



MEMORANDUM

To: Department Director (UT)
Finance Director
City Attorney
City Manager
City Clerk

March 19, 2024

From: Paul Sikora, Purchasing Manager

Subject: Final Coordination of Purchase Agreement (Graybar)

Enclosed is a proposed Purchase Agreement between the City and Graybar for final coordination and signatures. This was requested by Joe Stubitz from the Utilities Department.

The Utilities Department needs to purchase three (3) MCM NEMA 3R, Non-Walk-In, 600A, 15kV, 25Kka Bill Section Utility Meter Enclosures. Per NRS 332, the City conducted Bid 2023-11 in December 2023, and received 3 responses:

Planet Cell Inc	\$27,273.00	Unresponsive
Graybar Electric Company	\$266,775.66 (*UL Labeled)	Selected
Codale Electric Supply	\$331,400.19	Not Selected

During the review of Bids, we noticed Planet Cell's cost was almost 10 times lower than the other respondents. The Utilities Department called Planet Cell on January 2, 2024 and the Purchasing Manager called them on January 4, 2024. In both cases Planet Cell were unaware they had even provided a bid for the project, and promised to call us back with more information within the hour, they never returned our calls. Because of their failure to follow-up with the City, we determined them to be Unresponsive. Accordingly, Graybar was selected for award of this Bid.

The term of this Agreement shall commence on the Effective Date and continue until product delivery, but in no case to exceed February 1, 2025. This Agreement is for \$266,775.66. This is budgeted for and will be paid from account 61900-5905-E2303.

This Agreement was previously reviewed by the City Attorney on March 5, 2024. This will require City Council approval and is tentatively scheduled for City Council consideration on April 9, 2024.

Sincerely,
Paul Sikora
Purchasing Manager

Joe Stubitz
Director, Utilities

PURCHASE AGREEMENT

This Purchase Agreement (the "Agreement") is made and entered into as of _____ (the "Effective Date") by the City of Boulder City, a Nevada municipal corporation (the "City") and Graybar Electric Company Inc., a New York corporation (the "Supplier").

RECITALS

WHEREAS, the City of Boulder City Utilities Department needs to purchase three (3) MCM NEMA 3R, Non-Walk-In, 600A, 15kV, 25Kka Bill Section Utility Meter Enclosures for installation at various locations throughout the City; and

WHEREAS, per NRS 332, the City conducted Bid 2023-11 in December 2023, and selected the Supplier as the lowest responsive and responsible respondent; and

WHEREAS, the City desires to purchase three (3) MCM NEMA 3R, Non-Walk-In, 600A, 15kV, 25Kka Bill Section Utility Meter Enclosures as set forth in the Supplier Quote dated December 27, 2023 attached hereto as "**Exhibit A**" (3 pages) (the "Product") pursuant to the terms of this Agreement, and the Boulder City Purchase Order Terms and Conditions attached hereto as "**Exhibit B**" (5 pages).

SECTION ONE TERMS

The Parties agree to be bound by the following provisions:

2.1 The Supplier agrees to supply the Product in compliance with the terms of the Boulder City Purchase Order Terms and Conditions in Exhibit B.

2.2 The term of this Agreement shall commence on the Effective Date and continue until product delivery and acceptance, but in no case exceeding February 1, 2025. The City will purchase the equipment from the Supplier in an amount not to exceed Two Hundred Sixty-Six Thousand Seven Hundred Seventy-Five dollars and Sixty-Six cents (\$266,775.66). No additional compensation shall be paid, and no increase in the time of performance shall be awarded to the Supplier for changes referenced in this Agreement without the prior written authorization of the City to proceed with such changes.

2.3 Payment to the Supplier shall be made within thirty (30) calendar days after the City receives each invoice provided by the Supplier to the City, provided that such invoice is complete, correct, and undisputed by the City. Upon reconciliation of all errors, corrections, credits, and disputes, payment to the Supplier will be paid in full within thirty (30) calendar days. Invoices received without a valid purchase order number will be returned unpaid. The Supplier shall submit the original invoice to:

City of Boulder City Finance Department
ATTN: Accounts Payable
401 California Avenue
Boulder City, NV. 89005-2600

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

To City: City of Boulder City
Attn: Paul Sikora
401 California Avenue
Boulder City, NV 89005-2600
Fax: 702-293-9246

To Supplier: Graybar Electric Company Inc.
7055 S. Decatur Blvd, STE 100
Las Vegas, NV, 89118

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

2.5. The Supplier shall procure and maintain at all times during the Agreement and for one year thereafter, at its own expense, the following insurances:

A. Worker's Compensation Insurance as required by applicable legal requirements, covering all persons employed in connection with the matters contemplated hereunder and with respect to whom death or injury claims could be asserted against City or the Supplier.

