as possible so that corrective addenda may be furnished to prospective vendors.
- 9.9 Proposals must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the vendor's standard contract language. The omission of these documents renders a proposal non-responsive.
- 9.10 Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.
- 9.11 Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.
- 9.12 Proposals from employees of the State of Nevada will be considered in as much as they do not conflict with the State Administrative Manual, NRS Chapter §281 and NRS Chapter §284.
- 9.13 Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time. Withdrawals received after the proposal opening time will not be considered except as authorized by NRS §333.350(3).
- 9.14 The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, vendor or prospective vendor. Collaboration among competing vendors about potential proposals submitted pursuant to this RFP is prohibited and may disqualify the vendor.

- 9.15 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 9.16 Prices offered by vendors in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded vendor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded vendor for implementation of their proposal.
- 9.17 The State is not liable for any costs incurred by vendors prior to entering into a formal contract. Costs of developing the proposal or any other such expenses incurred by the vendor in responding to the RFP, are entirely the responsibility of the vendor, and shall not be reimbursed in any manner by the State.
- 9.18 All proposals submitted become the property of the State, selection or rejection does not affect this right; proposals will be returned only at the State's option and at the vendor's request and expense. The master technical proposal, the master cost proposal and Confidential Information of each response shall be retained for official files. Only the master technical and master cost will become public record after the award of a contract. The failure to separately package and clearly mark Part III – which contains Confidential Information, Trade Secrets and/or Proprietary Information shall constitute a complete waiver of any and all claims for damages caused by release of the information by the State.
- 9.19 A proposal submitted in response to this RFP must identify any subcontractors, and outline the contractual relationship between the awarded vendor and each subcontractor. An official of each proposed subcontractor must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the subcontractor has read and will agree to abide by the awarded vendor's obligations.
- 9.20 The awarded vendor will be the sole point of contract responsibility. The State will look solely to the awarded vendor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded vendor shall not be relieved for the non-performance of any or all subcontractors.
- 9.21 The awarded vendor must maintain, for the duration of its contract, insurance coverages as set forth in the Insurance Schedule of the contract form appended to this RFP. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverages. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

Notwithstanding any other requirement of this section, the State reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies required by the below-stated Insurance Schedule. It will be the awarded vendor's responsibility to recommend to the State alternative methods of insuring the contract. Any alternatives proposed by a vendor should be accompanied by a detailed explanation regarding the vendor's inability to obtain insurance coverage as described

below. The State shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

- 9.22 Each vendor must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. By submitting a proposal in response to this RFP, vendors affirm that they have not given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of a vendor's proposal. An award will not be made where a conflict of interest exists. The State will determine whether a conflict of interest exists and whether it may reflect negatively on the State's selection of a vendor. The State reserves the right to disqualify any vendor on the grounds of actual or apparent conflict of interest.
- 9.23 The State will not be liable for Federal, State, or Local excise taxes NRS §372.325.
- 9.24 Attachment B of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment C contract form and all terms and conditions therein, except such terms and conditions that the vendor expressly excludes. Exceptions will be taken into consideration as part of the evaluation process.
- 9.25 The State reserves the right to negotiate final contract terms with any vendor selected NAC §333.170. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded vendor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the State during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded vendor's proposal, and the awarded vendor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.
- 9.26 Vendor understands and acknowledges that the representations above are material and important, and will be relied on by the State in evaluation of the proposal. Any vendor misrepresentation shall be treated as fraudulent concealment from the State of the true facts relating to the proposal.
- 9.27 No announcement concerning the award of a contract as a result of this RFP can be made without the prior written approval of the State.
- 9.28 The Nevada Attorney General will not render any type of legal opinion regarding this transaction.
- 9.29 Notwithstanding any statement or description of federal, state or local law within this solicitation, or the applicability of such law to the transactions proposed, it is the responsibility of the vendor to ascertain and understand all federal, state and local laws prior to submission of any proposal or entering into any contract or transaction.

- 9.30 Any unsuccessful vendor may file an appeal in strict compliance with NRS 333.370 and chapter 333 of the Nevada Administrative Code.
- 9.31 Local governments (as defined in NRS §332.015) are intended third party beneficiaries of any contract resulting from this RFP and any local government may join or use any contract resulting from this RFP 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 resulting from this RFP.
- 9.32 Any person who requests or receives a Federal contract, grant, loan or cooperative agreement shall file with the using agency a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a) of 31 U.S.C. §1352.



**10. SUBMISSION CHECKLIST**

This checklist is provided for vendor’s convenience only and identifies documents that must be submitted with each package in order to be considered responsive. Any proposals received without these requisite documents may be deemed non-responsive and not considered for contract award.

- | <b>Part I:</b>   | <b>Completed</b> |
|--|------------------|
| 1. Required number of Technical proposals (per Submittal Instructions)   | _____            |
| <b>2. Required Forms to be submitted with technical proposal under section/tab labeled “<u>State Documents</u>”;</b> | _____            |
| a. Page 1 of the RFP completed   | _____            |
| b. All Amendments completed and signed   | _____            |
| c. Primary Vendor Attachments A & B signed   | _____            |
| d. Subcontractor Attachment A & B signed ( <u>if applicable</u> )  | _____            |
| e. Primary Vendor Information provided   | _____            |
| f. Subcontractor Information provided ( <u>if applicable</u> )   | _____            |
| g. Certificate of Insurance  | _____            |
| h. ( <u>other</u> ) _____  | _____            |

- | <b>Part II:</b>   |       |
|---|-------|
| 1. Required number of Cost proposals (per Submittal Instructions) | _____ |
| 2. ( <u>other</u> ) _____   | _____ |

- | <b>Part III:</b>  |       |
|---|-------|
| 1. Required number of Confidential Information (per Submittal Instructions and defined in Acronyms/Definitions) | _____ |
| 2. Financial Information  | _____ |

**REMINDERS:**

- |  |       |
|--|-------|
| 1. Send out Reference forms for Primary Vendor (with Part A completed)                 | _____ |
| 2. Send out Reference forms for Subcontractors (with Part A completed) (if applicable) | _____ |

**Attachment A**  
**CONFIDENTIALITY OF PROPOSALS AND**  
**CERTIFICATION OF INDEMNIFICATION**  
**PRIMARY VENDOR**

Submitted proposals, which are marked “confidential” in their entirety, or those in which a significant portion of the submitted proposal is marked “confidential” **will not** be accepted by the State of Nevada. Pursuant to NRS §333.333, only specific parts of the proposal may be labeled a “trade secret” as defined in NRS §600A.030(5). All proposals are confidential until the contract is awarded; at which time, both successful and unsuccessful vendors’ technical and cost proposals become public information. In accordance with the Submittal Instructions of this document, vendors are requested to submit confidential information in a separate envelope or binder marked “confidential.”

The State will not be responsible for any information contained within the proposal should vendors not comply with the labeling and packing requirements, proposals will be released as submitted. In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposals that will be in an open meeting format, the proposals will remain confidential.

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

This proposal contains either Confidential Information, Trade Secrets and/or Proprietary information as defined in Section 2 “ACRONYMS/DEFINITIONS.”

YES \_\_\_\_\_

NO \_\_\_\_\_

SIGNATURE \_\_\_\_\_  
Primary Vendor

\_\_\_\_\_ Date

PRINT NAME \_\_\_\_\_  
Primary Vendor

**This document must be submitted in the “State Documents” section/tab of vendors’ technical proposal**

**Attachment A**  
**CONFIDENTIALITY OF PROPOSALS AND**  
**CERTIFICATION OF INDEMNIFICATION**  
**SUBCONTRACTOR**

Submitted proposals, which are marked “confidential” in their entirety, or those in which a significant portion of the submitted proposal is marked “confidential” **will not** be accepted by the State of Nevada. Pursuant to NRS §333.333, only specific parts of the proposal may be labeled a “trade secret” as defined in NRS §600A.030(5). All proposals are confidential until the contract is awarded; at which time, both successful and unsuccessful vendors’ technical and cost proposals become public information. In accordance with the Submittal Instructions of this document, vendors are requested to submit confidential information in a separate envelope or binder marked “confidential.”

The State will not be responsible for any information contained within the proposal should vendors not comply with the labeling and packaging submission requirements, proposal will be released as submitted. In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposal that will be in an open meeting format, the proposals will remain confidential.

