

Date: January 17, 2013



City of Portland, Oregon

RFP No. 114730

REQUEST FOR PROPOSALS

for

STREETCAR AUTOMATIC PASSENGER COUNTING SYSTEM

PROPOSALS DUE: 02/15/13 by 4:00 p.m. Pacific Time

Submit the following number of Proposals in the format described: one (1) complete original copy, one (1) electronic copy in PDF format submitted on CD or USB flash drive, and one (1) electronic Redacted for Public Disclosure Copy in PDF format on a CD or USB flash drive.

Submit Proposals and Refer questions to:

James C. Moering, CPPP, JD
Senior Technology Procurement Specialist
RFP# 114730
Procurement Services
1120 SW Fifth Avenue, Room 750
Portland, Oregon 97204 Phone: (503) 823-7886
Email: james.moering@portlandoregon.gov

REQUEST FOR PROPOSAL NO. 114730
PROPOSAL TERMS AND CONDITIONS

CERTIFICATION AS AN EEO AFFIRMATIVE ACTION EMPLOYER - All respondents must be certified as Equal Employment Opportunity Affirmative Action Employers as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with the Procurement Services, City of Portland, prior to contract execution.

SUSTAINABLE PROCUREMENT: The City has a history of striving to be more sustainable in its operations and planning. Starting with the City's Sustainable City Principles (1994) the City has established a variety of policies to guide its work on sustainability, including: the Sustainable Procurement Policy, Green Building Policy, Local Action Plan on Global Warming, and the Stormwater Management Manual (to view these and related City policies, go to the Portland Policy Documents Website:

<http://www.portlandonline.com/auditor/index.cfm?c=2688>.

As applicable to City procurement, these policies guide the City to buy products and services that reduce the City's negative environmental and social impacts. While specific goals vary, the City's sustainability objectives tend to focus on: reducing energy use; reducing air, water, and land pollution; building and maintaining high-performance green buildings; reducing the use of materials toxic to the environment and human health; utilizing resources efficiently, including the use of renewable, reusable and recycled materials; utilizing minority-owned, small, and/or local businesses; preserving or enhancing biodiversity; and maintaining fiscal health in the short and long term. As such, the City seeks to do business with firms that will actively contribute to the City's sustainability objectives.

BUSINESS LICENSE AND REGISTRATION - Successful Proposers shall obtain a current City of Portland Business License, and shall be in compliance with regulations regarding conducting business in the State of Oregon prior to execution of this contract and commencement of the work.

ADDENDUMS - If, in the opinion of the Chief Procurement Officer, additional information or interpretation is needed by the bidders, an addendum will be issued. Any addendum or addenda issued by the Chief Procurement Officer, that may include changes, corrections, additions, interpretations, clarifications, or information, and issued seventy-two (72) hours or more before the scheduled closing time for filing bids, Saturday, Sunday, and legal holidays not included, shall be binding upon the bidder. City shall supply copies of such addenda

to all respondents who have obtained copies and are on the plan holder list of the RFP documents for the purpose of responding thereon, but failure of the respondent to receive or obtain such addenda shall not excuse the respondent from compliance therewith if awarded the contract.

COST OF RESPONDING This Request for Proposal does not commit the City to pay any costs incurred by any respondent in the submission of a response, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the RFP.

LATE PROPOSALS Proposal responses received after the scheduled closing time for filing will be returned to the respondent unopened. Due to heightened security measures in the Portland Building, respondents should allow extra time when delivering bids to the Procurement Services. It is the responsibility of the proposer to ensure their proposal is submitted in the proper form and in accordance with the time, date, and location specified in the RFP.

CANCELLATION The City of Portland reserves the right to modify, revise, or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews does not obligate the City to award a contract.

REJECTION OF PROPOSALS The City reserves the right to reject any or all responses to the Request for Proposal if found in the City's best interest to do so.

GOVERNING LAW - The provisions of any contract shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of law provisions. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon. All statutory, charter and ordinance provisions that are applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this contract. In connection with its activities under this Contract, Contractor shall comply with all applicable federal, state and local laws and regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. These requirements may be found on the City of Portland's Procurement Services website:

<http://www.portlandonline.com/omf/index.cfm?c=27353&>

Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this Contract. The following additional conditions apply to this solicitation and any resultant purchase order or contract: Appendix A as attached hereto.

AMERICANS WITH DISABILITIES ACT COMPLIANCE – Respondents agree that if awarded a contract, the successful Contractor will comply with all applicable provisions of the Americans with Disabilities Act of 1990, 42 USC Section 12101 et seq. If any respondent requires special assistance or auxiliary aids during the proposal, evaluation or award process, please notify the Procurement Services, (503) 823-6855, or TDD (503) 823-6868, at least two (2) business days prior to the required assistance.