B. Comprehensive General Liability (bodily injury and property damage) insurance in a policy limit of not less than \$1,000,000 for combined single limit per occurrence. Such General Liability insurance policy shall be endorsed as to include the City as an additional insured.

2.6. Miscellaneous.

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

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

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

D. Attorney's Fees. In the event either party commences any action against the other in connection with this Agreement (including any action to lift a stay or other bankruptcy proceeding), the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, as determined by the court. This Section survives the termination of this Agreement until the applicable statutes of limitation expire.

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

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

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

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

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

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

City of Boulder City,
a Nevada municipal corporation

Graybar Electric Company Inc.
a New York corporation

By: _____
Taylour Tedder, City Manager

By: Katherine Moran
Title: Manager Cust. Serv.

Attest:

By: _____
Tami McKay, City Clerk

Approved as to Form:

By: _____
Brittany Walker, City Attorney



7055 S DECATUR BLVD STE 100
LAS VEGAS NV 89118-4382
Phone: 702-889-5346
Fax: 702-876-2949

To: CITY OF BOULDER CITY
500 RAILROAD
BOULDER CITY NV 89005-2460
Attn: Mark Martin
Phone: 000-293-9220
Fax: 000-293-9414
Email:

Date: 12/27/2023
Proj Name: UTILITY METER ENCLOSURES
GB Quote #: 0245063588
Release Nbr:
Purchase Order Nbr:
Additional Ref#
Valid From: 12/27/2023
Valid To: 01/26/2024
Contact: Katherine Gosz
Email: Katherine.Gosz@graybar.com

Proposal

We Appreciate Your Request and Take Pleasure in Responding As Follows

Notes: NVE Utility Metering Section
This assembly is comprised of two (2) NEMA 3R, Outdoor, Non-Walk-In, 600A, 15kV, 25kA, 95kVA BIL sections.
One (1) NVE Utility Metering Section, and (1) 100E, Main Fused Load Interrupter Switch .
Included In this lineup: Space Heaters, and all other indicated Switchgear components.
This Utility Metering Section in NOT UL Labeled, NTRL Test & Label is available for an additional cost. All other Switchgear sections are UL Labeled.
Control and Assembly power are from an outside source and provided by others. No CPT or power source is included in this assembly.
Please see the detailed BOM and the Comments, Clarifications, and Exceptions for more information.
Start-up, programing, instruction, and Field services are NOT included as part of this price. These services can be provided at additional cost. Freight to Las Vegas, NV. is included in this price.
Freight is FOB factory.

Approval Drawings 6-9 weeks , depending upon the factory loading at the time of order entry.
Production: 30-34 Weeks after release for production.
FOB Pt: Factory
Freight PPD and Allow is included in the quoted price to Boulder City, NV

Item	Item/Type	Quantity	Supplier	Catalog Nbr	Description	Price	Unit	Ext.Price
100		3 EA	MCM	NVE MV UTILITY		\$71,163.86	1	\$213,491.58
			ENGINEERING	SECTION				
			INC					

Item Note: NVE MV UTILITY SECTION
1 NEMA 3R, 48"W x 78"D x 100"H for SDG&E
3 Meter Sockets
2 Test Block for CPT socket

This equipment and associated installation charges may be financed for a low monthly payment through Graybar Financial Services (subject to credit approval). For more information call 1-800-241-7408 to speak with a leasing specialist.

To learn more about Graybar, visit our website at www.graybar.com

24-Hour Emergency Phone#: 1-800-GRAYBAR

Subject to the standard terms and conditions set forth in this document. Unless otherwise noted, freight terms are F.O.B. shipping point prepaid and bill.
Unless noted the estimated ship date will be determined at the time of order placement.

