



**BI-ANNUAL CHEMICAL
SUPPLIER
CONTRACT**

BID OPENING: February 26, 2010 at 2:00 p.m.

To Supply Service from April 2010-April 2012

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ADVERTISEMENT FOR BIDS

For CITY OF FERNLEY (OWNER):

Sealed bids will be received by the CITY OF FERNLEY PUBLIC WORKS DEPARTMENT for the 2010 Bi-Annual Chemicals Supplier Contract at the office of The City of Fernley, 595 Silver Lace Blvd, Fernley, Nevada until **2:00 p.m.** local time on **Friday, February 26th, 2010**, and then at said office publicly opened reviewed and compared. The bid will be considered for award on **Wednesday, March 17, 2010** at the regularly scheduled City Council Meeting.

The work consists of supplying the City with the Sodium Hypochlorite (NaOCL) 12.5% Solution, Ferric Chloride (FeCl₃) 42% Solution, Sodium Hydroxide (NaOH) 20% Solution, Citric Acid 50% Solution.

Bids will be accepted on a **bulk rate** (i.e. \$ per gallon) basis. Bid packages shall also include any miscellaneous charges such as minimal hourly charges, travel charges and/or mobilization/demobilization charges. The bids shall be reviewed and selected based on the bulk rate, but with special consideration taking into account for any miscellaneous costs.

No proposal will be accepted from a Supplier who is not licensed for this type of work in accordance with the applicable Nevada Revised Statutes. A Statement of Qualifications shall be included with the bid packages.

Terms and conditions regarding this bid may be obtained from the Public Works Department, 595 Silver Lace Blvd, Fernley, NV 89408 or <http://www.cityoffernley.org/bids.aspx>. For further information, contact the Public Works Department at (775)-784-9910, Jeff Purchase, Assistant Public Works Director.

The OWNER reserves the right to reject any or all bids and to waive minor irregularities in any bid or in the bidding process. No bidder may withdraw their bid within **thirty (30) days** after the actual date of the opening thereof.



Lowell Patton
Public Works Director

Advertise: Reno Gazette Journal February 13th, 2010
Fernley Leader Courier February 10th, 2010

INFORMATION FOR BIDDERS

1 PREPARATION OF BID:

- a. Bidders are expected to examine the specifications and all instructions. Failure to do so will be at the bidder's risk.
- b. Any irregularities or lack of clarity in the invitation should be brought to the attention of the Public Works Department as soon as possible so that corrective addenda may be furnished to all bidders.
- c. The bidder shall sign, print or type the bidding firm's name on his bid and each continuation sheet on which he makes an entry. The person signing the bid must be a properly authorized representative of the bidding firm.
- d. The signer of the bid must initial erasures or other changes.
- e. Alterations, modifications or variations to this bid may not be considered unless authorized by the invitation or by addendum.
- f. When a unit price is requested such unit price shall be shown and shall include packing unless otherwise specified.
- g. All equipment or supplies shall be new and of the manufacturer's current model unless otherwise specified.
- h. Bidders are urged to proof read their bids carefully for any errors.
- i. In the event of an error in extension, unit price shall prevail.
- j. The price(s) and amount of this bid must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, bidder or potential bidder. Complementary bids are illegal and prohibited.
- k. No attempt may be made at any time to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid. All bids must be made in good faith and without collusion.
- l. Bidder understand and acknowledged that the representations above are material and important, and shall be relied on by the City of Fernley in awarding the contract(s) for which this bid is submitted. Any misrepresentation hereinabove is and shall be treated as fraudulent concealment from the City of Fernley of the true facts relating to the submission of bids for this contract.
- m. All day references are calendar days.

2. SUBMISSION OF BIDS:

- a. Bids from employees of the City of Fernley shall NOT be considered.
- b. Bids and addenda thereto shall be enclosed in sealed envelopes, marked as indicated in the invitation to bid, addressed to the City of Fernley Public Works Department, 595 Silver Lace Blvd, Fernley, NV 89408 with the name and address of the bidder, date of opening on the face of the envelope. Telegraph, telephone, facsimile bids, or bids post marked after the bid date, will NOT be considered.

3. NO BID-NO RESPONSE:

- a. Three "No Bids/No Responses" will automatically remove your name from any mailing list.

4. WITHDRAWAL OF BIDS:

- a. Bids may be withdrawn only by written notice, received prior to the bid opening time.
- b. Withdrawals received after the bid opening time shall not be considered.

5. LATE BIDS:

- a. Bids received after the advertised bid deadline shall not be considered.

