

A Participating Addendum Between the State of Nevada (Participating State)

Acting By and Through Its
Department of Administration, Purchasing Division
515 East Musser Street, Suite 300
Carson City, NV 89701
POC: Marcy Troescher
Telephone: (775) 684-0199| Fax: (775) 684-0188

and

FedEx Corporate Services, Inc., as agent for
Federal Express Corporation and
FedEx Ground System, Inc. (collectively, "FedEx")
6625 Lenox Park Boulevard, 3rd Floor
Memphis, TN 38115
POS: Linda Falch
Telephone: (720) 482-0405| Fax: (303) 478-7466

WHEREAS, Nevada Revised Statute (NRS) 333.700 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 pursuant to NRS 277.100, NRS 333.162(1)(d), and NRS 333.480 the Chief of the Purchasing Division of Nevada is authorized to enter into cooperative group-contracting consortium.

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. CONTRACT TERM. This Contract shall be effective from subject to Board of Examiners' approval (anticipated to be October 11, 2011), to August 27, 2015, unless sooner terminated by either party as specified in paragraph ten (10).

3. Scope, Definitions of Terms: This addendum relates to and incorporates the terms of the WSCA Small Package Delivery Services Contract, Master Price Agreement number **MA 454**, led by the State of Utah for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts. As used herein, the term "Contract" means the WSCA Master Agreement and this Participating Addendum. In the event of a conflict between the WSCA Master Agreement and this Participating Addendum, this Participating Addendum shall control with regard to all services or goods to be supplied according to its terms. The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:

EXHIBIT A: WSCA MASTER AGREEMENT NO. MA 454

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.

4. Participation: Use of specific WSCA cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

5. Participating State Modifications or Additions to Master Price Agreement:

Type of rates selected: SNCP

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 the WSCA Small Package Delivery Services Contract Master Price Agreement number MA 454. 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 within the State of Nevada 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:** 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, per Policy Terms and Conditions.
- 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 state that without thirty (30) days prior written notice to the State of Nevada, c/o the Participating Entity, 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 Participating State designee identified on page 1 of this Participating Addendum.

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.

6. Consideration. The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost not to exceed \$ 1,000,000.00. The Participating State does not agree to reimburse Contractor for expenses unless otherwise specified in the Participating Addendum and the Master Price Agreement number **MA 454**. 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. Lease Agreements: No lease agreements are included.

8. Primary Contacts: The primary government contact individual for the Lead State are as follows (or their named successors):

Lead State

Name: Dan Reisner

Address: 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114

Telephone: (801) 538-3216

Fax: (801) 538-3882

E-mail: dreisner@utah.gov

9. Subcontractors: Contractor shall only use Contractor approved servicing subcontractors under this Participating Addendum.

10. Contract Number: All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: **1913** and the Lead State price agreement number: **MA 454**.

11. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"): If or when contractor is notified by ordering entity that a specific purchase or purchases are being made with ARRA funds, contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing contractor as soon as the ordering entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide the required report to the ordering entity with the invoice presented to the ordering entity for payment. The contractor, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

12. 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.

13. Remedies Not Exclusive. Except as otherwise specifically stated in the 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. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

14. Limitation of State Liability. The State of Nevada will not waive and intends to assert available NRS chapter 41 liability limitations in all cases.

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

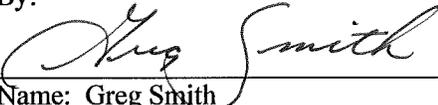
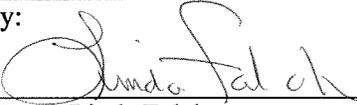
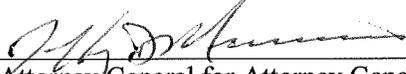
- | | | |
|--|-------|-------------------|
| 1. Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work? | _____ | <u> FF </u> |
| 2. Will the Contracting Agency be providing training to the independent contractor? | _____ | <u> FF </u>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

16. Licenses and Permits. The Contractor must hold all licenses, certificates, registrations, permits or other types of authorization that are required by law to perform the services in Nevada that are required to be performed under this Contract.

17. Governing Law, Jurisdiction and Venue. This Participating Addendum, the rights and obligations of the parties under this Participating Addendum, and the rights and obligations of the parties pertaining to or arising out of any services or goods supplied under this Participating Addendum, shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict of laws that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract

18. Entire Agreement. This Participating Addendum and the Master Price Agreement number **MA 454** (administered by the State of Utah) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: Nevada	Contractor: FedEx
By: 	By: 
Name: Greg Smith	Name: Linda Falch
Title: Administrator, Purchasing Division	Title: World Wide Account Manager
Date: 9-8-11	Date: 9/2/11
Signature: 	APPROVED BY BOARD OF EXAMINES:
Board of Examiners	On: 10-11-11 (date)
Approved as to form by:	
 Deputy Attorney General for Attorney General	On: 8 Sept 11 (date)