SPECIAL CONDITIONS – Where special conditions are written in the Request for Proposal, these special conditions shall take precedence over any conditions listed under these Proposal Terms and Conditions.

PUBLIC RECORDS: Any information provided to the City pursuant to this RFP shall be public record and subject to public disclosure pursuant to Oregon public records laws ORS 192.410 to 192.505 and 5.33.470.

The general requirement for public disclosure is subject to a number of exemptions. When preparing a proposal submission, a proposer must plainly mark by highlighting each piece of information deemed by the proposer to remain exempt from public disclosure after proposals have been evaluated (e.g., pages containing trade secret, economic development information, etc.). A summary of the redactions shall be placed with the redacted version of the proposal response.

The fact that a proposer marks and segregates certain information as exempt from disclosure does not mean that the information is necessarily exempt. Any portion of a

proposal that the proposer claims as exempt from disclosure must meet the requirements of ORS 192.501(2) and ORS 192.502(4). The City will make an independent determination regarding exemptions applicable to information that has been properly marked and redacted. Information that has not been properly marked and redacted may be disclosed in response to a public records request. When exempt information is mixed with nonexempt information, the nonexempt information must be disclosed.

Unless expressly provided otherwise in this RFP or in a separate communication, the City does not agree to withhold from public disclosure any information submitted in confidence by a proposer unless the information is otherwise exempt under Oregon law.

If the City refuses to release the records, the proposer agrees to provide information sufficient to sustain its position to the District Attorney of Multnomah County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, the City will notify the proposer in order for the proposer to take all appropriate legal action. The proposer further agrees to hold harmless, defend, and indemnify the city for all costs, expenses, and attorney fees that may be imposed on the City as a result of appealing any decision regarding the proposer's records.

ORAL INSTRUCTIONS - Oral instructions or information concerning the RFP documents or the project given out by officers, employees, or agents of the City to prospective bidders shall not bind the City. Any changes or revisions to the specifications shall be binding only if issued in writing by the City by addendum. The City reserves the right to officially amend or cancel an RFP after issuance.

TAXES - Taxes, whether State or Federal, shall not be included in the offered prices. A tax exemption certificate will be provided by the City upon request.

PART I

PROPOSAL REQUIREMENTS

SECTION A

GENERAL INFORMATION

I.A.1. PROPOSAL INVITATION

This document constitutes an invitation for sealed competitive proposals under Portland City Code Chapter 5.33. This RFP is issued by the City of Portland, Procurement Services on behalf of the Bureau of Transportation (collectively, the City) for an Automatic Passenger Counting (APC) System on the Portland Streetcar. This procurement shall be conducted as directed by the City and as identified and in accordance with the requirements and provisions of this RFP and its resulting Contract.

I.A.2. SCOPE OF WORK

The City is seeking proposals from qualified firms or contractors with demonstrated experience in the construction, installation and maintenance of APC systems and wishes to engage a secure and experienced proposer for the project to install APC systems in the City's streetcar vehicles. The City intends to install APC systems on six (6) streetcars initially, but may decide to install APC systems on additional streetcars in the future. The successful proposer will be expected to enter into a not-to-exceed Contract with the City similar to the Sample Contract in RFP Attachment A.

I.A.2.1 BACKGROUND

The City of Portland Bureau of Transportation owns and operates a 3.9-mile streetcar transit system with 72 station platforms. Maintaining accurate passenger ridership information is an important aspect of system operation, as it affects funding allocation and system expansion decisions. The current passenger counts are collected manually by staff contracted to the City. The City is pursuing an automatic passenger counting system that will allow for more frequent, accurate, and low cost passenger counts.

I.A.2.2 OVERVIEW OF THE REQUESTED SERVICES:

The City seeks proposals from qualified proposers on an APC system for each vehicle in the Portland Streetcar system that count the passengers that enter and exit the vehicle at each station and the passenger count, location, time, and car number. This information must be recorded in an onboard database for downloading via PTU and remote processing of the data at a later time. Proposed systems must automatically transfer the data to the wayside COP databases via a wireless transceiver.

I.A.2.3 COST ESTIMATE

The City estimates that a System with the requested type of functionality could cost up to \$166,000.00 to implement. This estimate is for informational purposes only and does not reflect or guarantee any amount to be spent on the contract that will result from this RFP. However, the successful proposer will be expected to enter into a not-to-exceed Contract with the City similar to the Sample Contract in RFP Attachment A.