6. AWARD OF CONTRACT:

- a. The contract shall be awarded to that responsible bidder whose bid conforms to the Invitation and whose bid is most advantageous to the City, price and other factors considered.
- b. The City reserves the right to reject any and all bids.
- c. The City may accept any item or group of items of any bid unless the bidder qualifies his bid by specific limitations.
- d. A signed City of Fernley purchase order, mailed or otherwise furnished to the successful bidder within the time of acceptance specified in the bid, is a binding contract without further action by either party.
- e. Successful bidder must sign and enter into a General Services Contract (Exhibit B) with the City of Fernley for a period not less than one year.
- f. Invoices issued as a result of this bid shall be processed for payment as each service and/or material is supplied to the City of Fernley.

7. DEFAULT OF CONTRACT:

- a. In case of default of the contractor, the City may procure the articles or service from other sources and hold the contractor responsible for any excess cost occasioned thereby.
- b. If public necessity requires that use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a proper adjustment in price.
- c. Default by the bidder in any manner including failure or refusal to furnish any item or items at the price AND/OR TIME specified in the bid shall be considered cause for the Council, to remove the bidder from the approved bidders list for not less than 6 months not more than one year AND retain the bid security posted for the contract..

8. APPEAL BY UNSUCCESSFUL BIDDER:

- a. Any unsuccessful bidder may file a notice of appeal within 10 days of award as entered on the bid record by post bond with good and solvent surety in an amount equal to 25 percent of the successful bid submitted. A bond must be furnished by a surety authorized to do business in the State of Nevada. The notice of appeal must include a written statement of the issues to be addressed on appeal. Within 20 days after receipt of the

notice of appeal, the Fernley City Council shall hold an informal hearing on the appeal and may cancel the award based on the finding that the bid was incorrectly awarded. Any such cancellation requires re-advertising for bids and new award under the provisions of NRS Chapter 332. Notice of the hearing on the appeal shall be provided to both the

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successful bidder and the unsuccessful bidder filing the protest by mailing a certified letter to each party at least 10 days prior to the scheduled date of the hearing. The time and place for the meeting shall be at the sole discretion of the City Council. The format for the council meeting to hear the appeal shall be conducted in a manner satisfactory to the chair of the City Council. The successful bidder and the unsuccessful bidder as well as City staff will be allowed to be heard and present information as directed by the chair.

- b. The City Council may withhold an amount from the bond posted by the unsuccessful bidder to cover the costs incurred by the Council in hearing the appeal, if the original decision to award is upheld. The amount is at the discretion of the City Council. If the appeal is upheld and the award is canceled, the bond posted with the notice of appeal will be returned to the person who posted the bond.
- c. The decision and finding of the City Council is final and all further disputes regarding the matter of the award or amount withheld from the bond to cover the costs of hearing the appeal shall be resolved in a court of competent jurisdiction.
- d. Any notice of appeal under the provisions of this section operates as a stay of action in relation to any contract under such award until a determination is made by the City Council following the informal hearing prescribed herein. Such stay of action will be lifted if the Council rejects the appeal and upholds the award. Any further stay of action must be pursued by the unsuccessful bidder through an action brought in a court of competent jurisdiction.

APPENDIX A: SPECIFICATIONS

The work consists of supplying the City of Fernley with the chemicals described below on an as-needed basis through one of the following two methods:

- 1) Suppliers will provide chemical stocking as directed by the Public Works Department. The estimated chemical quantities and historical usage are listed below. Due to any unforeseen circumstances Public Works will not guarantee a minimum chemical usage or frequency.
- 2) Supplier will provide chemicals on an as-needed basis when contacted by the Public Works Department. Supplier will provide chemicals within three (3) business days from being contacted by Public Works. The minimum and maximum quantities will be provided by Public Works.

The City's Chemical Inventory to be supplied will consist of the following:

Sodium Hypochlorite (NaOCL) at 12.5% solution:

Site breakdown:

- | | | |
|----|-----------------------|--------------------------|
| 1) | Well 4: | (500 gallon capacity) |
| 2) | Well 11: | (500 gallon capacity) |
| 3) | Well 13: | (405 gallon capacity) |
| 4) | Well 14 | (405 gallon capacity) |
| 5) | NE Booster | (500 gallon capacity) |
| 6) | EWWTTP | (1300 gallon capacity) |
| 7) | Water Treatment Plant | (20,000 gallon capacity) |

Summary of historical usage 13,000 gallons every 25 days

Ferric Chloride (FeCl3) at 42% solution:

Site breakdown:

- | | | |
|----|-----------------------|--------------------------|
| 1) | Water Treatment Plant | (20,000 gallon capacity) |
|----|-----------------------|--------------------------|

Summary of historical usage 10,000 every 35 days

Sodium Hydroxide (NaOH) at 20% solution:

Site breakdown:

- | | | |
|----|-----------------------|--------------------------|
| 1) | Water Treatment Plant | (20,000 gallon capacity) |
|----|-----------------------|--------------------------|

Summary of historical usage 10,000 every 29 days

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Citric Acid at 50% solution:

Site breakdown:

1) *Water Treatment Plant (20,000 gallon capacity)*

Summary of historical usage 5,000 gallons every 30 days

*Chemical Usage and Frequency may decline during off-peak months and may increase during on-peak months.

