

Item # 8-3

**City of Carson City
Agenda Report**

Date Submitted: March 10, 2009

Agenda Date Requested: March 19, 2009

Time Requested: Consent

To: Mayor and Supervisors

From: Purchasing & Contracts

Subject Title: Action to determine this contract is for purchases made with money in the prisoner store fund and therefore not suitable for public bidding pursuant to NRS 332.115(1) (l) and to approve this contract, a request for the purchase of inmate commissary products, for period not to exceed five (5) years from the Commissary Special Revenue Fund. (file 0809-197)

Staff Summary: Swanson Inmate Commissary Services has provided this service since 1993. Items are purchased from Swanson and sold through the Sheriff's Office Commissary Program. This process is completed with the use of Cobra Banker software – also provided by Swanson Inmate funds. The Cobra Banker software allows for complete control and auditing of inmate funds. The new contract will also provide for the implementation Cobra Cashier lobby kiosk, which will allow visitors the ability to add funds to inmate accounts using cash, credit and debit cards at no cost to the Sheriff's Department. Use of the Cobra Cashier will increase efficiency by freeing up staff time and providing excellent audit controls.

Type of Action Requested: (check one)

Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to determine this contract is for purchases made with money in the prisoner store fund and therefore not suitable for public bidding pursuant to NRS 332.115 (1) (l) and to approve this contract, a request for the purchase of inmate commissary products, for period not to exceed five (5) years from the Commissary Special Revenue Fund. (file 0809-197)

Explanation for Recommended Board Action: NRS 332.115 Contracts not adapted to award by competitive bidding: purchase of equipment by local law enforcement agency, response agency or other local governmental agency; purchase of goods commonly used by hospital

1. Contracts which by their nature are not adapted to award by competitive bidding, including contracts for: (l) Purchases made with money in a store fund for prisoners in a jail or local detention facility for the provision and maintenance of a canteen for the prisoners;

Applicable Statute, Code, Policy, Rule or Regulation: NRS 332.115(1)(l)

Fiscal Impact: No Fiscal Impact

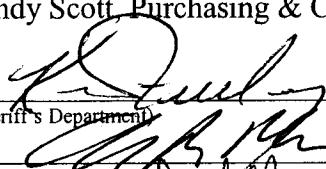
Explanation of Impact: There is no General Fund impact as all items are purchased through the Commissary Special Revenue Fund. It is expected that \$100,000.00 in items will be purchased for resale in the current fiscal year.

Funding Source: Commissary Special Revenue Fund

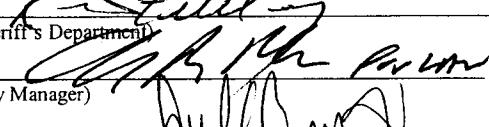
Supporting Material: Swanson Services Corporation Service Contract

Prepared By: Sandy Scott, Purchasing & Contracts Coordinator

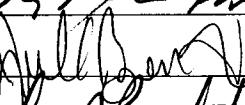
Reviewed By:

 (Sheriff's Department)

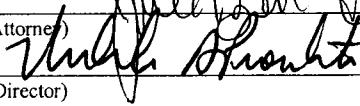
Date: 3-10-09

 (City Manager)

Date: 3-10-09

 (District Attorney)

Date: 3-10-09

 (Finance Director)

Date: 3-10-09

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay _____
2) _____

(Vote Recorded By)

Service Contract

**SWANSON SERVICES CORPORATION
SERVICE CONTRACT**

THIS AGREEMENT, made this 19th day of March, 2009 by and between Carson City Sheriff's Office, located at 911 E. Musser Street, Carson City, NV 89701, hereinafter referred to as "Client," and Swanson Services Corporation with principal offices located at 1133 Pennsylvania St., Denver, CO, hereinafter referred to as "Swanson."

