

ATTACHMENT AA

August 19, 2013
SOLICITATION #CIC-REF-14-001
ALTERNATIVE DISPUTE RESOLUTION
REFEREE / ARBITRATOR PANEL

The Nevada Real Estate Division (Division), Office of the Ombudsman for Owners in Common-Interest Communities is seeking proposals from qualified candidates for a panel of referees and arbitrators for the Alternative Dispute Resolution program. It is the Division's intent to enter into contract with successful candidates, acting as independent contractors, who have experience in meeting the scope of work described below. The Division reserves the right to award contracts at the Division's sole discretion. Responses will be processed immediately and the Division will be accepting responses continually. It is anticipated these contracts will commence upon approval of the State Board of Examiners through 6/30/2015. The State does not guarantee any minimum volume of service.

Responses will be accepted on a continual basis. However, the initial panels are to be established as soon as possible; therefore, if you wish to be considered for the initial panels, please provide your written response no later than August 23, 2013, at 4:00 p.m. PDT. Your proposal must be addressed to the Nevada Real Estate Division, Attn: Anne Moore, 2501 E. Sahara Avenue, Suite 201, Las Vegas, NV 89104. Solicitation number **CIC-REF-14-001** must be noted on the outside of the envelope.

SCOPE OF WORK:

The State of Nevada Shall:

- Receive written claims through the Office of the Ombudsman for Common-Interest Communities and Condominium Hotels, in which participation in the referee or arbitration programs has been requested.
- Provide specific instructions on the referee and arbitration programs processes through a written overview, as well as responding to any inquiries about the program.
- Receive and process the filing fees for the referee and arbitration programs.
- Create and maintain a list of referees and arbitrators along with their curriculum vitae which may be provided on the Division's website.

- Notify the Contractor in writing when they have been assigned to a claim, and forward to the Contractor the claim form and response filed with the Division.
- Notify the parties of the name and contact information for the referee or arbitrator selected.
- Create and maintain brochures, form letters, and any other descriptive paperwork related to the referee and arbitration programs.
- If funds are available, subsidize referee program proceedings if one or both parties are qualified pursuant to regulation or policy adopted by the Division. Subsidy payments will be forwarded to the Contractor no later than (60) days after receipt of the Contractor's itemized billing statement and written decision. (Arbitration proceedings will not be subsidized).
- Maintain accurate records of all subsidy amounts paid by the Division to the Contractor.
- Based on availability, provide conference room space for referee program hearings or arbitrations.

Unless noted specifically, all contractors will perform the following services:

- Maintain a status of "Good Standing" with the State Bar of Nevada throughout the term of the contract.
- Agree to update Contractor's curriculum vitae or resume when necessary for posting on the Division's website.
- Complete and submit to the Division within three (3) State business days from notice of assignment to a claim the Conflict of Interest form.
- Receive referee program claims that have been assigned, and contact the parties involved within five (5) days of the receipt of the claim to schedule a referee program hearing.
- Not later than 5 days after appointment for an arbitration, Contractor shall provide to the parties an informational statement related to the arbitration of the claim pursuant to NRS 38.
- Conduct referee program or arbitration proceedings and draft a decision regarding:
 - a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property, or any bylaws, rules or regulations adopted by an association.
 - b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property.
- Charge a fee of no more than \$200.00 per hour, not to exceed \$1,000.00 per referee program proceeding. The cost of the referee program proceeding shall be shared equally by both sides, unless a subsidy is provided for one or both sides.

- Charge a fee of no more than \$300.00 per hour for arbitration proceedings to be paid by the parties to the arbitration.
- Review all submitted documentation and issue a fair and impartial decision that is based upon the association's covenants, conditions and restrictions and other governing documents, as well as NRS and NAC 116 and, for the referee program, any policies and procedures adopted by the Division.
- Provide to the Division and the parties the written decision for the hearing within 30 days of the conclusion of a hearing. Contractor shall provide a detailed billing statement to the parties with the written decision. For referee program proceedings, if Contractor is notified that either or both parties requested and qualified for a subsidy, Contractor shall also send to the Division – along with the written decision – a detailed billing statement for such party or parties.
- Notify the Division in writing of any scheduled or non-scheduled absences, vacations, or time periods the referee or arbitrator will not be available for assignment to a hearing.
- During the term of the contract, and within each fiscal year of July 1 through June 30, be available to attend up to (4) hours of instruction if requested by the Division without compensation from the State.