**Additional chemicals may be added to this list at any time.

***Site location map is attached

Bids will be accepted on a **bulk rate** (i.e. \$ per gallon) basis. Bid packages shall also include any miscellaneous charges such as minimal hourly charges, travel charges and/or mobilization/demobilization charges. The bids shall be reviewed and selected based on the bulk rate, but with special consideration taking into account for any miscellaneous costs.

No proposal will be accepted from a Chemical Supplier who is not able to provide all the chemicals and/or at the frequencies listed within the specifications of this advertisement.

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A Contract Between
City of Fernley
595 Silver Lace Blvd
Fernley NV 89408

and

[REDACTED]

WHEREAS, NRS 266 authorizes the City of Fernley to engage services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor are both necessary and in the best interests of the City of Fernley;

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 Fernley City Council.

2. DEFINITIONS. “Fernley” or “City” means the City of Fernley. “Independent Contractor” means a person or entity that performs services and/or provides goods for Fernley 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 [REDACTED] to [REDACTED], subject to appropriation, unless sooner terminated by either party as specified in paragraph (10).

4. NOTICE. Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by 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; a Contractor's Attachment shall not contradict or supersede any Fernley required specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

ATTACHMENT A: ENTITLED [REDACTED] DATED [REDACTED]

ATTACHMENT B: ENTITLED [REDACTED] DATED [REDACTED]

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) at a cost follows: [REDACTED]

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 Fernley is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the City no later that the first Friday in August of the same year.

9. INSPECTION & AUDIT.

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a. Books and Records. Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully

disclose to Fernley, the State of Nevada 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 Fernley, 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 years and for five years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by Fernley, 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. Termination for Nonappropriation. The continuation of this Contract beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by Fernley. Fernley 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 Fernley'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 Fernley 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 Fernley 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 Fernley 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

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vi. If it is found by Fernley 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 (4), and the subsequent failure of the defaulting party within 15

calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

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 Fernley;

iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by Fernley;

iv. Contractor shall preserve, protect and promptly deliver to Fernley possession all proprietary information in accordance with paragraph (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 for Fernley shall include without limitation \$200 per hour for attorneys. Fernley may set off consideration against any unpaid obligation of Contractor.

12. LIMITED LIABILITY. Contract liability of both parties shall not be subject to punitive damages; furthermore, and notwithstanding any other provision of this Agreement, the total liability of either party, whether based in contract or tort, shall be limited to the total compensation or Fifty Thousand Dollars (\$50,000.00), whichever is less. However, damages for any Fernley 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.

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, but if not, the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by Contractor.

14. INDEMNIFICATION. To the fullest extent permitted by law, Contractor and Fernley shall not be responsible to each other for special, incidental, or consequential damages (including lost profits) incurred by either Contractor or Subcontractor or for which either party may be liable to any third party. Additionally, each party agrees to indemnify, hold harmless and defend, not excluding the Fernley's right to participate, the other from and against 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 either party and their officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with Fernley 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

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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 Fernley whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and Fernley 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 Fernley; (4) participation or contributions by either Contractor or the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by Fernley. Contractor shall indemnify and hold Fernley harmless from, and defend Fernley 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, or representatives shall be considered employees, agents, or representatives of Fernley.

16. INSURANCE SCHEDULE. Unless expressly waived in writing by Fernley, Contractor, as an independent contractor and not an employee of Fernley, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. Fernley 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 Fernley, and

2) Fernley has approved the certificates of insurance provided by the Contractor. Prior approval of the certificates of insurance by Fernley shall be a condition precedent to any payment of consideration under this Contract and Fernley's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of Fernley 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 the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by Fernley, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by Fernley of the completion of this Contract; or
2. Such time as the insurance is no longer required by Fernley under the terms of this Contract.

Any insurance or self-insurance available to Fernley shall be excess of and non-contributing with any insurance required from Contractor. Contractor's certificates of insurance shall apply on a primary basis. Until such time as the insurance is no longer required by Fernley, Contractor shall provide Fernley 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 Fernley and immediately replace such insurance or bond with an insurer meeting the requirements.

Workers' Compensation and Employer's Liability Insurance

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

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

If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.

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3) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to Fernley a fully executed "Affidavit of Rejection of Coverage Under NRS 616B627 and NRS 617.210" form.

