

PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
WIRELESS SERVICES 2012-2017
Administered by the State of Nevada (hereinafter "Lead State")

MASTER PRICE AGREEMENT
TESSCO

Contract Number: 1907
(hereinafter "Contractor")

And

STATE OF ND
(hereinafter "Participating State")

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1. **Scope:** This addendum covers the WIRELESS SERVICES lead by the State of Nevada for use by state agencies and other entities located in the Participating **State/Entity** authorized by that state's statutes to utilize **state/entity** contracts.

2. **Participation:** Use of specific **WSCA** cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **state/entity** 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.

INDIVIDUAL CUSTOMER: Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by this Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

3. **Participating State Modifications or Additions to Master Price Agreement:**

(These modifications or additions apply only to actions and relationships within the Participating Entity.)

1. **Authorized Participating Entities.** Participant hereby authorizes the following entities as "Participating Entities" under the Agreement: Entities authorized to participate in cooperative purchasing with the State under North Dakota Century Code 54-44.4-13, including institutions under the jurisdiction of State Board of Higher Education, K-12 schools, and local government entities. For purposes of this authorization the term "Government entities" means counties, cities, townships, institutions under the jurisdiction of State Board or Higher Education, public primary and secondary educational entities, governmental boards and commissions, and nonprofit entities established on behalf of public entities for the purpose of purchasing.

2. **Termination of Contract.**

a. Termination without cause. This contract may be terminated by mutual consent of both parties.

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b. Termination for lack of funding or authority. STATE by written notice of default to CONTRACTOR, may terminate the whole or any part of this contract, under any of the following conditions:

- (1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- (2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- (3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

c. Termination for cause. STATE may terminate this contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- (1) If CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by STATE; or
- (2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

- 3. Continuation of Participation.** The term of this Participating Addendum must be coterminous with the WSCA Master Agreement, #1907, to include all contract extensions and renewals.
- 4. Reports.** The contractor must maintain records of sales under this Participating Addendum and furnish volume of sales information to the Purchasing Agency or Entity/State within 15 business day upon written request of the Purchasing Agency or Entity/State. Reports will include agency name, invoice date, invoice amount, and summary of items purchased.

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5. **Merger and Modification.** This Participating Addendum and TESSCO Master Service Agreement for Services of Independent Contractor constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.
6. **Notices.** All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the Primary Contacts listed below. Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.
7. **Applicable Law and Venue.** This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated exclusively in the State District Court of Burleigh County, North Dakota.
8. **Spoilation – Notice of Potential Claims.** CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.
9. **Indemnification.** To the extent of Contractor's negligence, Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.
10. **Insurance.** The insurance coverages listed in the Master Service Agreement must also meet the following additional requirements:
 - a. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
 - b. a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;

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- c. a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
 - d. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
 - e. The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- 11. Attorney Fees.** In the event a lawsuit is instituted by STATE to obtain performance due under this contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.
- 12. Alternative Dispute Resolution – Jury Trial.** STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.
- 13. Confidentiality.** CONTRACTOR shall not use or disclose any information it receives from STATE under this contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. chapter 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.
- 14. Compliance with Public Records Law.** CONTRACTOR understands that, except for disclosures prohibited in this contract, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under this contract, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

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- 15. State Audit.** All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR shall maintain all such records for at least three years following completion of this contract.
- 16. Prepayment.** STATE will not make any advance payments before performance by CONTRACTOR under this contract.
- 17. Taxpayer ID.** CONTRACTOR'S federal employer ID number is: 52-186893.
- 18. Payment of Taxes by State.** State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.
- 19. Order of Precedence.** The Parties acknowledge and agree that in the event of a conflict between the terms contained in the various documents comprising this Agreement, the following order of precedence will control: (a) this PA; (b) the Master Agreement; (c) Attachment CC – Contractor's Additional Terms and Conditions; and (d) any Purchase Order issued in connection therewith. This section specifically supersedes any order of precedence provisions set forth elsewhere in the Agreement.
- 20. Attachment CC Contractor's Additional Terms - Section 5 Payment Terms – Remove of the following language:** "In the event TESSCO retains a collection agency or attorney to enforce any of your obligations to TESSCO, you agree to pay all of TESSCO's costs and expenses associated with such enforcement, including all collection, attorney, and litigation fees."
- 21. Attachment CC Contractor's Additional Terms – Remove Section 8 Limitation of Liability.**
- 4. Lease Agreements:** Leasing is NOT authorized under the category awarded for this contract.
- 5. Primary Contacts:** The primary contact individual for this participating addendum are as follows (or their named successors):

Lead State

Name	Teri Smith, Purchasing Officer
Address	515 E. Musser St, Suite 300, Carson City, NV 89701
Telephone	775-684-0178
Fax	775-684-0188

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E-mail	tlsmith@admin.nv.gov
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Contractor

Name	Kristina Lewis, Contract Administrator
Address	11126 McCormick Road, Hunt Valley, MD 21031-1494
Telephone	800-316-2830
Fax	410-527-0005
E-mail	bid@tessco.com

Participating Entity

Name	Tricia Opp
Address	600 East Boulevard Ave, Dept 012, 14 th Floor Capitol Tower, Bismarck, ND 58505-0310
Telephone	701-328-1721
Fax	701-328-1615
E-mail	topp@nd.gov

6. Subcontractors:

No dealers or resellers are authorized under this Master Price Agreement for this category of award.

7. Purchase Order Instructions:

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA Contract # 1907" (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount, monthly payment (if leased), itemized list of accessories. Please channel your PO through one of our authorized resellers so they can arrange for proper ordering and installation of your unit.

Orders can be made out to either (a) Tescoco or (b) to an AUTHORIZED reseller depending upon the preference of the Participating State or other participating legal entity.

8. Price Agreement Number:

All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: 915 and the

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Lead State price agreement number: 1907.

This Participating Addendum and the Master Price Agreement number 1907 (administered by the State of Nevada) 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.

9. 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.

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

Participating State: <u>North Dakota</u>	Contractor: TESSCO Incorporated
By: <u>[Signature]</u>	By: <u>[Signature]</u>

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Name: <i>Tricia Opp</i>	Name: Cynthia L. King
Title: <i>Procurement Officer II</i>	Title: Vice President
Date: <i>8/1/12</i>	Date: 08/01/2012