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

This proposal contains either Confidential Information, Trade Secrets and/or Proprietary information as defined in Section 2 “ACRONYMS/DEFINITIONS.”

YES \_\_\_\_\_

NO \_\_\_\_\_

SIGNATURE \_\_\_\_\_  
Subcontractor

\_\_\_\_\_  
Date

PRINT NAME \_\_\_\_\_  
Subcontractor

**This document must be submitted in the “State Documents” section/tab of vendors’ technical proposal**

**Attachment B**  
**CERTIFICATION OF COMPLIANCE WITH**  
**TERMS AND CONDITIONS OF RFP**  
**PRIMARY VENDOR**

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal.

Checking “YES” indicates acceptance of all terms and conditions, while checking “NO” denotes non-acceptance and vendor’s exceptions should be detailed below. In order for any exceptions to be considered they **MUST** be documented.

YES \_\_\_\_\_ I agree.      NO \_\_\_\_\_ Exceptions below:

SIGNATURE \_\_\_\_\_  
Primary Vendor

\_\_\_\_\_  
Date

PRINT NAME \_\_\_\_\_  
Primary Vendor

**EXCEPTION SUMMARY FORM**

RFP SECTION NUMBER	RFP PAGE NUMBER	EXCEPTION (PROVIDE A DETAILED EXPLANATION)

Attach additional sheets if necessary. Please use this format.

**This document must be submitted in the “State Documents” section/tab of vendors’ technical proposal**



## **Attachment C**

### **CONTRACT FORM**

The following State Contract Form is provided as a courtesy to vendors interested in responding to this RFP. Please review the terms and conditions in this form, as this is the standard contract used by the State for all services of independent contractors. It is not necessary for vendors to complete the Contract Form with their proposal responses.

**All vendors are required to submit a Certificate of Insurance in the “State Documents tab/section of their technical proposal identifying the coverages and minimum limits currently in effect.**

**Please pay particular attention to the insurance requirements, as specified in paragraph 16 and Attachment BB of the attached contract.**

As with all other requirements of this RFP, vendors may take exception to any of the terms in the Contract Form, including the required insurance limits. Exceptions will be considered during the evaluation process.

Unless specified as above, the insurance minimum limits will be negotiated at the time the State issues a Letter of Intent to Award.

## CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

### A Contract Between the State of Nevada Acting By and Through Its

(NAME, ADDRESS, PHONE AND FACSIMILE NUMBER OF CONTRACTING AGENCY)

and

(NAME, CONTACT PERSON, ADDRESS, PHONE, FACSIMILE NUMBER OF INDEPENDENT CONTRACTOR)

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;

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

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.

2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.

3. **CONTRACT TERM.** This Contract shall be effective from \_\_\_\_\_ subject to Board of Examiners' approval (anticipated to be \_\_\_\_\_) to \_\_\_\_\_, unless sooner terminated by either party as specified in paragraph ten (10).

4. **NOTICE.** Unless otherwise specified, termination shall not be effective until \_\_\_\_ 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 telephonic facsimile with simultaneous 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.

5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA: STATE SOLICITATION OR RFP # \_\_\_\_\_ and AMENDMENT(S) # \_\_\_\_\_;

ATTACHMENT BB: INSURANCE SCHEDULE; AND

ATTACHMENT CC: CONTRACTOR'S RESPONSE

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost of \$ \_\_\_\_\_ per \_\_\_\_\_ (state the exact cost or hourly, daily, or weekly rate exclusive of travel or per diem expenses) with the total Contract or installments payable: \_\_\_\_\_, not to exceed \$ \_\_\_\_\_. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. 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.

b. State Termination for Non-appropriation. The continuation of this Contract 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 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 Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

ii. 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

iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

v. 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 Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada 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

vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), 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.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:



- i. 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;
- ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. **REMEDIES.** 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. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. **LIMITED LIABILITY.** The State 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 State 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. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. **FORCE MAJEURE.** 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.

14. **INDEMNIFICATION.** To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State 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 or willful acts or omissions of Contractor, its officers, employees and agents.

15. **INDEPENDENT CONTRACTOR.** Contractor is associated with the State 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. 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 State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

Contractor's Initials

YES                      NO

- |  |       |       |
|--|-------|-------|
| 1. Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?   | _____ | _____ |
| 2. Will the Contracting Agency be providing training to the independent contractor?  | _____ | _____ |
| 3. Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?                            | _____ | _____ |
| 4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?                                     | _____ | _____ |
| 5. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)? | _____ | _____ |
| 6. Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?  | _____ | _____ |
| 7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?               | _____ | _____ |

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State'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 State to timely approve shall not constitute a waiver of the condition.

**Insurance Coverage:** The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment BB, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the State of the completion of this Contract; or
  2. Such time as the insurance is no longer required by the State under the terms of this Contract;
- Whichever occurs later.

Any insurance or self-insurance available to the State 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 State, Contractor shall provide the State 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 State and immediately replace such insurance or bond with an insurer meeting the requirements.

**General Requirements:**

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.

- c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. 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 State. 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 fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- e. Policy Cancellation: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, 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 the address shown on page one (1) of this contract:
- f. Approved Insurer: Each insurance policy shall be:
  - 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
  - 2) Currently rated by A.M. Best as “A-VII” or better.

**Evidence of Insurance:**

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage, section noted above.

**Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.**

- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above.
- 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.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State 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 State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. 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 required by 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 NRS 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 State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. 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.

19. SEVERABILITY. 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 non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. 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 State, 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 nor duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is 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 State and all such materials shall be delivered into State 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 State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. 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.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

- a. 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.
- b. 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.
- c. 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.)

25. LOBBYING. 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:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

- a. General Warranty. 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 set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
- b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.



**ATTACHMENT BB  
INSURANCE SCHEDULE**

**INDEMNIFICATION CLAUSE:**

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

**INSURANCE REQUIREMENTS:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
  2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **(State of Nevada Department Representative's Name & Address)** and shall be sent by certified mail, return receipt requested.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- All certificates required by this Contract shall be sent directly to **(State Department Representative's Name and Address)**. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.**
- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

\_\_\_\_\_  
Independent Contractor's Signature

\_\_\_\_\_  
Date                      Independent's Contractor's Title

\_\_\_\_\_  
Signature- State of Nevada

\_\_\_\_\_  
Date                      Title

## **Attachment D**

### **REFERENCE QUESTIONNAIRE**

The State of Nevada, as a part of the RFP process, requires proposing vendors to submit business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

The proposing vendor or subcontractor is required to complete Part A and send the following reference form to each business reference listed for completion of Part B. The business reference, in turn, is requested to submit the Reference Form directly to the State of Nevada, Purchasing Division by the requested deadline for inclusion in the evaluation process. The business reference may be contacted for validation of the response.





## RFP # 1697 REFERENCE QUESTIONNAIRE FOR: STATEWIDE MASTER LEASE PURCHASING PROGRAM

**Part A:**

\_\_\_\_\_

(Name of company requesting reference)

- As Primary Vendor  
 As Subcontractor of \_\_\_\_\_  
 Name of Primary Vendor

**Part B:**

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of Nevada, Purchasing Division, via e-mail at [svrpurch@purchasing.state.nv.us](mailto:svrpurch@purchasing.state.nv.us) or facsimile at (775) 684-0188, no later than August 26, 2009 @ 5:00 P.M. Pacific Time, and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of Nevada Purchasing Division, Services Procurement Section by telephone at (775) 684-0170 or by e-mail at [svrpurch@purchasing.state.nv.us](mailto:svrpurch@purchasing.state.nv.us). When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

**CONFIDENTIAL INFORMATION WHEN COMPLETED**

<b>Company providing reference:</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number</b>	
<b>Contact e-mail address</b>	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?  
 COMMENTS:
  
2. How would you rate this firm's knowledge and expertise?  
 \_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)  
 COMMENTS:
  
3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?  
 \_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)  
 COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

COMMENTS:

7. How satisfied are you with the products developed by the vendor?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

8. With which aspect(s) of this vendor's services are you most satisfied?

COMMENTS:

9. With which aspect(s) of this vendor's services are you least satisfied?

COMMENTS:

10. Would you recommend this vendor's services to your organization again?

COMMENTS:

**Attachment E**

**SAMPLE SCORE SHEET**

**STATE OF NEVADA, PURCHASING DIVISION**  
**RFP 1697**  
**STATWIDE MASTER LEASE PURCHASE PROGRAM**  
*Proposal Opening Date: September 2, 2009 @ 2:00 p.m.*

VENDOR NAME: \_\_\_\_\_

Evaluator Initials: \_\_\_\_\_

Item	Evaluation Criteria	Weight	Score (1-10)	Revised Score (1-10)
1.	Demonstrated Competence			
2.	Experience in performance of comparable engagements			
3.	Conformance with the terms of this RFP			
4.	Expertise and availability of key personnel			
5.	Reasonableness of cost			
	Total			

After reading vendor proposals, assign a score for each criterion above between 1 and 10, with 1=Poor and 10=Excellent, per the *Evaluation Guidelines* included in your packet. The Revised Score column should be left blank until the scheduled evaluation meeting.