To: CITY OF BOULDER CITY
500 RAILROAD
BOULDER CITY NV 89005-2460
Attn: Mark Martin

Date: 12/27/2023
Proj Name: UTILITY METER ENCLOSURES
GB Quote #: 0245063588

Proposal

We Appreciate Your Request and Take Pleasure in Responding As Follows

1 15kV, Polyester, PT Disconnect
LOT 600A, Bus
2 Kirk Key Interlocks
7 Ground Studs
1 .25" Thick, Clear, Rear Barrier
3 Live Parts for Utility Fuses
2 120V, Space Heaters
1 Thermostat

LI SWITCH

1 15kV, 600A, 40kA ASYM /25kA SCR SYM, Switch
1 NEMA 3R, 38"W x 78"D x 100"H
1 Fused LI Parts Substructure
LOT 600A Bus
LOT Ground Bus
1 Fused, Barrier Kit
3 Live Parts for Fuses
3 15kV, 100E, Non-Disconnect, Fuse
1 120V, Space Heater
1 Thermostat

200	3 EA	MCM ENGINEERING INC	NRTL TEST AND LABEL	\$17,761.36	1	\$53,284.08
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Item Note: This Utility Metering Section is NOT UL labeled.
UL Label is not typically required by the Utility.
NRTL Test and Label is available for an additional cost.
All other Switchgear sections and components are UL Labeled.

Total in USD (Tax not included): \$266,775.66

This equipment and associated installation charges may be financed for a low monthly payment through Graybar Financial Services (subject to credit approval). For more information call 1-800-241-7408 to speak with a leasing specialist.

To learn more about Graybar, visit our website at www.graybar.com

24-Hour Emergency Phone#: 1-800-GRAYBAR

Subject to the standard terms and conditions set forth in this document. Unless otherwise noted, freight terms are F.O.B. shipping point prepaid and bill.
Unless noted the estimated ship date will be determined at the time of order placement.

EXHIBIT B

Purchase Order Terms and Conditions

(Please see the attached pages

**CITY OF BOULDER CITY
STANDARD TERMS AND CONDITIONS – PURCHASE ORDER**

The Vendor shall provide the goods and/or services described in this Purchase Order subject to the following Standard Terms and Conditions, unless otherwise noted on the face of the Purchase Order.

1. DEFINITIONS [Goods, Services]

“City” means the City of Boulder City. “Purchase Order” means a City order for goods and/or services, which becomes a binding contract upon written acceptance or performance by a Vendor and which consists of the face of the Purchase Order and these Standard Terms and Conditions, and any other specifically referenced documents. “Vendor” means the individual, partnership, company, or corporation contractually obligated to provide the goods and/or services described in this Purchase Order.

2. ACCEPTANCE [Goods, Services]

Notwithstanding any provision of Law, including U.C.C. 2-207 or NRS 104.2207, the Vendor’s written acceptance of this Purchase Order, or the Vendor’s commencement of performance without providing a written rejection of the Purchase Order to the City within five (5) days of receipt, shall convert this Purchase Order, in its entirety, into a legally binding contract. Each heading within these Standard Terms and Conditions shall indicate its applicability to the purchase of goods and/or services. Whether these Terms are included in an offer or an acceptance by Vendor, the City’s acceptance is conditioned on Vendor’s assent to these terms. Any additional, different or conflicting terms contained in Vendor’s contract, quotation, proposal, invoice(s), or any other written or oral communication from Vendor shall not be binding in any way on the City whether or not they would materially alter the Purchase Order, and the City hereby objects thereto. Except for the “Rules of Precedence” clause below, these Standard Terms and Conditions do not apply if a specific bid award or contract is referenced on the face of the Purchase Order.

3. RULES OF PRECEDENCE [Goods, Services]

The parties shall attempt to construe the terms and conditions in the various documents comprising this Purchase Order, in a manner that avoids conflict or inconsistency and in a manner that is supplementary or complementary in nature rather than in conflict. If, however, a conflict or inconsistency between the terms and conditions of the documents cannot be so avoided through such efforts, the following rules of precedence shall govern this Purchase Order: (1) Terms and Conditions on the face of the Purchase Order prevail over these Standard Terms and Conditions; (2) All terms and conditions of the Purchase Order prevail over U.C.C. Article 2 and Nevada’s Uniform Commercial Code-Sales; (3) All terms and conditions of the Purchase Order prevail over any Vendor quotation, proposal, invoice(s), or any other written or oral communication from the Vendor; and (4) The terms and conditions of a specific bid award or contract referenced on the face of the Purchase Order prevail over any term or condition contained in the Purchase Order, Vendor contract, quotation, proposal, invoice(s), or any other written or oral communication from Vendor.