I.A.3 RFP SCHEDULE

The following dates are proposed as a timeline for this solicitation, times are listed in Pacific Time (PT):

	RFP advertised and distributed	01/17/2013
	Deadline for questions	02/08/2013 at 5:00pm
	Written proposals due.	02/15/2013 at 4:00pm
	Proposer selection and issuance of Intent to Award notice (estimate)	03/08/2013
	Contract negotiations (estimate)	03/15/2013
	Contract execution (estimate)	03/31/2013

The City reserves the right to make adjustments to the above noted schedule as necessary.

SECTION B

WORK REQUIREMENTS

I.B.1. TECHNICAL OR REQUIRED SERVICES

The primary work requirements are found in RFP Attachment C: Specification Document.

I.B.2. WORK PERFORMED BY THE CITY

Bureau staff shall make available sufficient hours of staff personnel as is required to meet with the contractor and provide such information as required. The City has assigned a project manager who will oversee the work and provide support as needed.

Specific duties the City will perform include:

- 1.) Review all submittals identified in Attachment C –including installation and testing procedures
- 2.) Assist with design layout and installation of all equipment on all Streetcars.
- 3.) Provide drawings of the streetcars for manufacture use during design phase. After the contractor provides proposed drawings to modify the streetcars with APC system, the City shall red line the submitted drawings.
- 4.) Modify the final official drawings of the streetcar to match end design after retrofit of the streetcar to include passenger counters.
- 5.) Provide space and storage area for contractor's equipment delivered as part of the streetcar retrofit.
- 6.) Provide necessary access for contractor at the Portland Streetcar facility where all work will take place. Hours to be determined for

work and access depending on availability of cars. Generally during normal City work hours Monday through Friday, 8:00am to 4:00pm Pacific Time.

- 7.) Provide on-site safety training for work at the Portland Streetcar facility – lock out tag out procedures.
- 8.) Operate Streetcars and support testing function to prove equipment functionality.

I.B.3. DELIVERABLES AND SCHEDULE

Deliverables shall be considered those tangible resulting work products which are to be delivered to the City such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings and reports.

I.B.3.1 The following design submittals are required, and shall be submitted to the COP at Contract execution. These submittals must be approved by COP before work can begin on the Contract. The submittals are as follows:

1. Automatic Passenger Counting Design Package
2. WIFI Router Design Package
3. Software Quality Assurance Plan
4. Software Requirements Specification
5. Software Design Description
6. Software Verification and Validation Plan
7. Software Verification and Validation Report
8. User Documentation
9. Proposed Standards
10. Material technical data
11. Material safety data sheets
12. Wire and Cable
13. Insulation Testing
14. Qualification Testing
15. Conformance Testing

Deliverables and schedule for this project shall include:

I.B.3.2 Delivery Schedule

1.) The City will require Delivery of a proposed project schedule from contractor within 15 days of Notice To Proceed. This project schedule must be approved by the City before it is adopted as the official project schedule in the contract.

2.) The City will require Project Completion within 180 days of the date the City issues its Notice To Proceed to the Contractor.

I.B.3.3 All deliverables and resulting work products from this contract will become the property of the City of Portland.

I.B.4 PLACE OF PERFORMANCE

Performance of the contract may take place at the Contractor's place of business. Some implementation steps may need to take place at the City's facilities. Some events such as, but not limited to meetings, reports, and status updates may take place at some implementation may take place at a location specified by the City.

I.B.5. PERIOD OF PERFORMANCE

The City anticipates having the selected contractor begin work on the first six (6) streetcars around April, 1 2013 with submittal of final deliverables (APC retrofitted streetcars) to the City occurring by September 30, 2013. The initial term of the contract between the City and the contractor shall be five (5) years so the City may purchase replacement parts and equipment, or order APC installation on additional streetcars. The City will have the option to renew the contract for up to five (5) additional years for a total possible contractual period of not more than ten (10) years.

I.B.6. INSURANCE: PROOF OF COVERAGE

Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer or the Auditor. All insurance requirements shall be as indicated within the attached sample Contract.

I.B.7 SECURITY

If the Contract requires work at the City's facilities, Proposers are notified in advance that the Contractor may be subject to the following:

Public safety may require limiting access to public work sites, public facilities, and public offices, sometimes without little advance notice. The contractor shall anticipate delays in such places and include the cost of delay in the costs in its proposal. The contractor's employees and agents shall carry sufficient identification to show by whom they are employed and display it upon request to security personnel. City project managers have discretion to require the contractor's employees and agents to be escorted to and from any public office, facility or work site if national or local security appears to require it.

SECTION C

LISTING OF RFP ATTACHMENTS

**I.C.1 ATTACHMENT A
SAMPLE CONTRACT**

The sample contract, shown as Attachment A is the City's standard contract for these types of goods and services. The sample contract or a substantially similar contract will be used to create the agreement between the City and the successful proposer. Any requested deviations from this contract shall be clearly identified in the proposal.