Below is a brief description of the issues related to each factor.

**1. Demonstrated competence.** Did the vendor provide sufficient data to convince you that it will do a good job for the State? Was the proof compelling? Are you confident that this vendor has the knowledge, skills and abilities to perform all its tasks well? Will the vendor’s resources be adequate to serve the State’s needs? Does the vendor suggest new ways to enhance performance? Does the vendor have the flexible capacity to handle all the needs of the State as they continue to change? Did the vendor present sufficient performance history to convince you of its ability? Has the vendor been in business long enough to provide good stability? Has the vendor experienced ownership changes that would impact its services? Has there been any censure or litigation history?

**2. Experience in performance of comparable engagements.** Does the vendor have prior experience that will ensure all the skills necessary to perform tasks well? Did the vendor have success in other work for a private or governmental entity? Does the vendor’s previous work convince you of its successful completion of

these duties? Has the vendor provided adequate references? (During the evaluation meeting, State Purchasing shall provide reference responses to questionnaires.)

**3. Conformance with the terms of this RFP.** Did the vendor's proposal provide all the necessary information requested in the RFP in a professional manner? Did the proposal cause doubt regarding its ability to complete the necessary tasks? Was the proposal easy to understand and did it provide answers to questions, or create more questions?

**4. Expertise and availability of key personnel.** Is the staff that will be assigned to this project by the vendor the best qualified to complete the tasks? Will they be available to insure completion of the project? Will they be available for follow-up issues? Is sufficient staff assigned to handle these duties? Is there a Nevada office or contact person? Will assigned staff respond to issues within a reasonable amount of time?

**5. Reasonableness of cost.** Has the vendor established a cost that is reasonable for the project? Is the State of Nevada receiving good value for its dollars? Does the fee appear cost-effective? Are the costs reasonable compared to the competition? Will there be any additional costs or other ongoing expenses?

**Attachment F**

**MASTER LEASE PURCHASE AGREEMENT**

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MASTER LEASE PURCHASE AGREEMENT

between

(as “the Corporation”)  
and

(as the “Governmental Entity”)

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MASTER LEASE PURCHASE AGREEMENT

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This Table of Contents is not a part of the Agreement and is for convenience only. The captions herein are of no legal effect and do not vary the meaning or legal effect of any part of the Agreement.

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## MASTER LEASE PURCHASE AGREEMENT

THIS MASTER LEASE PURCHASE AGREEMENT, entered into by and between the \_\_\_\_\_ Corporation, a for-profit corporation duly authorized or qualified to do business in the State (hereinafter "the Corporation"), and \_\_\_\_\_ (hereinafter "the Governmental Entity"). All capitalized, undefined terms used herein shall have the meanings ascribed to them in Article I hereof.

WITNESSETH:

WHEREAS, the Governmental Entity is an agency of the State or a political subdivision of the State enumerated in NRS 226.110;

WHEREAS, the Governmental Entity, by and through its Governmental Representative, has the power to enter into agreements for the installment purchase of certain property for public purposes on behalf of the Governmental Entity;

WHEREAS, the Governmental Representative has previously determined, and hereby further determines, that the Governmental Entity is in need of Property;

WHEREAS, the Governmental Representative has determined and hereby determines that it is in the best interests of the Governmental Entity to enter into this Agreement for the purpose of financing the acquisition of Property with the Corporation;

WHEREAS, the Corporation is a for-profit corporation duly authorized or qualified to do business in the State, and under its articles and bylaws, is authorized to enter into this Agreement;

WHEREAS, the execution, delivery and performance of this Agreement by the Corporation have been authorized, approved and directed by all necessary and appropriate action of the Corporation; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

### ARTICLE I—DEFINITIONS

The following terms will have the meanings specified below unless the context clearly requires otherwise:

"Agreement" means this Master Lease Purchase Agreement and any amendments or supplements hereto, including the Exhibit forms attached hereto.

"Agreement Term" means the term of this Agreement as determined pursuant to Article III hereof.

"Base Payments" means the payments payable by the Governmental Representative, acting on behalf of the Governmental Entity, pursuant to Section 5.1 of this Agreement and each Property Schedule, as it may be amended hereunder, during the Lease Term, which constitute the principal and interest payments payable by the Governmental Representative, acting on behalf of the Governmental

Entity for and in consideration of the financing of the acquisition of a Property Group by the Governmental Representative, acting on behalf of the Governmental Entity, during the Lease Term.

"Code" means the Internal Revenue Code of 1986, as amended.

"Contractor" means each of the manufacturers or proposers from whom the Governmental Representative, acting on behalf of the Governmental Entity, has ordered or will order or with whom the Governmental Representative, acting on behalf of the Governmental Entity, has contracted or will contract for the manufacture, delivery and/or installation of Property.

"Corporation" means \_\_\_\_\_, and its successors and assigns which is a for-profit corporation, duly authorized or qualified to do business in this State and under its articles and bylaws is authorized to enter into this agreement.

"Corporation Representative" means the person or persons at the time designated to act on behalf of the Corporation by written certificate, containing the specimen signature of each such person signed on behalf of the Corporation by the Chairman of the Corporation's board of directors.

"Escrow Agreement" has the meaning ascribed to such term in Section 4.4 of this Agreement.

"Event of Default" means one or more events of default as defined in Section 12.1 of this Agreement.

"Event of Non-appropriation" means for any Property Group, the failure of the Governing Body to appropriate money for any Fiscal Year sufficient to pay the Base Payments payable during such Fiscal Year with respect to such Property Group and to pay all other amounts required to be paid to meet all obligations of the Governmental Representative, acting on behalf of the Governmental Entity, hereunder.

"Financing Statements" means the Uniform Commercial Code-Financing Statements-Form UCC-1 or any other form acceptable to the Corporation.

"Fiscal Year" means the 12-month fiscal period of the Governmental Entity which commences in every year on the date set forth on the execution page hereof and ends in every year on the date shown on the execution page hereof.

"Force Majeure" means, neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligation 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.

"Governing Body" means the governing body of the Governmental Entity specifically named herein.

**“Governmental Entity” means the State or a political subdivision of the State enumerated in NRS 226.110.**

"Governmental Representative" means the person or political body with the requisite authority to enter into agreements for the installment purchase of certain property for public purposes on behalf of the governmental entity;

"Lease" means the financing of the acquisition of a Property Group pursuant to the related Property Schedule, this Agreement as of the date of the Lease without giving any effect to any amendments to the Agreement after the date of the Lease, as incorporated therein, and a Certificate of Acceptance in which the Property Group is described.

"Lease Term" means, with respect to any Lease, the period during which the related Lease is in effect as specified in Section 3.2.

"Net Proceeds" means any insurance proceeds or condemnation awards paid with respect to any Property remaining after deducting therefrom all expenses (including, without limitation, attorneys' fees and costs) incurred in the collection of such proceeds.

"Permitted Encumbrances" means, as of any particular time, (a) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to the provisions of Article VIII and Article IX of this Agreement; (b) this Agreement and amendments hereto; (c) the Corporation's interest in the Property; (d) any Financing Statements filed to perfect security interests pursuant to this Agreement; and (d) such other encumbrances with respect to any Property as to which the Corporation consents to in writing.

"Prepayment Price" with respect to any Property Group, as of the payment dates specified in the Property Schedule relating thereto, the amount so designated and set forth opposite each such date in the related Property Schedule.

"Property" means all items of personal property described in Property Schedules and which are subject to this Agreement.

"Property Acquisition Fund" has the meaning ascribed to such term in Section 4.4 of this Agreement.

"Property Group" means the Property listed on a single Property Schedule.

"Property Schedule" means a schedule in the form of Exhibit A hereto which has been completed with respect to a Property Group and executed by the Governmental Representative and the Corporation as indicated therein.