4. QUALIFICATIONS [Goods, Services]

Vendor represents to the City that Vendor is qualified and has sufficient skill and expertise to provide the goods and/or perform the services. Vendor further represents that it has obtained and will maintain all necessary licenses, permits or other authorizations to provide the goods and/or perform the services and that it is financially solvent, able to pay its debts when due, and possessed of sufficient working capital to complete its contractual obligations.

5. PRICE STABILITY [Goods, Services]

Vendor agrees that all prices quoted shall remain firm until the later of (a) sixty (60) calendar days from the date quoted or (b) the date such price quote expires.

6. DELIVERY REQUIREMENTS [Goods]

Vendor shall deliver the goods at the delivery point specified on the face of the Purchase Order (the "Delivery Location") F.O.B. Delivery Location on or before the date(s) specified in this Order (the "Delivery Date"). If no Delivery Date is specified, Vendor shall deliver the goods in full within a reasonable time of receipt of the Order. Counterparty shall obtain the City's prior approval for partial shipment. Prices shall include delivery as well as necessary unloading. Timely delivery and performance is of importance. If Vendor fails to deliver the goods in full by the Delivery Date, the City may terminate the Order immediately and Vendor shall indemnify the City against any losses, damages, and reasonable costs and expenses attributable to Vendor's failure to deliver. Vendor bears all risk of loss or damage to the goods until delivery of the goods to the City. Title to the goods passes to the City after delivery and unloading of the goods at the Delivery Location is completed. Delivery of the goods is not complete until such goods have actually been received and accepted by the City. Goods are to be packaged in a manner that assures they are protected against deterioration and contamination. All shipments are to meet applicable D.O.T. Regulations. Serial numbers noted on the packing slip must match the serial number of the actual goods shipped. Incorrect, or questionable documentation of serial numbers may result in shipment rejection. Shipments rejected due to Vendor error will be returned solely at Vendor's cost. Freight charges must be prepaid by vendor.

7. INSPECTION [Goods, Services]

An authorized representative of the City will inspect the goods and services at the time of delivery. If deficiencies are detected, the goods and/or services will be rejected and the Vendor will be required to make necessary repairs, corrections, or replacements. Payment and/or commencement of a discount period will not be made until the corrective action is made; the goods and/or services are re-inspected and accepted.

8. SAFETY DATA SHEETS [Goods]

Vendor shall provide City a current safety data sheet (SDS) for each good supplied for which an SDS is required by applicable law, including 29 CFR 1910.1200(g), as amended.

9. INVOICES [Goods, Services]

The Vendor shall send invoices to the "Bill To" address on the face of the Purchase Order upon completion of items of work. Invoices should include the following: (i) Vendor name and address, (ii) date and number of invoice, (iii) applicable Purchase Order number, and (iv) any other information (e.g., quantity, description, period of performance) necessary to identify the goods or services for which payment is requested. Upon reconciliation of all errors, corrections and credits, payment will be made within thirty (30) calendar days, unless otherwise noted on the face of the Purchase Order. The City may return to the Vendor the invoices received that do not comply with the requirements set forth herein.

10. TAXES [Goods, Services]

The City is exempt from paying Sales and Use Taxes under NRS 372.325(4) and from paying certain Federal Excise Tax. The price(s) must be net, exclusive of these taxes. The Vendor shall pay all taxes, levies, duties and assessments of every nature, which may be applicable to any goods and/or services delivered under this Purchase Order. The Vendor herein indemnifies and holds the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

11. FORCE MAJEURE [Goods, Services]

Neither party shall be liable for failure or delay in performance due to fire, flood, earthquake, unusually severe weather, strikes, labor disputes, war, acts of vandalism, destruction, public disobedience, terrorism, the action of civil or military authorities, or other events beyond the reasonable control and without fault or negligence of the affected party including, but not limited to, sourcing, shipment or delivery issues caused by, related to, or resulting from COVID-19 or other similar national or global health situations. The affected party shall promptly

notify the other party in writing, describing the cause and the estimated duration of delay. The affected party shall use commercially reasonable efforts to avoid or remove such cause and continue performance.

12. TERMINATION FOR CONVENIENCE [Goods, Services]

The City and Vendor shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason. Such termination shall be affected by written notice to the other party, specifying the extent and effective date of the termination. Upon receipt of such notice from City, the Vendor shall stop work, mitigate its damages, and within 30 days, shall submit to the City a written request for incurred costs for goods delivered and/or work performed through the date of termination and shall provide any substantiating documentation requested by the City. The City shall bear cost incurred by Seller for any cancellation without clause, including restocking fees charged by the manufacturers of the goods.