**I.C.2 ATTACHMENT B
SUMMARY OF RATES
AND SERVICES**

The Summary of Services and Rates, including the spreadsheet in Attachment B shall be completely filled out. The proposer will identify in what areas their firm meets, exceeds or how they anticipate they will comply with the requirements of the RFP. For each fee listed in the spreadsheet, if there is no cost, or if a cost is included in another cost, or if a cost is not applicable, mark that cost as \$0.00.

**I.C.3 ATTACHMENT C
SPECIFICATION
DOCUMENT**

Proposers shall respond to the requirements identified in this document when completing the technical proposal portion of their response to this RFP as identified in Section II.B.6.5 below.

PART II

PROPOSAL DEVELOPMENT

SECTION A

PROPOSAL PREPARATION

**II.A.1. PRE-PROPOSAL
MEETING**

There will be no pre-proposal meeting or site visit scheduled for this project.

II.A.2. INVESTIGATION

The proposer shall make all investigations necessary to inform itself regarding the work or services to be furnished pursuant to Section II.A.3 below.

**II.A.3 QUESTIONS OR
CLARIFICATIONS**

It shall be the respondent's responsibility to ask questions, request changes or clarifications, or otherwise advise the City of Portland, Procurement Services if any language, specifications or requirements of an RFP appear to be ambiguous, contradictory, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source.

Every attempt shall be made to ensure that the proposer receives an adequate and prompt response. However, in order to maintain a fair and equitable RFP process, all respondents will be advised, via the issuance of an addendum to the RFP, of any relevant or pertinent information related to the procurement. Questions and requests for clarification regarding this Request for Proposal must be directed in writing, via email or fax, to the person listed below at least seven (7) calendar days prior to the proposal due date. Therefore, respondents are advised that any questions received less than seven (7) calendar days prior to the RFP opening date may not be answered.

James C. Moering, CPPB, JD
Senior Technology Procurement Specialist
Procurement Services
1120 SW Fifth Avenue, Room 750
Phone: (503) 823-7886
Portland, Oregon 97204
James.moering@portlandoregon.gov

If, in the opinion of the Chief Procurement Officer, additional information or interpretation is needed by the respondents, an addendum will be issued. Any addendum or addenda issued by the Chief Procurement Officer, that may include changes, corrections, additions, interpretations, clarifications, or information, and issued seventy-two (72) hours or more before the scheduled closing time for submitting the proposal, Saturday, Sunday, and legal holidays not included, shall be binding upon the respondent. City shall supply copies of such addenda to all respondents who have obtained copies and are on the plan holder list of the RFP documents for the purpose of responding thereon, but failure of the respondent to receive or obtain such addenda shall not excuse the respondent from compliance therewith if awarded the contract.

II.A.4. CONTRACT REVIEW

The sample contract as attached hereto (Attachment A) contains the terms and conditions that will govern this Contract between the City of Portland and the successful proposer. The City of Portland is not inclined to negotiate any portion of this contract, however, if a proposer believes any of the terms and conditions contained in the City's contract are unnecessarily restrictive, limit competition, or would like to request that specific terms and conditions contained in the contract document be considered for negotiation, they shall submit all requested changes along with their proposal.

The request shall identify the specific provision the proposer would like to negotiate, an explanation of why the proposer believes the provision should be a negotiable provision, and the suggested revised language. Requests that are not submitted in this format may not be considered. **Requests that state the entire contract be negotiated will not be considered.** If the City decides that a contract term can be changed, or is willing to consider negotiation of a term, the term will be discussed during contract negotiations after the posting of the Intent to Award Notice.

THIS WILL BE THE OFFEROR'S ONLY OPPORTUNITY TO TAKE EXCEPTION TO ANY OF THE TERMS AND CONDITIONS CONTAINED WITHIN THE CONTRACT AND TO REQUEST THE NEGOTIATION OF PROVISIONS CONTAINED IN THE

CONTRACT. ANY PROPOSAL WHICH TAKES EXCEPTION TO TERMS AND CONDITIONS OF THE SAMPLE CONTRACT THAT HAVE NOT BEEN IDENTIFIED AS SUBJECT TO NEGOTIATION OR WHICH MAKES THE PROPOSAL CONTINGENT UPON ACCEPTANCE OR NEGOTIATION OF OTHER TERMS AND CONDITIONS SHALL BE DEEMED NON-RESPONSIVE AND THE PROPOSAL SHALL BE REJECTED.

II.A.5. ORAL INSTRUCTIONS

Oral instructions or information concerning the RFP documents or the project given out by officers, employees, or agents of the City to prospective respondents shall not bind the City. Any changes or revisions to the specifications shall only be binding if issued in writing by the City by addendum. The City reserves the right to officially amend or cancel an RFP after issuance.