"Specifications" means the bid specifications and/or purchase order pursuant to which the Governmental Representative, acting on behalf of the Governmental Entity, has ordered Property from a Contractor.

"State" means the State of Nevada.

"Tax Certificate" means, with respect to any Property Group, the related Arbitrage and Tax Certificate.

## ARTICLE II--REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of the Governmental Representative. The Governmental Representative, acting on behalf of the Governmental Entity, represents, covenants and warrants for the benefit of the Corporation as follows:

(a) The Governmental Representative is an agency of the Governmental Entity, has power to enter into this Agreement on behalf of the Governmental Entity, and has duly authorized and taken the necessary acts (including all required approvals) required prior to the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement or any Property Schedule or the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof conflicts with or results in a breach of the terms, conditions, or provisions of any restriction or any agreement or instrument to which the Governmental Representative or the Governmental Entity is now a party or by which the Governmental Representative or the Governmental Entity is bound or constitutes a default under any of the foregoing, nor conflicts with or results in a violation of any provision of law governing the Governmental Representative or the Governmental Entity, and no representation, covenant or warranty herein or therein is false, misleading or erroneous in any material respect.

(c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting the Governmental Representative or the Governmental Entity, nor to the best of the knowledge of the Governmental Representative is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially and adversely affect the transactions contemplated by the Governmental Representative in connection with this Agreement or any Property Schedule or which would adversely affect, in any way, the validity or enforceability of this Agreement or any Property Schedule or any material agreement or instrument to which the Governmental Representative, acting on behalf of the Governmental Entity, is a party, used or contemplated for use in the consummation of the transactions contemplated hereby.

(d) The proceeds from each Lease and any investment earnings thereon will be used only for payment of costs of acquiring, equipping and installing the related Property Group.

(e) The Governmental Entity has never defaulted under any bond, note, warrant, debt obligation, agreement, or under any contract similar to this Agreement. The Governmental Representative anticipates having sufficient moneys to pay, and that will be available and used for the payment of, regardless whether moneys are hereafter budgeted therefor, an amount equal to that portion of the Base Payments set forth in each Property Schedule when the same becomes due for the remainder of the current Fiscal Year of the Governmental Entity.

(f) No Lease Term exceeds the estimated useful life of the related Property Group.

(g) Prior to the occurrence of an Event of Non-appropriation, neither the Governmental Entity nor the Governmental Representative will take or permit, or omit to take or cause to be taken, any action that would adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Base Payments payable by the Governmental Representative, acting on behalf of the Governmental Entity, and, if it should take or permit, or omit to take or cause to be taken, any such action, the Governmental Representative shall take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof. The Governmental Entity and the Governmental Representative specifically covenant:

(i) At least one of the following two conditions will be satisfied: (1) less than 10% of the proceeds of a Lease (reduced by costs of issuance and any amounts deposited in any reasonably required reserve fund) will be used directly or indirectly in the business of a person other than a state or local governmental unit or (2) less than 10% of the principal or interest on the Base Payments is directly or indirectly (x) secured by an interest in property used or to be used in a private business or any interest in payments made with respect to such property or (y) to be derived from payments made with respect to property, or borrowed money, used or to be used in a private business;

(ii) Less than 5% of the proceeds of a Lease (reduced by costs of issuance and any amounts deposited in any reasonably required reserve fund) will be used by nongovernmental persons for a use unrelated to the Property;

(iii) It will not lease directly or indirectly more than 5% or \$5 million (whichever is less) of the proceeds of a Lease to nongovernmental persons;

(iv) It will not enter into any management contract with respect to the facilities in which the Property is located unless it obtains an opinion of nationally recognized bond counsel that such management contract will not impair the exclusion from gross income for federal income tax purposes of the interest component of the Base Payments;

(v) The Governmental Representative and the Corporation acknowledge that the continued exclusion of the interest component of the Base Payments from gross income for federal income tax purposes depends, in part, upon compliance with the arbitrage limitations imposed by Section 148 of the Code. The Governmental Representative, acting on behalf of the Governmental Entity, and the Corporation covenant that they will comply with all the requirements of Section 148 of the Code, including the rebate requirements and that they shall not permit at any time any of the proceeds of a Lease or other funds of the Governmental Representative to be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the obligations of the Governmental Representative, acting on behalf of the Governmental Entity, hereunder to be "arbitrage bonds" for purposes of Section 148 of the Code; and

(vi) The obligation of the Governmental Representative, acting on behalf of the Governmental Entity, to make payments of Base Payments are not and shall not be "federally guaranteed" as defined in Section 149(b) of the Code.

(vii) The Governmental Representative shall cause books for the registration and transfer of each Lease and each Corporation thereunder to be kept in accordance with Section 149(a) of the Code.

Section 2.2. Representations, Covenants and Warranties of Corporation. The Corporation represents, covenants and warrants for the benefit of the Governmental Representative and the Governmental Entity as follows:

(a) The Corporation is a for-profit corporation, duly organized, existing, and in good standing under and by virtue of the laws of the State of \_\_\_\_\_, authorized or qualified to do business in the State, has all necessary power to enter into this Agreement, is possessed of full power to own and hold personal property and to lease and sell the same as lessor or seller, and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery hereof, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound, or constitutes a default under any of the foregoing.

(c) To the knowledge of the Corporation, there is no litigation or proceeding pending or threatened against the Corporation or any other person affecting the right of the Corporation to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither the execution and delivery of this Agreement by the Corporation, nor compliance by the Corporation with its obligations under this Agreement, require the approval of any regulatory body, any parent company, or any other entity, which approval has not been obtained.

### ARTICLE III--AGREEMENT AND LEASE TERMS

Section 3.1. Agreement Term. This Agreement shall be in effect for an Agreement Term commencing upon the date of execution hereof and ending upon the termination of all Lease Terms; provided, however, no Property Schedules shall be executed after an Event of Default or an Event of Non-appropriation.

Section 3.2. Lease Term. The Lease Term with respect to a Lease shall commence upon the date specified in the related Property Schedule and shall terminate upon the earliest to occur of any of the following events:

(a) The exercise by the Governmental Representative, acting on behalf of the Governmental Entity, of its prepayment option with respect to such Lease pursuant to Article X of this Agreement and the discharge of the obligation of the Governmental Representative, acting on behalf of the Governmental Entity, to pay Base Payments with respect thereto;

(b) An Event of Default by the Governmental Representative or the Governmental Entity under Article XII of this Agreement at the Corporation's option;



(c) The payment in full by the Governmental Representative of all Base Payments and all other amounts authorized or required to be paid by Governmental Representative, acting on behalf of the Governmental Entity, with respect to such Lease; or

(d) The termination of a Lease by the Governing Body in accordance with Section 3.3 of this Agreement.

Section 3.3. Non-appropriation. Any Lease shall terminate upon the occurrence of an Event of Non-appropriation with respect thereto on the last day of the Fiscal Year preceding the Fiscal Year to which such Event of Non-appropriation relates. The Governmental Representative shall give notice to the Corporation of such Event of Non-appropriation and the Fiscal Year to which it relates as quickly as is practical, and shall use its best efforts to give such a notice on the earlier of (i) the date not less than thirty (30) days prior to the end of the then current Fiscal Year and (ii) the date not less than thirty (30) days after the occurrence of the Event of Non-appropriation. The Governmental Representative shall use its best efforts to give notice of any anticipated Event of Non-appropriation not less than one hundred and twenty (120) days prior to the end of the then current Fiscal Year. In the event of termination of a Lease as provided in this Section, the Governmental Representative shall comply with the instructions received from the Corporation in accordance with Section 12.6 within ten (10) days after the termination of such Lease Term.

Section 3.4. Intent to Continue; Appropriations. The Governmental Representative presently intends to continue each Lease for its entire Lease Term made subject hereto and to pay all Base Payments due thereunder. The Governmental Representative will include in his or her budget request for each Fiscal Year the Base Payments to become due in such Fiscal Year, and will use all reasonable and lawful means available to secure the appropriation of money for such Fiscal Year sufficient to pay all such Base Payments coming due therein. The Governmental Representative reasonably believes that moneys in any amount sufficient to make all such Base Payments can and will lawfully be appropriated and made available for this purpose.