WITNESS TO:

Whereas, Client desires to avail itself of Swanson's services and whereas Swanson desires to provide such services to Client, now, therefore, in consideration of mutual covenants and agreements hereto set forth, the parties intending to be legally bound, hereby agree to as follows:

SECTION ONE: CLIENTS GRANT TO SWANSON

Client grants to Swanson as an independent contractor, the exclusive right to sell commissary products and any other items which are charged to the residents account balance, including, but not limited to, debit phone cards, to the residents of Carson City Jail, located at 911 E. Musser Street, Carson City, NV 89701, such location referred herein as "premises." Charges, by the Client, to a resident's account for services the Client provides to such resident, are excluded from this provision.

SECTION TWO: SWANSON'S RESPONSIBILITIES

A. Pursuant to the provisions of this agreement, Swanson will purchase and maintain at high standards of quality, such mutually agreed upon number and type of inventory items at mutually agreed locations for the sales of food products, non-alcoholic beverages, tobacco products and other such articles and will keep such inventory adequately serviced and supplied, with the appropriate merchandise in good quality. Swanson warrants that initial price list is subject to ordinary price adjustments that, from time to time, are necessary due to market factors beyond the control of Swanson during the term of this agreement.

B. Swanson agrees to comply with all applicable Federal, State and Local laws and regulations pertaining to wages and hours of employment.

C. All records will be kept on file by Swanson for a period of three (3) years from the date which record is made, and upon reasonable notice, Swanson will give Client, or Client's authorized representative the privilege, at a reasonable time, of inspecting, examining and auditing, during normal business hours, such of Swanson's records which are directly relevant to clients purchases. The cost of such inspection, examination or audit shall be the sole expense of Client. Such inspections shall take place at the Swanson location where said records are normally maintained.

D. Shipment of orders will be FOB: Dock

E. Only provisions contained in Swanson's proposal dated _____, specifically agreed to by the parties, in writing and attached as an exhibit to this agreement, are made a part of this agreement.

F. Swanson agrees to provide phone support for Swanson's software on a 24 hour, 7 days per week basis.

G. Swanson agrees to provide onsite hardware support and maintenance on Swanson owned hardware. After installation of Swanson Software on Client's Hardware, Client agrees to compensate Swanson for its expenses related to providing support and maintenance on Client's Hardware.

SECTION THREE: CLIENT'S RESPONSIBILITIES

A. It shall be the sole responsibility of Client to insure that Client's employees follow and adhere to the accounting system provided by Swanson and operating procedures presented during initial training provided by Swanson and outlined in the Swanson Manual. This includes, but is not limited to, balancing cash drawers, daily trust fund balancing, weekly trust fund balancing and monthly check book and bank reconciliation.

B. It shall be the sole responsibility of Client to train their replacement or relief personnel in processing commissary and/or in maintaining the accounting system, provided by Swanson. Under no circumstance will Swanson be responsible for the integrity of the accounts or account balances maintained by Client. Should Client request additional training and support of Swanson, such training and support will be provided at a fee mutually agreed to, in writing, by the parties.

C. Client or Client's staff will adhere to mutually agreed to time frame for commissary order and delivery procedures, where delivery to residents is provided by Swanson staff.

D. Client shall promptly and in a timely manner notify Swanson of any changes in Clients Hardware, Software or Operating Procedures that, in any way affect Swanson's hardware, software or Swanson's performance under this agreement.

E. If Client delivers orders to the inmate. Client will accurately account for and deliver commissary orders shipped by Swanson, notifying Swanson immediately of any discrepancy.

F. With any interface. Client will insure that Client's Hardware or Software in no way results in the disruption of Swanson's Hardware or Software operating systems, files or file structure.

SECTION FOUR: FINANCIAL ARRANGEMENTS

A. Client agrees to reimburse Swanson each week for all purchases from Swanson.

B. Client is responsible for the payment of any sales, fees or other taxes levied against the sales or performance under this contract.

C. Swanson agrees to remit any payments due Client within fifteen (15) days following the end of Swanson's accounting period.