II.A.6. COST OF RESPONDING

This Request for Proposal does not commit the City to pay any costs incurred by any respondent in the submission of a response, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the RFP.

II.A.7. OWNERSHIP AND PERMISSION TO USE SUBMITTED MATERIALS:

All Proposals submitted in response to this RFP become the property of the City. By submitting a Proposal in response to this RFP, Proposer grants the City a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the Proposal solely for the purpose of evaluating the Proposal, negotiating a Contract, if awarded to Proposer, or as otherwise needed to administer the RFP process, and to fulfill obligations under Oregon Public Records Laws. Proposals, including supporting materials, will not be returned to Proposer unless the Proposal is submitted late.

II.A.8. PERMITS AND LICENSES

The successful respondent shall include in their proposal the cost to obtain or maintain all permits, certifications and licenses that may be required to perform the contract.

II.A.9. IGAs (INTERGOVERNMENTAL AGREEMENTS) AND CO-OPERATIVE PURCHASING

The respondent agrees to extend identical prices and services under the same terms and conditions to all public agencies. Requirements stated herein reflect the City of Portland usage only.

A public agency wishing to utilize like services will execute its own contract with the awarded contractor for its requirements. The successful contractor shall provide quarterly usage reporting of the City of Portland as well as that of other public agencies to the City of Portland, Procurement Services. Any respondent by written notification included with their proposal, may decline to extend the services, prices and terms of this RFP to any or all other public agencies.

II.A.10. CHANGES TO THIS RFP

The City reserves the right to modify, revise or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews do not obligate the City to award a contract.

SECTION B

PROPOSAL SUBMISSION

II.B.1. PROPOSALS DUE

By submitting a proposal, the respondent agrees to provide all services specified within the RFP, at the times and prices indicated, pursuant to all requirements and specifications as contained therein.

Sealed proposals must be received by Procurement Services no later than the date shown on the cover of this solicitation. The outside of the envelope shall plainly identify the subject of the proposal, the RFP number and the name and address of the proposer. Responses received after time or date listed herein shall not be considered. Proposals received after the scheduled closing time for filing will be returned to the proposer unopened.

II.B.2. PROPOSAL FORMAT

Proposals must be clear, succinct and not exceed twenty-five (25) pages, excluding Attachment materials. Proposers who submit more than the pages indicated may not have the additional pages of the proposal read or considered.

For purposes of review and in the interest of the City's Sustainable Paper Use Policy and sustainable business practices in general, the City requests the use of submittal materials (i.e. paper, envelopes) that contain post-consumer recycled content and are readily recyclable. Submittals shall not include 3-ring binders or any plastic binding, folder, or indexing material. Reusable binding posts, clips, or rings and recycled content paper envelopes or folders are examples of acceptable bindings. Submittals shall be printed on both sides of a single sheet of paper wherever applicable; if sheets are printed on both sides, it is considered to be two pages. Color is acceptable, but content should not be lost by black-and-white printing or copying.

All submittals will be evaluated on the completeness and quality of the content. Only those firms providing complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail.

II.B.3 PROPOSAL AND PROPOSAL COPIES SUBMISSION

Security and confidentiality of the transmitted data: For purposes of this proposal submission, the proposer shall submit: one (1) complete original printed copy, one (1) electronic copy in PDF format submitted on CD or USB flash drive, and one (1) electronic Redacted for Public

Disclosure Copy in PDF format submitted on CD or USB flash drive. If Proposer has no redactions, provide a written statement to that effect. The entire proposal shall be received at the place, and on or before the time and date, specified on the first page of the proposal document.

II.B.4 REDACTION FOR PUBLIC RECORDS

Any information provided to the City pursuant to this RFP shall be public record and subject to public disclosure pursuant to Oregon public records laws ORS 192.410 to 192.505 and 5.33.470.

For the purpose of the Redacted for Public Disclosure Copy, “redaction” means “the careful editing of a document to remove confidential references; a revised or edited document thereby obscuring the exempt information but otherwise leaving the formatted document fully intact.”

The general requirement for public disclosure is subject to a number of exemptions. **When preparing a redacted proposal submission, a proposer must plainly mark by highlighting each piece of information deemed by the proposer to remain exempt from public disclosure after proposals have been evaluated (e.g., pages containing trade secret, economic development information, etc.).** A summary of the redactions shall be placed with the redacted version of the proposal response.

The fact that a proposer marks and segregates certain information as exempt from disclosure does not mean that the information is necessarily exempt. Any portion of a proposal that the proposer claims as exempt from disclosure must meet the requirements of ORS 192.501(2) and ORS 192.502(4). The City will make an independent determination regarding exemptions applicable to information that has been properly marked and redacted. Information that has not been properly marked and redacted may be disclosed in response to a public records request. When exempt information is mixed with nonexempt information, the nonexempt information must be disclosed.