13. TERMINATION FOR CAUSE [Goods, Services]

Upon failure to perform this Purchase Order under its terms, the City will provide written notice to the Vendor of the breach and the documented costs due from the City to the Vendor, and the Vendor will have a reasonable time (as stated in the City's written notice) in which to cure the breach and direct. Failure to cure within the stated time will subject the Vendor to a default termination. The City will retain all rights to common law breach of contract remedies.

14. WARRANTY [Goods]

The Vendor warrants that goods supplied under this Purchase Order are free of defects in material, workmanship and design, suitable for the purpose intended, and in compliance with all applicable specification and free from liens or encumbrance on file. Vendor further warrants that, unless otherwise specified on the face of the Purchase Order, the goods are new, are of the latest and most improved model of current production, are made up completely of unused, genuine, and original parts, and have not been operated for any purpose other than routine operational testing. Demonstration goods do not meet the foregoing requirements and are not acceptable.

15. WARRANTY- Standard of Care [Services]

The Vendor warrants that all services performed are in accordance with current, sound and generally accepted industry practices by qualified personnel trained and experienced in the appropriate fields and that the services are in conformance with any specification/statement of work contained or referenced in this Purchase Order. In the event of a breach of this warranty, the Vendor shall, at no cost to the City, re-perform or perform the services so that the services conform to the warranty.

16. INSURANCE [Goods]

Vendor shall obtain and maintain, at its expense, the following insurance coverage for all work related to the performance of this Purchase Order: commercial general liability insurance; automobile liability insurance; worker's compensation insurance; and employers' liability insurance.

17. INSURANCE [Services]

Vendor shall obtain and maintain the following insurance coverages: (a) commercial general liability insurance, \$1 million each occurrence, \$1 million personal and advertising injury, and \$2 million general aggregate; (b) automobile liability insurance, with a combined single limit of \$2 million for bodily injury and property damage for each occurrence; (c) professional liability insurance (errors and omissions), \$1 million each claim and \$1 million annual aggregate and if written on claims-made basis, Vendor shall ensure that any retroactive date under that policy shall precede the effective date of the Purchase Order and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time the services are completed and accepted by the City; and (d) workers compensation insurance per

statutory requirements and employer's liability insurance, with the following limits: (1) \$1 million each accident; (2) \$1 million disease/employee; and (3) \$1 million disease/policy limit. Vendor shall maintain a "Certificate of Insurance" naming the City as an "Additional Insured" under A and B, stating that the insurance is primary with respect to the City's interest and that any insurance retained by the City is in excess and not contributory, providing for separation of insured coverage, and providing waivers of subrogation on all coverage.

18. INDEMNIFICATION [Goods, Services]

Vendor shall indemnify and defend the City, its officers, officials, and employees, for, from and against any liability, loss, damage, expense, fine, penalty, claim, damage, judgment, suit, and cost (including reasonable costs and fees of litigation, enforcing indemnification rights and pursuing insurance providers) of every nature by a third-party to the extent arising due to the negligence or willful misconduct of Vendor in connection with this Purchase Order, including but not limited to damage to any property, bodily injury to, or death of, a person, violation or infringement of any patent, copyright or uncopyrighted work, misappropriation of any trade secret, and Vendor's failure to comply with applicable Law, unless caused by the negligence or willful misconduct of the City. Any pre-printed or additional terms providing for indemnification or hold harmless commitments by the City do not apply to the Purchase Order and are rejected by the City unless the City signs the document setting forth such terms in strict compliance with the then applicable fiscal signature policy of the City. Without limitation of the foregoing, the City's hold harmless and indemnification obligations will be subject to the limitations set forth in the NRS.

Notwithstanding any provision of this Agreement to the contrary, in no event shall Vendor's liability exceed the purchase price of the product from which such liability arises or to which such liability relates.

19. COMPLIANCE WITH LAWS AND STATUTES [Goods, Services]

The Vendor shall comply with all federal, state and local laws and regulations and all Laws applicable to this Purchase Order and relative to conducting business or performing work in the City and the County of Clark, Nevada. By entering into this Purchase Order, Vendor provides a written certification that Vendor is not currently engaged in, and during the duration of the Purchase Order shall not engage in, a Boycott of Israel. The term "Boycott of Israel" has the meaning ascribed to that term in NRS 332.065.