D. Nothing in this agreement shall allow either party to withhold or refuse payment of any money due the other party.

SECTION FIVE: INDEMNIFICATION AND INSURANCE

A. The parties shall indemnify each other against any loss, damage, injury or death caused by the negligent acts or omissions by their agents or employees for losses, damages, injuries or death caused by their negligence and arising out of the consumption or use of the products sold; services provided, however, nothing contained herein shall require the parties to defend or indemnify each other for losses, damages, injuries or death arising out of the negligence of their respective agents or employees.

B. The parties' obligation to hold each other harmless pursuant to the Agreement shall be dependent upon promptly notifying each other in writing of any such claims or lawsuits against either Swanson or Client, but in no event not later than thirty (30) days after the date of first receiving notice of such claim or lawsuit. Failure of the party receiving such notification, to notify the other party of any such claim or lawsuit within said thirty (30) day period, shall relieve that party of any and all responsibility and liability under the Agreement to Indemnify and hold harmless.

SECTION SIX: EMPLOYEES

A. Party's to this Agreement recognize that employees of Client are not employees of Swanson and employees of Swanson are not employees of Client.

B. During the term of this Agreement and for a period of two (2) years from the termination of this agreement or renewal or extension of this agreement, the parties agree not to hire or offer to hire any employee or former employee of the other party, without the express written consent of that party.

SECTION SEVEN: COMMENCEMENT

This Agreement shall become effective as of the commencement date of service and shall remain in effect for 5 years, unless sooner terminated as herein provided. The commencement date of this contract shall be 20. It shall thereafter renew itself automatically for similar terms until notice of

termination, in writing, is given by either party by registered mail at least ninety (90) days prior to the expiration of this Agreement, or any renewal term thereof.

SECTION EIGHT: TERMINATION:

A. The following may not be a cause for termination of this agreement:

1. Any responsibility of Client referred to in Section Three: Responsibilities, of this agreement.
2. Failure of any third party delivery service to deliver a Swanson shipment in a timely and satisfactory manner.

B. This Agreement may only be terminated under the following circumstances:

1. Upon mutual agreement of both Client and Swanson.

2. For Cause, in the following manner:

- a. If either party shall refuse, fail or be unable to perform any of the terms of this agreement for any reason, other than excused performance stated in other sections of this agreement, the party claiming such failure shall give the other party written notice of such breach listing the event and necessary documentation supporting such breach.
- b. Within 30 days, both parties shall meet and discuss the claimed breach and set forth, a mutually agreed upon resolution to such breach and time-line for correcting such breach satisfactory to both parties. Such resolution and time-line must be in writing, agreed to and signed by both party's.
- c. If, a mutually agreeable resolution is not reached, or if at the end of such time line, agreed upon resolution and time-line are not being met, the injured party may cancel this agreement effective ten days (10) after the end of said agreed time line or failure to mutually agree to a resolution.

C. Mitigated Damages:

1. Client agrees that Swanson must expend considerable time and resources in the implementation, training and execution of this agreement and that cancellation, for any reason, prior to completing the full term of this agreement, will result in Swanson suffering substantial losses.

2. In the event of any cancellation or defacto cancellation, (whereby Swanson is hindered in any way, or not allowed to perform and be paid for services to the fullest extent and intent of the agreement), Client agrees that Swanson shall be entitled to mitigated damages. Such mitigated damages are mutually agreed to as being equal to five (5) percent of the sales remaining to be realized under this agreement.

Unrealized sales shall be determined by calculating the highest weekly sales average experienced in the preceding twelve months. Such annual sales average shall be utilized in determining the total sales for the remaining years of portions of years of the term of this agreement or extensions thereof.

In an agreement that has optional or renewal or extension terms, any and all such terms shall be deemed to be part of the total term, in calculating the remaining term of this agreement. Such mitigated damages shall be paid to Swanson within five business days following date of termination.