Section 3.5. Effect of Termination. Upon termination of a Lease as provided in Section 3.3, neither the Governmental Representative nor the Governmental Entity shall be responsible for the payment of Base Payments relating thereto coming due in succeeding Fiscal Years, but if the Governmental Representative has not delivered possession of the related Property Group to the Corporation in accordance with Section 12.6 and, if so instructed by the Corporation, conveyed to the Corporation or released its interest in such Property Group within ten (10) days after the termination of the related Lease Term, the termination shall nevertheless be effective, but, subject to the availability of appropriated funds, the Governmental Representative shall be responsible for the payment of the portion of the Base Payments that would have thereafter come due during the period which the Governmental Representative continues to use the Property Group and for any other loss suffered by the Corporation as a result of the Governmental Representative's failure to take such actions as required.

#### ARTICLE IV—ACQUISITION OF PROPERTY

Section 4.1. Acquisition of Property. The Governmental Representative shall provide notice to the Corporation when it desires to purchase Property pursuant to this Agreement. Such notice shall specify the cost of the Property, the intended use for the Property, the Contractor of the Property, the desired or expected delivery date of the Property and the desired purchase terms relating to such Property. The Governmental Representative, acting on behalf of the Governmental Entity, shall be

responsible for ordering such Property from the appropriate Contractor or Contractors. The Corporation shall have no obligation to make payment to a Contractor or to reimburse the Governmental Representative for any payment it made to a Contractor for a Property Group (or, if the alternative procedure described in Section 4.4 hereof is utilized, consent to disbursement by the Escrow Agent) until ten (10) business days after the Property Schedule has been executed by the Governmental Representative, acting on behalf of the Governmental Entity, and the Corporation. On or prior to the date that the Corporation executes the Property Schedule, the Governmental Representative shall have delivered to the Corporation all of the following in form and substance satisfactory to the Corporation: (a) a Property Schedule executed by the Governmental Representative, acting on behalf of the Governmental Entity; (b) a Certificate of Acceptance executed by the Governmental Representative, acting on behalf of the Governmental Entity; (c) evidence of insurance with respect to the Property Group in compliance with Article VIII of this Agreement; (d) Contractor invoice(s) relating to the Property Group and if such invoices have been paid by the Governmental Representative, acting on behalf of the Governmental Entity, evidence of payment thereof and, if applicable, evidence of official intent to reimburse such payment with this Agreement as required by the Code and regulations promulgated thereunder; (e) as applicable, Financing Statements executed by the Governmental Representative, acting on behalf of the Governmental Entity, as debtor; (f) a completed and executed Form 8038-G or -GC or evidence of filing thereof with the Secretary of Treasury; (g) a completed and executed Tax Certificate; and (h) any other documents required by the Corporation.

Section 4.2. Acceptance. If the alternative procedure described in Section 4.4 is utilized, upon delivery of any Property Group during the term of the related Escrow Agreement, the Governmental Representative, acting on behalf of the Governmental Entity, shall inspect such Property, and if such Property meets the Specifications, the Governmental Representative shall, within three (3) business days from the date of delivery of the Property Group, provide to the Corporation a completed and executed copy of a Certificate of Acceptance relating thereto. Simultaneously with the delivery, the Governmental Representative shall take all actions necessary to vest legal title to the Property Group in the Governmental Entity, and to perfect a security interest therein in favor of the Corporation.

Section 4.3. Enjoyment. The Corporation hereby covenants to provide the Governmental Entity during each Lease Term with the quiet use and enjoyment of the related Property Group, and the Governmental Entity shall during such Lease Term peaceably and quietly have and hold and enjoy such Property Group, without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Agreement. The Corporation has not been in the chain of title of the Property, has not operated, controlled or had possession of the Property nor had control over the Governmental Representative or the Governmental Entity's operation, use, storage or maintenance of the Property. The Governmental Representative, acting on behalf of the Governmental Entity, is solely responsible for the selection of the Property, and the manufacturer and proposer thereof, and is solely responsible for the use, maintenance, operation and storage of the Property.

Section 4.4. Alternative Procedure; Escrow Agreement. Notwithstanding the provisions of Section 4.1, upon agreement by the Governmental Representative, acting on behalf of the Governmental Entity, and the Corporation as to any Property Group, the Corporation and the Governmental Representative, acting on behalf of the Governmental Entity, may enter into an escrow agreement (an "Escrow Agreement") with an escrow agent establishing an escrow account to be an appropriately designated property acquisition fund ("Property Acquisition Fund") from which the Property Group cost is to be paid. Any Escrow Agreement relating to a Lease shall be executed on or prior to the date the related Property Schedule is executed by the Corporation. The amount deposited by the Corporation into

a Property Acquisition Fund shall be held, invested and disbursed in accordance with the related Escrow Agreement and shall constitute a Lease from the Corporation to the Governmental Representative which shall be repaid as part of the Base Payments due under the related Property Schedule.

## ARTICLE V--PAYMENT BY THE GOVERNMENTAL REPRESENTATIVE

Section 5.1. Base Payments. The Governmental Representative, acting on behalf of the Governmental Entity, shall pay Base Payments to the Corporation during the Lease Term in the amounts and on the dates specified in the Property Schedule relating thereto. The Base Payments with respect to each Lease shall be in consideration for the financing of the acquisition, installation and equipping of the related Property Group. A portion of each Base Payment is paid as and represents the payment of interest as set forth in each Property Schedule.

Section 5.2. Manner of Payment. The Base Payments and, if paid, the Prepayment Price, shall be paid to the Corporation at the address specified by the Corporation, and such payments shall be made exclusively from money legally available therefor, in lawful money of the United States of America.

Section 5.3. Current Expenses. The obligations of the Governmental Representative, acting on behalf of the Governmental Entity, under this Agreement, including its obligation to pay the Base Payments with respect to any Lease due in any Fiscal Year for which this Agreement is in effect, shall constitute a current expense of the Governmental Entity for such Fiscal Year and shall not constitute an indebtedness of the Governmental Entity within the meaning of the Constitution and laws of the State and the Governmental Entity, including particularly Article 9, Section 3 of the State Constitution. Nothing herein shall constitute a pledge by the Governmental Entity of any taxes or other moneys, other than moneys lawfully appropriated from time to time for this purpose and Net Proceeds, to the payment of any Base Payments or other amount coming due hereunder.

Section 5.4. Payments Unconditional. Except as provided in Section 3.3 or the failure of the property to be delivered, the obligation of the Governmental Representative to make Base payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between the Governmental Representative and Corporation or between the Governmental Representative and Contractor or any other person, the Governmental Representative shall make all Base Payments and other payments required hereunder when due and shall not withhold any Base Payment or other payment pending final resolution of such dispute nor shall the Governmental Representative assert any right of set-off or counterclaim against its obligation to make Base Payments or other payments required hereunder. The Governmental Representative's obligation to make Base Payments or other payments shall not be abated through accident, unforeseen circumstances or to perform as desired, damage or destruction to the Property, loss of possession of the Property or obsolescence of the Property.

Section 5.5. Event of Taxability. If Lessor either (i) receives notice, in any form, from the Internal Revenue Service or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor, that Lessor may not exclude any Interest paid under any Lease from its Federal gross income (each an "Event of Taxability"), the Lessee shall pay to Lessor upon demand (x) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the Interest due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the

after-tax yield rate) on the transaction evidenced by such Lease through the date of such event and (y) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor.

**ARTICLE VI--DAMAGE, DESTRUCTION AND CONDEMNATION;  
USE OF NET PROCEEDS**

Section 6.1. Damage, Destruction or Condemnation. If, during the Agreement Term, (i) any Property is destroyed, or damaged by fire or other casualty; (ii) title to, or the temporary or permanent use of any Property or the estate of the Governmental Entity or the Corporation in any Property shall be taken under the power of eminent domain by any governmental authority; (iii) a material defect in any Property shall become apparent; or (iv) title to or the use of any Property shall be lost by reason of a defect in title thereto, then the Governmental Representative, acting on behalf of the Governmental Entity, shall continue to be obligated, subject to the provisions of Section 6.2 of this Agreement, to continue to pay the amounts specified in Section 5.1 of this Agreement.