Commercial General Liability Insurance

1) Minimum Limits required:

<u>\$2,000,000</u>	General Aggregate
<u>\$1,000,000</u>	Products & Completed Operations Aggregate
<u>\$1,000,000</u>	Personal and Advertising Injury
<u>\$1,000,000</u>	Each Occurrence

2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Business Automobile Liability Insurance

1) Minimum Limit required: **\$30,000** Each Occurrence for bodily injury and property damage.

2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).

The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Professional Liability Insurance

1) Minimum Limit required: \$100,000 Each Claim, \$200,000 Aggregate

2) Retroactive date: Prior to commencement of the performance of the contract

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

4) A certified copy of this policy may be required.

Umbrella or Excess Liability Insurance

1) May be used to achieve the above minimum liability limits.

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

Commercial Crime Insurance

Minimum Limit required: **\$10,000** Per Loss for Employee Dishonesty

This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

Performance Security

Amount required: **\$ Not Applicable**

Security may be in the form of surety bond, Certificate of Deposit or Treasury note payable to the City of Fernley, only.

The security shall be deposited with Fernley no later than ten (10) working days following award of the Contract to Contractor.

Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

General Requirements:

a. Additional Insured: By endorsement to the general liability insurance policy evidenced by Contractor, *the City of Fernley, its officers, and employees* shall be named as additional insured's for all liability arising from the Contract.

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- b. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insured's clause.
- c. 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 Fernley. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the Risk Management Division.
- d. Policy Cancellation: Except for ten days notice for non-payment of premium, each certificate of insurance shall be endorsed to state that; without thirty (30) days prior written notice to the City of Fernley, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address shown below.
- e. Approved Insurer: Each certificate of insurance shall be:
- 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to Fernley 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 Fernley:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Fernley to evidence the insurance policies and coverage required of Contractor.
- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, **must** be submitted to Fernley to evidence the endorsement of Fernley as an additional insured per General Requirements, Subsection a above.

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

Mail all required insurance documents to the City of Fernley identified on page one of the contract.

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 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

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.

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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 nonenforceability 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 Fernley, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the Fernley.

21. FERNLEY 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 Fernley and all such materials shall be delivered into Fernley 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 Fernley. Notwithstanding the foregoing, the Fernley shall have no proprietary interest in any materials licensed for use by the Fernley 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. Fernley will have the duty to disclose 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", provided that Contractor thereby agrees to indemnify and defend Fernley for honoring such a designation. The failure to so label any document that is released by Fernley shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. 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 there under 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.)

24. LOBBYING. The parties agree, whether expressly prohibited by federal, State or local 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:

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

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

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

25. WARRANTIES.

a. **General Warranty.** Contractor warrants that 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 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 Fernley. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multicity formulas and data values and date data interface values that reflect the century.

26. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective upon signing and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

27. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. Contractor consents to the jurisdiction of the Nevada district courts for enforcement of this Contract.

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

(The remainder of the this page is blank intentionally)

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29. ACKNOWLEDGMENT AND EXECUTION. In witness whereof, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby:

CITY'S ORIGINATING DEPARTMENT:

PUBLIC WORKS DEPARTMENT

Lowell Patton, Public Works Director

Telephone: 775-784-9910

Fax: 775-784-9966

lpatton@cityoffernley.org

LOWELL PATTON
PUBLIC WORKS DIRECTOR

DATED this ____ day of _____, 200__.

CITY ATTORNEY

Paul Taggart

Telephone: 775-784-9861

Fax: 775-784-575-6732

cityattorney@cityoffernley.org

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

PAUL TAGGART
CITY ATTORNEY

DATED this ____ day of _____, 200__.

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Agent of Contractor being first duly sworn deposes and says: That Agent of Contractor s/he is the Contractor; that Agent of Contractor s/he has read the foregoing Contract; and that Agent of Contractor s/he understands the terms, conditions, and requirements thereof.

CONTRACTOR

BY:

TITLE:

FIRM:

BUSINESS LICENSE #:

Address:

City: State: Zip Code:

Telephone: / Fax #:

E-mail Address:

(Signature of Contractor)

DATED this ____ day of _____, 200__.

STATE OF _____)

) ss

County of _____)

On this _____ day of _____, in the year 200__, before me, _____ / Notary Public, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

WITNESS my hand and official seal.

Notary's Signature

My Commission Expires: _____

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CONTRACT ACCEPTANCE AND EXECUTION:

The City Council for Fernley, Nevada at their publicly noticed meeting of approved the acceptance of this Contract. Further, the City Council authorizes LeRoy Goodman, Mayor of the City of Fernley, Nevada to set his hand to this document and record his signature for the execution of this contract in accordance with the action taken.

CITY OF FERNLEY, NEVADA

LEROY GOODMAN
MAYOR

DATED this ____ day of _____, 200__.

ATTEST:

LENA SHUMWAY
CITY CLERK

DATED this ____ day of _____, 200__.