3. Should Client fail to compensate Swanson for its Sales and/or any mitigated damages outlined herein, Swanson shall be entitled to one and one-half (1.5%) percent interest, per month on any outstanding balance owed Swanson. Further, Client shall be responsible for all costs Swanson may incur in collection of such balance including, but not limited to, reasonable collection and/or attorney's fees.

SECTION NINE: INDEPENDENT CONTRACTOR RELATIONSHIP

It is mutually understood and agreed, and it is the intent of the parties that; subject, where applicable, to the terms and conditions set forth in the direct sales to client financial arrangement, if such is used, an independent contractor relationship be and is hereby established under the terms and conditions of this Agreement; that employees of Swanson are not nor shall be deemed to be employees of Client; and that employees of Client are not nor shall they be deemed to be employees of Swanson.

SECTION TEN: SWANSON'S TITLE TO THE SOFTWARE AND HARDWARE

A. All software installed by Swanson pursuant to the Agreement is proprietary, copyrighted and a patent application on file with regard to, not only the software, but also the operating technology involved in Swanson's services. This software and technology, shall at all times, remain the property of Swanson, with title and all rights vested in Swanson. Client shall have no property interest in said software and technology and shall at all times protect such software and technology from copying, removal, tampering with, or disclosure to other persons or companies, without the express, written consent of Swanson.

B. All hardware installed by Swanson shall remain the property of Swanson, unless purchased by Client.

C. All Maintenance, repair, or replacement of hardware shall be the responsibility of: **Swanson**

SECTION ELEVEN: EXCUSED PERFORMANCE

In case performance of any terms or provisions hereof (other than the payment of monies) shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, State, or Federal, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, acts of God, or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option suspend, without liability, the performance of its obligations hereunder (other than the payment of monies) during the period of such suspension of performance of duties hereunder.

SECTION TWELVE: INDEMNIFICATION

- A. To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, each party shall indemnify, hold harmless and defend, not excluding the others right to participate, the other party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this paragraph.
- B. Except as otherwise provided in Sub-Section 12.D. below, the indemnifying party shall not be obligated to provide a legal defense to the indemnified party, nor reimburse the indemnified party for the same, for any period occurring before the indemnified party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party, along with:
 1. a written request for a legal defense for such pending claim(s) or cause(s) of action; and
 2. a detailed explanation of the basis upon which the indemnified party believes that the claim or cause of action asserted against the indemnified party implicates the culpable conduct of the indemnifying party, its officers, employees, and/or agents.
- C. After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party, including counsel through which the indemnified party might voluntarily choose to participate in its defense of the same matter.
- D. After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall be obligated to reimburse the reasonable attorneys fees and costs incurred by the indemnified party during the initial thirty (30)-day period of the claim or cause of action, if any, incurred by separate counsel.

SECTION THIRTEEN: ENTIRE AGREEMENT: WAIVER

This Agreement constitutes the entire Agreement between the parties with respect to the provision of Commissary Services, and there are no other or further written or oral understandings or agreements with respect thereto. No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of Swanson and Client. This Agreement supersedes all other agreements between the parties for the provision of Services outlined herein.

SECTION FOURTEEN: NOTICES

All notices to Client shall be addressed to:
Kathie Heath, Business Manager
911 E. Musser Street
Carson City, NV 89701

All notices to Swanson shall be addressed to:
Swanson Services Corporation
1133 Pennsylvania St.
Denver, CO 80203

SECTION FIFTEEN: GOVERNING LAW

This Agreement shall be governed by the laws of the state of Nevada.

IN WITNESS WHEREOF, the parties hereto affirm that they have the authority to execute this agreement on behalf of their respective entities for the entire term and have hereunto set their hands and seals of the day and year first above written.

CARSON CITY SHERIFF'S OFFICE

By: Kev Furlong
TITLE: Sheriff

Kev Furlong
(TYPED NAME OF OFFICIAL SIGNING)

SWANSON SERVICES CORPORATION

By: Clay Kling 1-12-2008
TITLE: Vice President of Operations

Clay Kling
(TYPED NAME OF OFFICIAL SIGNING)