Unless expressly provided otherwise in this RFP or in a separate communication, the City does not agree to withhold from public disclosure any information submitted in confidence by a proposer unless the information is otherwise exempt under Oregon law.

Should the proposer determine that no redaction is required, that statement may be included within the text of the cover memo. If a proposer fails to submit a Redacted for Public Disclosure Copy of their proposal as required, the City may release the proposer’s original proposal without redaction.

Please refer to the STANDARD TERMS AND CONDITIONS on pages 2 and 3 of this RFP for more information about confidential information within public records.

II.B.5 CONFLICT OF INTEREST

A respondent submitting a proposal thereby certifies that no officer, agent or employee of the City who has a pecuniary interest in this RFP, has participated in the contract negotiations on the part of the City, that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other respondent of the same request for proposal, and that the respondent is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

II.B.6 PROPOSAL ORGANIZATION

The respondents must provide all information as requested in this Request for Proposal (RFP). Responses must follow the format outlined in this RFP. Additional materials in other formats, or pages beyond the stated page limit(s) may not be considered. The City may reject as non-responsive at its sole discretion any proposal or any part thereof, which is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner:

II.B.6.1 COVER LETTER

By submitting a response, the proposer is accepting the General Instructions and Conditions of this Request for Proposal found on the second page of this proposal.

The Cover Letter must state the name of the person(s) authorized to represent the offeror in any negotiations, the name(s) of the person(s) authorized to sign any contract that may result, the contact person's name, mailing or street addresses, phone and fax numbers and email addresses. A legal representative of the successful firm, authorized to bind the firm in contractual matters must sign the Cover Letter and the Proposal response.

II.B.6.2 COST PROPOSAL

The Proposer must complete the Cost Proposal form using the provided spreadsheet attached as Attachment B. One copy of the completed spreadsheet must be printed and included in the Proposal response. The completed Cost Proposal spreadsheet must also be included in its native Microsoft Excel format as part of the required complete electronic copy of the Proposal. The proposal shall include the contractor's true estimated cost to perform the work irrespective of the City's anticipated cost.

II.B.6.3 DIVERSITY IN EMPLOYMENT AND CONTRACTING

The City values diversity in its workforce and in the workforce of those who contract with the City and has a significant interest in extending contracting opportunities to Minority, Women, and Emerging Small

REQUIREMENTS

Businesses (M/W/ESB). The City is committed to ensuring that such firms receive opportunities and equal consideration to be awarded City contracts. The City recognizes that there are several ways to meet this goal. The list below is provided as a catalyst to generate ideas on how proposers may meet this goal:

II.B.6.3.1 Internal work force, Equal Employment Opportunity, technical training and mentoring;

II.B.6.3.2 Emphasize the way this project will provide developmental opportunities and sustainable business growth for certified M/W/ESB;

II.B.6.3.3 Point to a long-term history of strategic alliances and partnership with M/W/ESBs that will be used to perform a commercially useful function on this project;

II.B.6.3.4 Placing a particular emphasis on a project-specific partnership with M/W/ESBs;

II.B.6.3.5 Carving out a meaningful scope of work based on the expertise of their M/W/ESB partner firm(s).

*

All proposers responding to this solicitation shall address the following factors:

II.B.6.3.6 MBE, WBE & ESB Certification

II.B.6.3.7 Indicate if your firm is currently certified through the State of Oregon as an MBE, WBE or ESB. If no, what percentage of the project will be subcontracted out to M/W/ESBs?

II.B.6.3.8 EEO & Workforce Diversity

II.B.6.3.8.1 Describe how your firm has historically provided opportunities for minorities and women to receive training and work within your firm.

II.B.6.3.8.2 Describe your existing relationships with M/W/ESB firms including a description of your supplier diversity program.

II.B.6.3.8.3 If your company currently has under representation of minorities or women within

your current workforce, describe how over time you propose to remedy the underutilization.

II.B.6.3.8.4 Discuss any project-specific opportunities for technical training and/or employment of underrepresented groups you would commit to. Are there other outreach (through local schools or community-based organizations) that you consider to be viable in light of the size and scope of this project? What resources might your firm address to such needs?

The City expects thoughtful consideration to be given to which EEO/Diversity and M/W/ESB program components make sense to individual proposers on this particular project.

II.B.6.3.9 Provide a narrative description of the company's experience in promoting participation on the part of Minority-owned, Women-owned and Emerging Small Business (M/W/ESB) enterprises as partners, consultants or suppliers on previous projects.