Minimum Qualifications:

Candidates should demonstrate in their submissions that they have the following qualifications:

- A Nevada State Bar License number and Good Standing status.
- Training and experience in resolution of disputes concerning associations, including, without limitation, the interpretation, application and enforcement of covenants, conditions and restrictions pertaining to residential property and the articles of incorporation, bylaws, rules and regulations of an association.
- Must not have any litigation pending against the State of Nevada within the last (5) years.

Your response should include, at a minimum, the following:

- A completed and notarized Referee Application;
- A current curriculum vitae or resume outlining education and experience;
- Nevada bar license number;
- Copy of any Arbitrator certifications, if applicable;
- Signed Attestments A, B and C;
- Signed Referee Policies and Procedures
- The geographic regions you can provide service, i.e., statewide, rural, northern Nevada, southern Nevada.

A sample contract and Disclaimer of Conflict of Interest have been provided for your reference.

**STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION**

2501 East Sahara Avenue, Suite 201 * Las Vegas, NV 89104-4137
Ph: (702) 486-4480 * Fax: (702) 486-4520

REFEREE APPLICATION FORM
(Please Print or Type)

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

E-mail Address: _____

Daytime #: _____ Fax#: _____ Cell #: _____

NEVADA BAR ID #: _____ Current Member Status: _____ (must be in good standing)

Current Specialization(s): _____

Professional Certificates / Designations: _____

List major areas of specialization or subject expertise related to homeowner association knowledge/operation: real estate, CC&R's, bylaws, budgets, accounting, injuries, construction, insurance, etc., as well as NRS 116:

Qualifications:

List formal training on the hearing of cases/claims and issuance of decisions:

Course/Training Title: _____

Date(s): _____ Number of
Hours: _____

Provider

Name/Address: _____

Completion Validation: _____

(Attach additional training if applicable)

PLEASE INDICATE IF YOU WOULD LIKE TO BE CONSIDERED FOR THE ADR MEDIATION PANEL:

Yes, I would like to be considered No, I do not wish to be considered

IF SO, PLEASE COMPLETE THE MEDIATOR APPLICATION FORM

PLEASE INDICATE IF YOU WOULD LIKE TO BE CONSIDERED FOR THE ADR ARBITRATION PANEL:

Yes, I would like to be considered No, I do not wish to be considered

Name of Mediation/Arbitration organization or service:

Address: _____ City: _____ State: _____ Zip: _____
Phone: _____ Member Since: _____

Please describe any experience with the resolution of homeowner association disputes. If no experience, please enter N/A:

Geographic Service Area:

- Reno/Carson/Tahoe Area Central Nevada
 Northeastern Nevada Greater Las Vegas Area

Please list foreign languages, or sign language, in which you have sufficient fluency to serve as a neutral:

Fees and Expenses:

I acknowledge that my rate will be a maximum of \$200 per hour, not to exceed a total amount of \$1,000 per hearing. If I receive notice from the Division that one or both sides to a hearing requested and qualified for a subsidy, a subsidy for a referee program hearing shall not be more than \$250 per side, not to exceed \$500 for both sides. _____ (initial here)

As an arbitrator, I understand my billing rate is established by AB370 and may not exceed \$300 per hour. _____ (initial here)

I CERTIFY that the above information and any other information I am submitting for this application is true and correct to the best of my knowledge and that I may be removed from the Referee and Arbitrator panel and the approved Division Neutral List for intentionally falsifying the information provided. False certification may also subject me to civil or criminal penalties. I understand that all of the information provided is a public record. I agree to comply with all provisions of Chapter 38 Nevada Revised Statute and Assembly Bill 370. _____ (initial here)

If I am listed on the Division Neutral list, I agree to perform resolution services to the best of my ability in an ethical and proper manner and in accordance with the time provisions of the referee program process.

Signature Date Printed Name
STATE OF _____ ss. COUNTY OF _____

I certify that this is a true and correct copy of a document in possession of _____
PRINT NAME

Notary Signature Commission Expiration:

Attestation A

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES
REFEREE / ARBITRATOR PROGRAM
SOLICITATION #CIC-REF-14-001
AUGUST 19, 2013

**Declaration of Certification
of Nevada Revised Statutes (NRS) 116 including SB130, SB280,
SB278, SB389, AB44 and AB395 of the 2013 Legislative Session
and
Nevada Administrative Code (NAC) 116**

I _____,
(print name)

certify that I have read and understand the provisions, amendments, and
regulatory revisions in chapter 116 of Nevada Revised Statutes (NRS) and
Nevada Administrative Code (NAC) identified above.