Section 6.2. Replacement of Property; Use of Net Proceeds. Upon the occurrence of any of the events specified in Section 6.1, the Governmental Representative shall as soon as practicable after such event (but in no event later than forty-five (45) days after such event) either: (a) replace the Property at the sole cost and expense of the Governmental Representative, acting on behalf of the Governmental Entity, with property of equal or greater value to the Property immediately prior to the time of the loss occurrence, whereupon such replacement Property shall be substituted in this Agreement and the other related documents by appropriate endorsement; or (b) pay the applicable Prepayment Price of the Property Group to which such Property belongs as set forth in the related Property Schedule. The Governmental Representative shall notify the Corporation of which course of action it desires to take within thirty (30) days after the loss occurrence.

**ARTICLE VII--DISCLAIMER OF WARRANTIES; OTHER COVENANTS**

Section 7.1. Disclaimer of Warranties. THE CORPORATION MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE USE, VALUE, DESIGN, QUALITY, CONDITION, DURABILITY, CAPACITY, SUITABILITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF ANY PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY. The Governmental Representative hereby acknowledges and declares that the Governmental Representative, acting on behalf of the Governmental Entity, is solely responsible for the operation and maintenance of the Property during the Agreement Term, and that the Corporation has no responsibility therefor. In no event shall the Corporation be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishings, functioning or use by the Governmental Representative, acting on behalf of the Governmental Entity, of any item of Property, product or service provided with respect thereto.

Section 7.2. Further Assurances and Corrective Instruments. The Corporation and the Governmental Representative, acting on behalf of the Governmental Entity, agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby financed or intended so to be, or for otherwise carrying out the intention hereof.

Section 7.3. Corporation and Governmental Representatives. Whenever under the provisions hereof the approval of the Corporation or the Governmental Representative is required to take some action at the request of the other, unless otherwise provided, such approval or such request shall be given for the Corporation by the Corporation Representative and for the Governmental Entity by the Governmental Representative, and the Corporation and the Governmental Representative shall be authorized to act on any such approval or request.

Section 7.4. Compliance With Requirements. During the Agreement Term, the Governmental Representative and the Corporation shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the Property or any portion thereof (or be diligently and in good faith contesting such orders).

#### ARTICLE VIII--MAINTENANCE, TAXES, INSURANCE AND OTHER CHARGES

Section 8.1. Maintenance of Property by the Governmental Representative. The Governmental Representative, acting on behalf of the Governmental Entity, agrees that, at all times during a Lease Term, to maintain, preserve and keep the related Property Group or cause the Property Group to be maintained, preserved and kept in good repair, working order and condition, in compliance with prevailing industry standards and that the Governmental Representative will from time to time make or cause to be made all necessary and proper repairs, including replacement of parts and accessories except as otherwise provided in section 6.2 of this Agreement. The Corporation shall not have any responsibility in any of these matters or for the making of any repairs, modifications or replacements to the Property. All such repairs and replacement parts and accessories shall be part of the Property and shall be subject to the terms of this Agreement.

Section 8.2. Modification of Property. The Governmental Representative, acting on behalf of the Governmental Entity, shall, at its own expense, have the right to make repairs to the Property, and to make repairs, replacements, substitutions and modifications to all or any of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or medication shall thereafter comprise part of the Property and be subject to the provisions of the related Lease. Such work shall not in any way damage the Property or cause it to be used for purposes other than those authorized under the provisions of applicable law or those contemplated by this Agreement; and the Property, upon completion of any such work shall be of a value which is not less than the value of the Property immediately prior to the commencement of such work.

Section 8.3. Taxes, Other Governmental Charges and Utility Charges.

(a) In the event that the Property or any portion thereof or any Base Payments with respect thereto shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the Governmental Representative, acting on behalf of the Governmental Entity, shall, during the related Lease Term, pay the amount of all such taxes, assessments and governmental charges then due. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Governmental Representative, acting on behalf of the Governmental Entity, shall be obligated to provide only for such installments as are required to be paid during such Lease Term. The Governmental Representative shall not allow any liens for taxes, assessments or governmental charges with respect to the Property or any portion thereof to become delinquent (including,

without limitation, any taxes levied upon the Property or any portion thereof which, if not paid, will become a charge on the rentals). The Governmental Representative, acting on behalf of the Governmental Entity, shall also pay, as the same respectively become due, all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property.

(b) The Governmental Representative may, at the expense and in the name of the Governmental Entity, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the Governmental Representative that, in the opinion of Independent Counsel, by nonpayment of any such items the security afforded pursuant to this Agreement will be materially endangered or the Property or any portion thereof will be subject to loss or forfeiture, or the Corporation will be subject to liability, in which event such taxes, assessments, utility or other charges shall be paid forthwith (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such taxes, assessments, utility or other charges).

Section 8.4 Provisions Regarding General Liability and All Risks Property Insurance. During each Lease Term, the Governmental Representative, acting on behalf of the State, shall cause all-risk property insurance to be procured and maintained with respect to the Property Groups in an amount not less than 100% of the replacement cost of each and every Property Group. The Property may be insured under a blanket insurance policy which insures other property as well, as long as such blanket insurance policy complies with the requirements of this Agreement. The Net Proceeds of insurance required by this paragraph shall be applied to the prompt repair, restoration or replacement of the Property, as provided in Section 6.2. Any Net Proceeds not needed for those purposes shall be paid to the Governmental Representative, acting on behalf of the State. During each Lease Term, the Governmental Representative, acting on behalf of the Governmental Entity, shall cause general liability insurance to be carried for personal injuries, death or damage to or loss of property arising out of or in any way relating to the Property sufficient to protect the Corporation from liability in all events.

All insurance policies required by this Section shall be procured, maintained and kept in force until all Property Group obligations have been satisfied. The insurance shall be provided by insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State, and shall have a A.M. Best rating of A-:VII or better. The insurance shall contain a provision that the Insurer shall not cancel or materially reduce coverage thereunder without giving written notice to the insured parties at least thirty (30) days before the cancellation or reduction becomes effective. Each insurance policy required by this Section shall name the Corporation as an additional insured party and loss payee. Prior to delivery of the Property to the Governmental Representative, the Governmental Representative shall deposit with the Corporation a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy, the Governmental Representative shall furnish to the Corporation evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Section.

Section 8.5. Self-insurance. Notwithstanding the provisions of Section 8.4, the Governmental Representative may elect to meet the requirements of such Section 8.4 through self-insurance provided by a Qualified Self-insurance Program. "Qualified Self-insurance Program" means a program of self-insurance which has been established by the State, pursuant to a State law specifically authorizing the

program, and which is funded in a manner similar to commercial insurance or in a manner provided in such State law.

Section 8.6. Use; Permits. The Governmental Representative shall exercise due care in the installation, use, operation and maintenance of the Property, and shall not install, use, operate or maintain the Property improperly, carelessly, in violation of any State or federal law or for a purpose or in a manner contrary to that contemplated by this Agreement. The Governmental Representative shall obtain all permits and licenses for the installation, operation, possession and use of the Property. The Governmental Representative shall comply with all State and federal laws applicable to the installation, use, possession and operation of the Property, and if compliance with any such State and federal law requires changes or additions to be made to the Property, such changes or additions shall be made by the Governmental Representative at its expense. The Governmental Representative shall not use any item of Property to haul, convey, store, treat, transport or dispose of any "hazardous substances" or "hazardous waste" as such terms are defined in any federal, state or local law, rule or regulation pertaining to the protection of the environment (together, "Environmental Laws"). The Governmental Representative agrees that if the Governmental Representative is required to deliver any item of Property to the Corporation or the Corporation's agent, the Property shall be delivered free of all substances which are regulated by or form a basis for liability under any Environmental Law. The Governmental Representative shall comply with all license and copyright requirements of any software used in connection with the Property.

#### ARTICLE IX--TITLE TO PROPERTY; SECURITY INTERESTS; LIMITATIONS ON ENCUMBRANCES

Section 9.1. Title. During the Lease Term with respect to any Lease, and so long as no Event of Non-appropriation or Event of Default has occurred nor is continuing with respect to such Property Group, legal title to such Property Group and any and all repairs, replacements, substitutions and modifications to it shall be vested in the Governmental Entity. Upon termination of such Lease Term pursuant to Section 3.2(b) or (d) hereof, full and unencumbered legal title to the related Property Group, at the election of the Corporation and pursuant to written instructions from the Corporation, shall pass to the Corporation, and the Governmental Entity shall have no further interest therein. In either of such events, the Governmental Representative shall execute and deliver to the Corporation such documents as the Corporation may request to evidence the passage of legal title to such Property Group to the Corporation and the termination of the Governmental Representative's and the Governmental Entity's interest therein, and upon request by the Corporation shall deliver possession of such Property Group to the Corporation or the Corporation's agent. Upon termination of the Lease Term with respect to any Lease pursuant to Section 3.2(a) or (c) hereof, the Corporation's security or other interest in such Property Group shall terminate, and the Corporation shall execute and deliver to the Governmental Representative such documents as the Governmental Representative may request to evidence termination of the Corporation's security or other interest and the Corporation shall execute and deliver to the Governmental Representative such documents as the Governmental Representative may request to evidence termination of the Corporation's security or other interest in such Property Group.