II.B.6.3.10 Include a description of your firm's supplier diversity program:

II.B.6.3.10.1 How long has it been in existence and what were the driving factors for establishing the program?

II.B.6.3.10.2 What results has it had to increase your company's M/W/ESB participation?

II.B.6.3.10.3 Who is the individual responsible for your company's M/W/ESB initiative? Provide their experience with the M/W/ESB community.

II.B.6.3.11 Discuss any innovative or particularly successful measures that your firm has undertaken to work with M/W/ESB firms on other projects.

II.B.6.3.12 Include a list of those certified M/W/ESB firms with which your firm has had a contractual relationship during the last twelve (12) months.

II.B.6.3.13 Describe your diversity solution where you, as the prime contractor, sub-contract services in a partnering relationship

with a certified M/W/ESB firm:

II.B.6.3.13.1 How do the M/W/ESB(s) that you partner with benefit from the relationship with your firm?

II.B.6.3.13.2 Describe what you consider your first-tier diversity solution where you utilize a certified M/W/ESB firm as the prime contractor and your company works as an alliance partner.

II.B.6.3.13.3 How do you evaluate the credentials of your M/W/ESB suppliers?

II.B.6.3.13.4 Describe how your firm could increase the utilization of certified M/W/ESB firms in service of the City contract if you are the winning proposer?

II.B.6.3.14 Describe your outreach plan to M/W/ESBs for this project.

If your firm is not utilizing existing relationships as described above or is able to undertake additional outreach to improve opportunities for minority, women, and emerging small business, describe your outreach program or plan for obtaining maximum utilization of M/W/ESB firms on this project. Proposers not drawing on existing relationships with M/W/ESB firms should describe what outreach efforts will be pursued in order to make contracting opportunities available to M/W/ESBs.

A suggested set of possible actions is listed below but firms may propose their own plan to make subcontracting opportunities available to M/W/ESBs:

II.B.6.3.14.1 Identify probable subcontracting opportunities by type of work, potential size of subcontract, etc.

II.B.6.3.14.2 Advertising in the Daily Journal of Commerce, Skanner, Oregonian, Observer, El Hispanic News, Just Out, Asian Reporter, and/or other trade publications to notify potential M/W/ESBs and other diverse groups of contracting opportunities.

II.B.6.3.14.3 Utilizing certified M/W/ESB firms from the State of Oregon certification list, or other source, as a basis for direct outreach in likely subcontracting areas.

II.B.6.3.14.4 Meeting with potential M/W/ESB subcontractors in order to encourage collaboration and partnering.

II.B.6.3.14.5 Documenting proposals received from M/W/ESB firms and identify proposal(s) accepted and reasons for rejection of such proposals, if and proposals are rejected.

II.B.6.3.14.6 Providing mentoring, technical or other business development services to M/W/ESB team members.

II.B.6.3.14.7 Initiating other efforts as might be useful for this particular project.

II.B.6.3.15 M/W/ESB COMPLIANCE AND REPORTING

If your company will be utilizing M/W/ESBs on this project, please list those firms and detail their role within the present solicitation. The City will enforce all EEO/Diversity and M/W/ESB commitments submitted by the successful proposer. All proposers shall identify the following:

II.B.6.3.15.1 The name of ALL subcontractors on the project;

II.B.6.3.15.2 The names of all MBE, WBE and ESB firms. If firms have more than one certification (ESB and MBE) note that on the form; and

II.B.6.3.15.3 The proposed scope or category of work for each subcontractor

II.B.6.3.15.4 If the proposer will not be using any subcontractors, the proposer will indicate "NONE" with the proposal.

II.B.6.4 SUSTAINABLE PROCUREMENT

II.B.6.4.1 City Sustainability Objectives

The City has a history of striving to be more sustainable in its operations and planning. Starting with the City's Sustainable City Principles (1994) the City has established a variety of policies to guide its work on sustainability, including: the Sustainable Procurement Policy, Green Building Policy, Climate Action Plan, and the Stormwater Management Manual (to view these and related City policies, go to the Portland Policy Documents Website: <http://www.portlandonline.com/auditor/index.cfm?c=26818>). As applicable to City procurement, these policies guide the City to buy

products and services that reduce the City's negative environmental and social impacts. While specific goals vary, the City's sustainability objectives tend to focus on: reducing energy use; reducing air, water, and land pollution; building and maintaining high-performance green buildings; reducing the use of materials toxic to the environment and human health; utilizing resources efficiently, including the use of renewable, reusable and recycled materials; utilizing minority-owned, small, and/or local businesses; preserving or enhancing biodiversity; and maintaining fiscal health in the short and long term. As such, the City seeks to do business with firms that will actively contribute to the City's sustainability objectives.