*“I declare under penalty of perjury under the laws of the State of Nevada
that the foregoing is true and correct.”*

Executed on _____
Date *Signature*

Attestation B

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES
REFEREE / ARBITRATOR PROGRAM
SOLICITATION #CIC-REF-14-001
AUGUST 19, 2013

**Declaration of Certification
of Nevada Revised Statutes (NRS) 38.300-.360 including Assembly
Bill 370 of the 2013 Legislative Session and
Nevada Administrative Code (NAC) 38.350**

I _____,
(print name)

certify that I have read and understand the provisions and amendments in the chapter of Nevada Revised Statute (NRS) 38 and the Nevada Administrative Code (NAC) 38.

“I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.”

Executed on _____
Date *Signature*

Attestation C

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES
REFEREE / ARBITRATOR PROGRAM
SOLICITATION #CIC-REF-14-001
AUGUST 19, 2013

**Declaration of Certification
Specialization or Subject Expertise Related to
Associations of Residential Unit Owners**

I _____,
(print name)

have specialization or subject expertise related to associations of residential unit owners in *each* of the following categories:

- Real Estate, Covenants, Conditions and Restrictions (CC&R's)
- By-Laws
- Budgets and Accounting
- Homeowner Association Responsibilities and Liabilities
- Residential Unit Construction

“I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.”

Executed on _____
Date *Signature*

REFEREE POLICIES AND PROCEDURES

1. Referee must be qualified by training and experience in the laws of this State governing real property and common-interest communities. During the term of the contract, and within each fiscal year of July 1 through June 30, be available to attend up to (4) hours of instruction if requested by the Division without compensation from the State.
2. A referee must review the claim and the answer filed and, unless the parties agree to waive a hearing, conduct a hearing on the claim within 60 days of the claim being assigned. The date the claim is assigned to the referee is the date the Division mails to the referee notice of the claim.
3. Parties to a referee program hearing shall provide any documents relevant to the claim within 5 days of a scheduled hearing or as requested by the referee, if no hearing is required.
4. After reviewing the claim, the answer, and any other documents provided by the parties and, if required, conducting a hearing on the claim, the referee shall issue a written decision and award and provide a copy of the written decision and award to the parties and to the Division within 30 days of the hearing or from the date the parties agree to waive a hearing.
5. Referees may not charge more than \$200 per hour, not to exceed a total of \$1,000 per claim.
6. Parties to the referee program may request a subsidy from the Division by submitting an application on a form provided by the Division. A unit's owner is entitled to have one referee program proceeding subsidized per fiscal year per unit that he or she owns. An association is entitled to have one referee program proceeding subsidized per fiscal year against the same unit's owner for each unit that he or she owns.
7. The amount of the subsidy for each referee program matter shall not exceed \$500 or \$250 for each party who qualifies for a subsidy, whichever is less.
8. The referee may not award to either party costs or attorney's fees. Monetary awards are not to exceed \$7,500.00.
9. Any statute of limitations applicable to a claim referred to a referee pursuant to AB370 is tolled from the time the claim is submitted to the Division until the issuance of the written decision and award by the referee.
10. The Division has the discretion to exclude matters from the referee program if the claim involves multiple parties.
11. Any party to the referee program may, within 60 days after receiving the written decision and award, commence a civil action in the proper court concerning the claim. If such action is not commenced, any party may, within 1 year after receiving the written decision and award, apply to the proper court for a confirmation of the written decision and award pursuant to NRS 38.239.

I acknowledge that I have read the foregoing Referee Policies and Procedures and agree to adhere to the policy rules stated above.