Section 9.2. Security Interest. The Governmental Representative, acting on behalf of the Governmental Entity, grants to the Corporation a continuing, first priority security interest in and to the Property, all repairs, replacements, substitutions and modifications thereto or thereof made pursuant to Article VI, all moneys, if any, deposited into any Escrow Account pursuant to Section 4.4, and all

proceeds of the foregoing in order to secure the Governmental Representative's payment of all Base Payments and other amounts due during the Lease Term relating thereto and the performance of all other obligations herein to be performed by the Governmental Representative. The Governmental Representative, acting on behalf of the Governmental Entity, will join with Corporation in executing such financing statements or other documents as appropriate and will perform such acts as the Corporation may request to establish and maintain a perfected security interest in the Property.

Section 9.3. No Encumbrance, Mortgage or Pledge of Property. The Governmental Representative shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property other than as provided in this Agreement and Permitted Encumbrances.

#### ARTICLE X—PREPAYMENT OPTION

Section 10.1. When Available. The Governmental Representative shall have the option to prepay (with no prepayment penalty) the entire amount due under any Lease and terminate such Lease for the then applicable Prepayment Price, but only if no Event of Default has occurred and is continuing under such Lease, and only in the manner provided in this Article.

Section 10.2. Exercise of Option. The Governmental Representative shall give notice to the Corporation of its intention to exercise its prepayment option with respect to a Lease not less than thirty (30) days prior to the date on which the option is to be exercised and shall deposit with the Corporation on the date of exercise an amount equal to all Base Payments and any other amounts then due or past due and the applicable Prepayment Price.

#### ARTICLE XI--ASSIGNMENT, INDEMNIFICATION AND SELLING

Section 11.1. Assignment by Corporation. The Corporation may not assign its rights hereunder to any person or entity without the prior written consent of the Governmental Representative; provided, however, the Corporation may assign its rights hereunder to an affiliate of the Corporation, upon written notice provided there is no change in the remittance of Base Payments, there is no adverse change in the Government Representatives' rights or obligations hereunder, there are no undisclosed claims or interests in this agreement, and the Corporation maintains the record required by Section 149(a) of the Code.

In the event an assignment is made or attempted under the authority of this Section without the prior written consent of the Governmental Representative, the assignor and assignee jointly warrant to the Governmental Representative that the assignment meets the conditions of this Section, and assignor and assignee jointly and severally shall indemnify the Governmental Representative from all loss or damage suffered as a result of an assignment that breaches any of the terms or conditions of this Section.

Section 11.2. Assignment and Sale by the Governmental Entity. Neither this Agreement nor any Lease may be assigned by the Governmental Entity for any reason except with the consent of the Corporation. The Governmental Entity will not sell, assign, transfer or convey the Property or any portion thereof during the Lease Term related thereto without the consent of the Corporation.



Section 11.3. Risk of Loss. The Governmental Entity shall bear the risk of loss, theft, destruction, or damage of the Property or any part thereof which is not proximately caused by the negligent conduct of the Corporation, its officers, directors, employees and agents.

## ARTICLE XII--EVENTS OF DEFAULT AND REMEDIES

Section 12.1. Events of Default defined. The following shall be "Events of Default" under a Lease and the term "Default" shall mean with respect to any Lease, whenever it is used in this Agreement, any one or more of the following events:

(a) Failure by the Governmental Representative to pay any Base Payments with respect to such Lease within forty-five (45) days after the time specified in the related Property Schedule.

(b) Failure by the Governmental Representative or the Governmental Entity to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to such Lease, other than as referred to in Section 12.1 (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied shall have been given to the Governmental Representative by the Corporation unless the Corporation shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Corporation will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Governmental Representative within the applicable period and diligently pursued until such failure is corrected.

(c) Failure of the Governmental Representative to maintain insurance as required by Article VIII.

An Event of Default with respect to one Lease and the Property Group subject thereto shall not constitute an Event of Default with respect to another Lease and the Property Group subject thereto.

The provisions of subsection (b) of this Section are subject to the following limitations: if by reason of Force Majeure the Governmental Representative is unable in whole or in part to carry out any of its agreements contained herein (other than its obligations contained in Article V hereof), the Governmental Representative shall not be deemed in default during the continuance of such inability.

Section 12.2. Remedies on Default or Event of Non-appropriation. Upon the occurrence and continuance of any Event of Default or any Event of Non-appropriation with respect to a Lease and the Property Group subject thereto (in which case, on the first day of any Fiscal Year with respect to which an Event of Non-appropriation has occurred), the Corporation shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(a) With respect to an Event of Default, the Corporation, with or without terminating the Lease as to which the Event of Default has occurred, may declare all Base Payments due or to become due under such Lease during the Fiscal Year in effect when the event occurs to be immediately due and payable by the Governmental Representative, whereupon such Base Payments shall be immediately due and payable.

(b) The Corporation, with or without terminating the Lease as to which the Event of Default or Event of Non-appropriation has occurred, may repossess such Property by giving the Governmental Representative written notice to deliver all of the Property within such Property Group to the Corporation, whereupon the Governmental Entity shall return all of such Property in the manner provided in Section 12.6; or in the event the Governmental Entity fails to do so within ten (10) days after receipt of such notice, the Corporation may enter upon the Governmental Entity's premises, subject to any security limitations and restrictions, where such Property is kept and take possession of such Property and charge the Governmental Entity for costs incurred in repossessing such Property.

(c) If the Corporation terminates the Lease as to which an Event of Default or Event of Non-appropriation has occurred and, in its discretion, takes possession and disposes of the Property Group subject thereto or any portion thereof, the Corporation shall apply the proceeds of any such disposition to pay the following items in the following order: (i) all expenses incurred by Corporation in exercising its remedies under this Agreement; (ii) the applicable Prepayment Prices of the Property Group; and (iii) the balance of any Base Payments owed by the Governmental Representative during the Fiscal Year then in effect. Any disposition proceeds remaining after the requirements of Clauses (i), (ii) and (iii) have been met shall be paid to the Governmental Representative.

(d) The Corporation may take any other remedy available at law or in equity with respect to such Event of Default. Provided, however; that if the State Legislature fails to appropriate money for payments due pursuant to the Lease, or the State of Nevada or the State Agency breaches the agreement, no property of the State of Nevada or of the State Agency may be forfeited except for the Property Group which is the subject of the Lease.

Section 12.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder and every remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power and any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation, to exercise any remedy reserved in this Article XII, it shall not be necessary to give any notice, other than such notice as may be required in this Article XII.

Section 12.4. Waivers. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing, shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No such waiver shall extend to or affect any subsequent or other Event of Default under this Agreement or impair any right consequent thereon.

Section 12.5. Agreement To Pay Attorneys' Fees and Expenses. In the event that the Governmental Entity shall default under any of the provisions hereof and the Corporation shall employ attorneys or incur other expenses for the collection of Base Payments, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Entity herein contained, the Governmental Entity agrees that it shall pay on demand therefor to the Corporation the reasonable fees of such attorneys and such other expenses so incurred.