20. NON-DISCRIMINATION AND FAIR EMPLOYMENT PRACTICES [Goods, Services]

Vendor shall not discriminate against any person on the grounds of race, color, creed, religion, sex, sexual orientation, gender identity or gender expression, age, disability, national origin or any other status protected under any applicable Law.

21. NO CONFLICT OF INTEREST [Goods, Services] Vendor represents that to its knowledge there is no relationship with any City employee, appointed official, or elected official that would create a conflict of interest under applicable Law in connection with this Purchase Order.

22. CONFIDENTIAL INFORMATION AND DATA [Goods, Services]

- a. Confidentiality. The City might provide Confidential Information (as defined below) to the Vendor in connection with the Purchase Order. Vendor shall (1) maintain the confidentiality of the City's Confidential Information and not disclose it to a third party, except as authorized by the City in writing, as required by Law, or as required by a court or other regulatory body or government agency of competent jurisdiction; (2) restrict disclosure of Confidential Information to personnel who have a reasonable basis for needing access to such information and who are bound by confidentiality obligations similar to those in these Terms; (3) take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its personnel who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions

will be with the same degree of care that Vendor uses to protect its own Confidential Information and in no event less than a reasonable amount of care; (4) not use the Confidential Information, except to further the purposes of the Purchase Order or as may be required to report to the Vendor's governing body, legal advisors, financial advisors, or regulators, and not sell the Confidential Information; (5) promptly notify the City upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Section; and (6) establish and maintain any additional physical, electronic, and procedural controls and safeguards to protect the Protected Data (as defined below) from unwarranted disclosure as may be required for the City to comply with all Laws. The responsibilities under this Section shall continue for five (5) years after the termination or expiration of the Purchase Order for Confidential Information that is not Protected Data or a trade secret under Law and for Protected Data and trade secrets shall continue for so long as such Confidential Information remains Protected Data or a trade secret under Law.

- b. "Confidential Information" means information that is disclosed by the City under the Purchase Order in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent. Confidential Information does NOT include any information that: (1) is or becomes publicly known through no wrongful act of Vendor; (2) is already known to Vendor without restriction when it is disclosed; (3) is or becomes rightfully and without breach of any obligations, in Vendor's possession lawfully without any obligation restricting disclosure; (4) is independently developed by Vendor without breach of any obligations; (5) is explicitly approved for release by written authorizations of the City; or (6) required to be open to public inspection pursuant to NRS Chapter 239 and NAC and is not subject to an applicable exception or declared by law to be confidential (as determined by the City in its sole and absolute discretion).
- c. "Personal Information" means (1) any data or information accessible by Vendor as a result of its business relationship with the City that can be used to identify or locate a natural person, including but not limited to: name, address, telephone number, email address, social security number, or driver's license number; (2) any other data, such as, but not limited to, identifiers, demographic or behavioral data, when such data is linked or has the capacity to be linked to a specific person; and (3) "personal information" as that term is defined in NRS 603A.040 or any comparable Nevada statutes, and any Nevada regulations promulgated under such state statutes. Personal Information includes any list, description or other grouping of individuals that is derived using any of the foregoing.
- d. "Protected Data" means any Personal Information that is protected or covered by Law or a City policy. Protected Data will not be excluded from coverage merely because it is provided to Vendor in a manner that commingles the Protected Data with other data that is not Protected Data.
- e. Rights in Data. All data created and/or processed in connection with the services is and remains the property of the City and shall in no way become attached to the services, nor shall Vendor have any rights in or to the data of the City. The City shall own all data created and/or processed by the services, and/or any City provided data that resides in the service's environment, to include disaster recovery site(s), equipment and media. Vendor is granted no rights hereunder to use the customer data except to the extent necessary to fulfill its obligations to the City.
- f. Return of Data. Vendor agrees to return all original data and any data contained in any derivative work to the City in a mutually agreed upon format within thirty (30) days of the expiration of the term set forth under this Purchase Order. Delivery must be through a secured electronic transmission or on encrypted portable media by parcel service that utilizes tracking numbers.

23. USE, STORAGE OR OTHER PROCESSING OF CITY'S PROTECTED INFORMATION [Services]

- a. Data Storage. Vendor represents and warrants that its creation, collection, receipt, access, use, transmission, storage, disposal, and disclosure of Confidential Information and Protected Data ("Protected Information") does and will comply with Law, as well as all other applicable regulations and

directives. Vendor shall implement and maintain a written information security program including appropriate policies, procedures, and risk assessments that are reviewed by Vendor at least annually.