Signature

Printed Name

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

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

Department of Business and Industry, Real Estate Division
Office of the Ombudsman for Common-Interest Communities and Condominium Hotels
2501 East Sahara Avenue, Suite 201, Las Vegas, Nevada 89104
Phone: (702) 486-4480 Fax: (775) 684-2998

and

(NAME, ADDRESS, PHONE, FACSIMILE NUMBER FEDERAL I.D. NUMBER OF INDEPENDENT CONTRACTOR)

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

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

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

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

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

3. CONTRACT TERM. This Contract shall be effective from subject to Board of Examiners' approval (anticipated to be 10/8/13) to 6/30/15, 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 State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

ATTACHMENT AA: SOLICITATION

ATTACHMENT BB: INSURANCE SCHEDULE

ATTACHMENT CC: AFFIDAVIT OF REJECTION OF COVERAGE

6. CONSIDERATION. The parties agree that Contractor will provide the referee program services specified in paragraph 5 at a cost to the parties of no more than **\$200.00 per hour, not to exceed a total of \$1,000 per claim, to be split equally by both sides. The parties to the referee program are billed for the Contractor's services.**

If the Contractor receives notice from the contract monitor that a party or parties to a referee program matter will be subsidized by the Real Estate Division, the billing statement for such party

shall be sent to the contract monitor within 30 days of the completion of the hearing or from a decision that no hearing is necessary. Invoicing for services shall be itemized by: date and time. Contractor will invoice for referee program services based on hourly services, billed in 1/10th of an hour increments. Travel time is not billable.

The funds used to subsidize a referee program matter may not exceed \$500 or \$250 per side, whichever is less. After the subsidy is applied to the Contractor's bill, Contractor shall collect any deficiency in payment from the appropriate parties. The maximum contract authority for this contract is \$25,000.00. The maximum contract authority does not obligate the State of Nevada to expend funds under this contract up to that amount, nor does it ensure Contractor a fixed number of assigned cases that will include a subsidy. Contractor may provide arbitration services specified in paragraph 5 and shall not bill the parties to the arbitration more than \$300 per hour. The State shall not be responsible for payment of any arbitration related charges or fees.

The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments.

7. **SELF PROMOTION.** Contractor understands the referee program hearing or arbitration services to be provided. Contractor agrees to refrain from any attempt to promote his or her own business, in any manner. Self promotion or solicitation of business to participants will constitute an immediate default under the provisions of this Contract.

8. **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.

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

10. **INSPECTION & AUDIT.**

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 the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

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

c. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained a minimum three 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 the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

11. CONTRACT TERMINATION.

- a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.
- b. State Termination for Nonappropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:
 - i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
 - v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
 - vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (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 the Contracting Agency;
 - iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph (22).

12. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

13. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor,

for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

14. 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.

15. INDEMNIFICATION. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

16. 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, or representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

Contractor's Initials

YES NO

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

17. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The State shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

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

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

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.

Any insurance or self-insurance available to the State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

General Requirements:

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured

retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.

- e. Policy Cancellation: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract:
- f. Approved Insurer: Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
 - 2) Currently rated by A.M. Best as "A-VII" or better.

Evidence of Insurance:

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

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26) , 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.

18. 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. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

19. 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.

20. 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.

21. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

22. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

23. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State 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" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

24. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

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

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

26. 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:

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

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

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

27. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multicentury formulas and data values and date data interface values that reflect the century. Pursuant to NRS 41.0321, the State is immune from liability due to any failure of any incorrect date being produced, calculated or generated by a computer or other information system.

ATTACHMENT BB

INSURANCE SCHEDULE

INDEMNIFICATION CLAUSE:

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

INSURANCE REQUIREMENTS:

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

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

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

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

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

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

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

2. **Automobile Liability - WAIVED**

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

Combined Single Limit (CSL) \$300,000

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

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

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

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

4. **Professional Liability (Errors and Omissions Liability)**

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; 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 work under this Contract is completed.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the State of Nevada, Department (Division) of Real Estate is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to:

**Anne Moore, Department of Business and Industry, Real Estate Division
Office of the Ombudsman for Common-Interest Communities and Condominium Hotels
2501 East Sahara Avenue, Suite 201, Las Vegas, Nevada 89104**

- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an “A.M. Best” rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to:

**Anne Moore, Department of Business and Industry, Real Estate Division
Office of the Ombudsman for Common-Interest Communities and Condominium Hotels
2501 East Sahara Avenue, Suite 201, Las Vegas, Nevada 89104**

The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.

- F. **SUBCONTRACTORS:** Contractors’ certificate(s) shall include all subcontractors as additional insureds under its policies **or** Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Risk Management Division or the Attorney General’s Office, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