Section 12.6. Return of Property; Release of the Governmental Entity's Interest. Upon the termination of a Lease prior to the payment of all Base Payments or the applicable Prepayment Price in accordance with each Property Schedule, the Governmental Representative shall deliver the Property as directed by the Corporation in the condition, repair, appearance and working order required in Section 8.1, in the following manner as specified by the Corporation: (a) the Governmental Entity, at its sole cost and expense, subject to such money being made available by appropriation during any Fiscal Year, shall cause competent personnel to de-install, test and inspect the Property, perform any repairs required to place the Property in the condition required by Section 8.1, and, if applicable, crate the Property in accordance with manufacturer's instructions and (b) the Governmental Entity shall cause the Property, at the Governmental Entity's sole cost and expense, subject to such money being made available by appropriation during any Fiscal Year, to be delivered to such place as the Corporation shall specify. If the Governmental Entity refuses to return the Property in the manner designated, the Corporation may repossess the Property and charge to the Governmental Representative the costs of such repossession or pursue any remedy described in Section 12.2. Upon termination of a Lease in accordance with Section 3.3 or Article XII hereof, at the election of the Corporation and upon the Corporation's written notice to the Governmental Representative, full and unencumbered legal title and ownership of the related Property Group shall pass to the Corporation, the Governmental Entity shall have no further interest therein and the Governmental Entity shall execute and deliver to the Corporation such documents as the Corporation may request to evidence the passage of legal title and ownership to the Corporation and termination of the Governmental Entity's interest in such Property Group. In the event the Governmental Entity does not appropriate funds to pay the expenses specified in clauses (a) or (b) of the first sentence of this Section 12.7, the Governmental Entity shall allow the Corporation onto its premises to undertake the activities described in those clauses, at such reasonable times as requested by the Corporation.

#### ARTICLE XIII--MISCELLANEOUS

Section 13.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified or registered mail, postage prepaid, addressed as follows:

To the Corporation:

Name  
Contact Person:  
Address  
City, State, Zip Code  
Telephone No.:  
Facsimile No.:

Governmental Entity:

Name  
Contact Person:  
Address  
City, State, Zip Code  
Telephone No.:  
Facsimile No.:

Section 13.2. Financial Information. During the Agreement Term, the Governmental Entity annually will provide the Corporation with current financial statements, budgets, proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of the Governmental Entity to continue the Agreement as may be requested by the Corporation.

Section 13.3. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Corporation and the Governmental Entity and their respective successors and assigns, subject, however, to the limitations contained in Article XI of this Agreement.

Section 13.4. Amendments, Changes and Modifications. This Agreement may not be effectively amended, changed, modified or altered without the written consent of the Corporation and the Governmental Entity. No Lease may be amended, changed, modified or altered without the written consent of the Corporation and the Governmental Entity.

Section 13.5. Payments Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Agreement, shall be a legal holiday or a day on which banking institutions in the city in which the office of the Corporation designated in a Lease is located are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next preceding day that is not a legal holiday or a day on which such banking institutions are not authorized by law to remain closed with the same force and effect as if done on the nominal date provided in this Agreement.

Section 13.6. Severability. In the event that any provision of this Agreement, including, without limitation, the provisions of Sections 11.3 and 13.9 hereof, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.7. Entire Agreement, Amendments, Changes and Modifications. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Agreement may be amended or any of its terms modified only by written document duly authorized, executed and delivered by the Corporation and the Governmental Entity, acting on behalf of the Governmental Entity.

Section 13.8. Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary in this Agreement, in no event shall this Agreement or any Lease require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce the principal portion of the remaining Base Payments and when no such principal remains, refunded to the Governmental Representative. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the related Lease Term so that the interest is uniform through such term.

Section 13.9. Waiver of Jury Trial. The Governmental Entity and the Corporation hereby unconditionally waive their right to a jury trial of any claim or cause of action based upon or arising out of, directly or indirectly, this Agreement, any dealings between the Governmental Entity and the Corporation relating to the subject matter hereof, and/or the relationship that is being established

between the Governmental Entity and Corporation. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court (including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims). This waiver is irrevocable meaning that it may not be modified either orally or in writing, and the waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 13.10. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.11. Applicable Law. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Nevada, without giving effect to any to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. Contractor consents to the jurisdiction of the Nevada state district courts for enforcement of this Contract.

Section 13.12. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 13.13. Need for Appropriations.

(a) Nothing in this Agreement obligates the Governing Body to appropriate any money for the payment of any obligations hereunder, including, without limitation, the obligations described in Sections 2.1(g), 6.2, 8.1, 8.3(a), 8.4, 8.5, 11.3, 12.1(b) and 12.1(d), the last paragraph of 12.1,12.2(a), 12.2(b) and 12.6.

(b) Nothing in this Agreement obligates the Governmental Representative, acting on behalf of the Governmental Entity, to expend funds in any Fiscal Year to meet any obligation hereof in an amount in excess of what has been appropriated in that Fiscal Year for the purposes of meeting the obligations of this Agreement, including the provisions above-mentioned in subparagraph (a).

Section 13.14. Certificates of Participation. No Certificates of Participation may be created in this Agreement or in the Lease, unless specifically allowed by the Nevada State Board of Examiners, upon recommendation of the State Treasurer.

(LESSOR)  
Contact Name  
Title  
Vendor Name  
Address  
City, State & Zip

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(LESSEE)  
Contact Name  
Title  
State of Nevada, by and through  
Agency Name  
Address  
City, State & Zip

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM

ATTORNEY GENERAL

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

Name: Jeff Menicucci  
Title: Deputy Attorney General

Dated: \_\_\_\_\_

Approved June, 2004  
Revised July, 2008

**EXHIBIT A**

**PROPERTY PAYMENT SCHEDULE**  
**For use with Individual Agency Financing Definition Agreements**

**PURCHASE PRICE: \$\_\_\_\_\_**

Lease Payment Date	Principal	Interest	Base Rent	Remaining Principal Balance
	\$_____	\$_____	\$_____	\$_____
<b>Total Remaining</b>	<b>\$_____</b>	<b>\$_____</b>	<b>\$_____</b>	<b>\$_____</b>

**Attachment G**  
**OPINION OF COUNSEL LETTER**



DATE:

TO: Mr. Greg Smith, Administrator  
Department of Administration, Division of Purchasing  
State of Nevada  
515 East Musser Street, Room 300  
Carson City, NV 89701

RE: MASTER LEASE PURCHASE AGREEMENT #

OPINION OF COUNSEL

The Office of the Attorney General has acted as counsel with respect to the above Master Lease Purchase Agreement (the "Agreement") between \_\_\_\_\_ (the "Lessor") and the \_\_\_\_\_ (the "Lessee"), by and through its Department of Administration, Division of Purchasing.

Subject to the qualifications and limitations expressed below, as of the date of this letter, it is our opinion that:

1. Lessee is a state or a fully constituted political subdivision or agency of the state and is duly organized, existing, and operating under the constitution and laws of the State of Nevada.
2. The execution, delivery and performance of the Agreement by Lessee is duly authorized by all necessary action on the part of Lessee in accordance with Nevada law.
3. Under fully disclosed current Nevada law, the Agreement constitutes a legal, valid and binding contract enforceable in accordance with its terms, except to the extent limited by local, state, and federal laws affecting remedies and by bankruptcy, reorganization, or other laws of general application relating to or affecting the enforcement of creditor's rights.

The undersigned certifies that he is qualified to practice law in the State of Nevada. This office expresses no opinion with respect to the laws of any jurisdiction other than the internal laws of the State of Nevada. Our opinion is based upon such laws as are in effect on the date of this opinion letter, and we expressly disclaim any undertaking to advise you of any subsequent changes in law. Our opinions are solely for the benefit and reliance of the addressee and its assignees and may not be relied upon by any other person.

Sincere regards,

Catherine Cortez Masto  
Attorney General

By: \_\_\_\_\_  
Deputy Attorney General  
Civil Division

**Attachment H**  
**COST PROPOSAL FORM**

Cost Proposal Forms<sup>1</sup>

Vendor Name \_\_\_\_\_

Respondents are required to enter the percentage of the yield for the lowest yielding U.S. Treasury Note for the same maturity as the lease term.

Rates for X-Month Financing<sup>2</sup>

11 <b><u>GOVERNMENTAL ENTITY</u></b>	ENTER % OF TERM TREASURY			
	Up to \$250,000	\$250,000 - \$1,000,000	\$1,000,001 - \$5,000,000	\$5,000,001 +
State of Nevada				
Political Subdivisions, Investment Grade Rated				
Political Subdivisions, Rated, but Not Investment Grade				
Political Subdivisions, Not Rated				

No Prepayment Premiums will be allowed under the Statewide Master Lease Purchase Program.

The Vendor, through the percentage proposed, must cover all administrative costs associated with the transaction. **No additional costs, such as Documentation Fees, will be allowed.**

<sup>1</sup> Submit Bid Proposal Form for each monthly term for a) Bank Qualified; and b) Not Bank Qualified.

<sup>2</sup> 24, 36, 48, 60, 72, 84, 96, 108, 120 Month Terms