- b. **Standards.** Without limiting Vendor's obligations for the creation, use, storage or other processing of Protected Information, Vendor shall provide all available reports that substantiate compliance with accepted industry practices applicable to the services, including, NRS Chapter 603A, Criminal Justice Information System, the International Organization for Standardization's standards: ISO/IEC 27001 – Information Security Management Systems – Requirements and ISO/IEC 27002 – Code of Practice for International Security Management, the Control Objectives for Information and related Technology (COBIT) standards, Payment Card Industry Data Security Standard (PCI DSS), the National Institute of Standards and Technology (NIST) Cybersecurity Framework, or any other applicable industry standards for information security, and shall ensure that all such internal safeguards, including the manner in which Protected Information is created, collected, received, accessed, used, transmitted, stored, disposed, and disclosed, comply with Law, as well as this Purchase Order.
- c. **Breach.** Vendor shall notify the City without unreasonable delay and in the most expedient time possible of a security breach where unencrypted Protected Information transferred to Vendor by the City was or is reasonably believed to have been accessed or acquired by an unauthorized person ("Security Breach"). Immediately following Vendor's notification to the City of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. Vendor agrees to fully cooperate in the City's handling of the matter, including, without limitation: (1) assisting with any investigation; (2) providing the City with physical access to the facilities and operations affected; (3) facilitating interviews with Vendor's employees and others involved in the matter; and (4) making available all relevant records, logs, files, data reporting, and other materials required to comply with Law, industry standards, or as otherwise required by the City.
- d. **Oversight.** Upon City's request, Vendor shall confirm compliance with these Terms, as well as any applicable Law and industry standards. Vendor shall promptly and accurately complete a written information security questionnaire provided by the City at the City's discretion, not to exceed frequency of one time per annum, or a third party on the City's behalf, regarding Vendor's business practices and information technology environment in relation to all Personal Information being handled and/or services being provided by Vendor to the City under the Purchase Order. Vendor shall fully cooperate with such inquiries. In addition, upon the City's request, Vendor shall provide the City with the results of any audits performed by or on behalf of Vendor that assess the effectiveness of Vendor's information security program as relevant to the security and confidentiality of Protected Information.

24. UPDATES [Goods, Services]

Except as otherwise specified by the City under a Purchase Order, Vendor will update computer software and cause it to operate under new versions or releases of operating systems and/or databases required by such software, and provide timely support and maintenance for any future releases of such operating systems and/or databases. Vendor will provide an update to computer software supporting a newer version of third-party platform components within a timeframe set by the City that is in advance of the Vendor's termination of support for such third-party components.

25. GOVERNING LAW/VENUE OF ACTION [Goods, Services]

This Purchase Order shall be construed and enforced in accordance with the laws of the State of Nevada, without giving effect to its choice or conflicts of law provisions. Any action at law or other judicial proceeding for the enforcement of any provision shall be instituted in the County of Clark, State of Nevada, and Vendor irrevocably agrees to submit to the exclusive jurisdiction of the courts located in Clark County, Nevada over any dispute or other matter arising under or in connection with this Purchase Order.

26. NO ASSIGNMENT [Goods, Services]

Vendor shall not assign, transfer, convey or otherwise dispose of this Purchase Order or its right, title, or interest in or to the same, or any part thereof, without prior written consent of the City.

27. INDEPENDENT CONTRACTOR [Goods, Services]

The Vendor is deemed to be an independent Contractor under this Purchase Order, and nothing herein shall be deemed to create an employment, partnership or agency relationship.

28. NO WAIVER [Goods, Services]

The failure of a party to enforce any of the provisions of this Purchase Order at any time, or to require performance by the other party of any of the provisions of this Purchase Order at any time, will not be a waiver of any provisions, nor in any way affect the validity of this Purchase Order, or the right of any party to enforce each and every provision.

29. PROHIBITION AGAINST CONTINGENT FEES [Goods, Services]

Vendor warrants that no person or entity has been employed or retained to solicit or secure this Purchase Order upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the City shall have the right to terminate this Purchase for cause without penalty or further obligation or liability to Vendor or, in the City's discretion, to deduct from the price or consideration, or otherwise recover, the full amount of such commission, percentage brokerage or contingent fee from Vendor.

30. PUBLICITY [Goods, Services]

Except with respect to internal business communications, communications with governmental agencies, or as required by applicable law, Vendor shall not use this Purchase Order nor its relationship with the City for purposes of or in any manner that intentionally gives rise to advertising or publicity without first consulting with and obtaining the City's prior written consent.

31. OWNERSHIP OF DOCUMENTS [Services]

All materials, drawings, specifications, reports or other documents given, prepared, or assembled by Vendor are deemed to be the City's property when prepared, whether delivered to the City or not, constitute "work made for hire" (and all copyrights to which belong to the City), and shall, together with any materials furnished to Vendor by the City, be delivered to the City upon request, and, in any event, upon termination or final acceptance of the services. In any event, Vendor assigns to the City all intellectual property rights in such work whether by way of copyright, trade secret or otherwise, and whether or not subject to protection by copyright Laws. However, Vendor shall retain all rights to its preexisting standard details, specifications, computer software or other intellectual property and hereby licenses such preexisting materials to the City through a fully paid, worldwide, royalty-free, non-exclusive and perpetual license, for the City's own use and any future use, replacement, or correction of the services. If Vendor (or a subcontractor) labels a document owned by the City as Vendor's (or a subcontractor's) proprietary or confidential document, such label shall be deemed void.

32. FUNDING [Goods, Services]

Funding of the services specified under this Purchase Order is dependent on City budget appropriations set each City fiscal year. If necessary funds to continue with the specified services are not allocated by the City, this Purchase Order shall terminate at the expiration of the appropriated funds.

33. TIME OF IMPORTANCE [Goods, Services]

Time is of importance with respect to Vendor's obligations under this Purchase Order. Vendor will make all commercially reasonable efforts to adhere to the delivery schedule.

34. SEVERABILITY [Goods, Services]

If any provision of this Purchase Order is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding.

35. ENTIRE AGREEMENT [Goods, Services]

This Purchase Order constitutes the entire agreement between the parties with respect to the specified goods and services.

36. AMENDMENT [Goods, Services]

The face of the Purchase Order may be modified or amended by the City issuing a change order. Any other modifications or amendments to this Purchase Order must be in a written document executed by the authorized representatives of each party.

37. PUBLIC RECORDS [Goods, Services]

Vendor acknowledges that the City is a governmental entity that is subject to the public records Laws and regulations set forth in Chapter 239 of the NRS and NAC and, therefore, the City's records, including this Purchase Order and documents provided in connection with it, are likely public records and may subject to inspection and copying by any person unless there is an applicable exception or the record is declared by applicable law to be confidential. If the City receives a public records request that arises from or relates to this Purchase Order, the Vendor, or any Vendor disclosures to the City, the City will determine in its sole and absolute discretion whether it must provide the information because an applicable exception does not apply or the information is not declared by applicable law to be confidential. The City shall not be liable in any way to the Vendor for the disclosure of any public record, including but not limited to documents provided to the City by the Vendor. In the event the City is required to defend an action with regard to a public records request for documents submitted by the Vendor, the Vendor agrees to indemnify, hold harmless, and defend the City from all damages, costs, and expenses, including court costs and reasonable attorneys' fees related to such public records request.

38. NOTICES [Goods, Services]

Notices will be addressed to the places of business identified on the face of the Purchase Order.

39. CONSEQUENTIAL DAMAGE WAIVER [Goods, Services]

The City shall not be liable to Vendor for any consequential, indirect, exemplary or incidental damages.

40. NO THIRD PARTY BENEFICIARIES [Goods, Services]

This Purchase Order is intended only to benefit the parties hereto, their permitted successors and assigns, and express indemnitees. This Purchase Order shall not be deemed to be for the benefit of any entity or person that is not a party hereto, is a party's permitted successor or assign, or an express indemnitee and does not create any rights, benefits or causes of action for any other person, entity or member of the general public.

41. SAFETY AND COMPLIANCE [Goods, Services]

Vendor shall plan and direct the performance of services in compliance with Vendor's safety policies, and the City's safety and work practices. Vendor shall supervise all activities to ensure that its personnel and subcontractors use proper safety equipment and comply with the foregoing policies and all applicable Laws.

42. RECORDS AND AUDITING [Goods, Services]

Vendor shall maintain accurate and complete books, documents, accounting records and other records pertaining to the goods and services for six (6) years (or longer as required by applicable law) from the later of the date of final payment under this Purchase Order or the City's acceptance of the goods and services. Vendor

shall make such records available to the City for inspection, audit, examination, reproduction, and copying at Vendor's offices at all reasonable times. However, if requested, Vendor shall furnish copies of said records at its expense to the City, within seven (7) business days of the request.

[END OF TERMS]