II.B.6.4.2 Environmental Claims

Upon request, the vendor must provide and make publicly available verifiable evidence supporting every environmental claim made about the products or services provided to the City. Environmental claims for which verifiable evidence must be provided include any claim provided on products, product packaging, product or service sales literature and websites, and information provided to respond to this solicitation.

II.B.6.4.3 Sustainability Questions

II.B.6.4.3.1 Describe your firm's sustainability plans, strategy or goals for improving your firm's social, environmental and economic performance.

II.B.6.4.3.2 Describe any sustainability programs or activities that your firm currently has in place.

II.B.6.4.3.3 How does your firm report publicly on its sustainability performance? (website, annual report, etc.)

II.B.6.4.3.4 Describe how your firm will contribute to meeting the City's sustainability objectives as part of the resulting contract.

II.B.6.5. TECHNICAL PROPOSAL:

Proposer shall submit a technical proposal that describes how they would address each of the requirements in Attachment C.

II.B.6.6. PROJECT TEAM

II.B.6.6.1 Proposers are to include with their technical proposal information on their proposed project team, including:

II.B.6.6.1.1 The number of people to be assigned to the project;

II.B.6.6.1.2 Extent of company's principal member's involvement;

II.B.6.6.1.3 Team qualifications and experience on similar or related projects:

II.B.6.6.1.4 Educational background of team members

II.B.6.6.1.5 Proposer's project manager's experience with similar projects;

II.B.6.6.1.6 When each team member will be starting to work on this project.

II.B.6.6.1.7 Names of key team members who will perform the work on this project, and:

II.B.6.6.1.8 their responsibilities on this project

II.B.6.6.1.9 current assignments and location

II.B.6.6.1.10 experience on similar or related projects

II.B.6.6.1.11 unique qualifications

II.B.6.6.1.12 percentage of their time that will be devoted to the project.

II.B.6.6.3 Key Personnel

Describe the education background, directly related work experience, professional development, and demonstrated performance record of the proposed key personnel.

II.B.6.8 PROJECT UNDERSTANDING AND APPROACH

Proposers shall identify any subcontractors they plan to utilize in the performance of the resulting contract in this section of their proposal. Additionally, Proposers will provide a draft Statement of Work complete with deliverables, estimates of how long each streetcar would be out of service for APC installation, any applicable project milestones and any interim payments per milestone or deliverable. Specifically, in this section the proposer shall:

- Describe the tasks and activities, the methodology that will be used to

- accomplish them, and which team members will work on each task;
- Describe the results from each task or activity;
- Identify points of input, review, and testing with staff; and
- The time frame estimated to complete each task.

II.B.6.9 REFERENCES:

Each proposer shall provide with their proposal three (3) references from similar projects completed within the last three (3) years. Each provided reference shall have a brief description of the project including:

- II.B.6.9.1 Customer name,
- II.B.6.9.2 Customer contact e-mail and phone number,
- II.B.6.9.3 Customer contract number,
- II.B.6.9.4 Original dollar value of customer contract,
- II.B.6.9.5 Customer system go-live or completion date,
- II.B.6.9.6 Scope of products and services provided,
- II.B.6.9.7 Number of customers from the project currently enrolled in proposer's services
- II.B.6.9.8 Percentage of the total number of the reference's customers using proposer's services.

The City will make a reasonable attempt to contact each reference three (3) times. If after three (3) attempts the reference does not respond, that reference shall not be evaluated, and the proposer shall only be evaluated on their remaining references. If the proposer provides more than three (3) references, references beyond the first three references provided will not be contacted, evaluated or considered. Failure to provide references may result in the proposer's proposal being rejected as non-responsive.

The City reserves the right to contact any additional references it deems appropriate or in its best interests when evaluating the Proposer's proposal. The City may conduct other reference checks with persons whose names have not been provided by the proposer, but that the City has knowledge. The City may use references to obtain additional information, break tie scores, or verify any information needed. The City may check additional references to determine if references provided by the proposer are supportive of the proposer's ability to comply with the requirements of this RFP. Failure to provide complete and accurate information in a proposal may be cause for rejection.

II.B.10. WITHDRAWAL, MODIFICATION, OR ALTERATION OF PROPOSAL

Prior to the RFP opening, changes may be made provided the change is initialed by the respondent or authorized agent.

Any proposer who wishes to make modifications to their proposal already received by the City must first withdraw its proposal in order to make the modification. Withdrawals must be made in accordance with this Section II.B.10. The revised Proposal may then be resubmitted in accordance with the

provisions of this RFP. No oral, facsimile, electronic, telegraphic, or telephonic proposal modifications will be considered.

Also, a proposal may be withdrawn upon written request of the respondent prior to the scheduled closing time for accepting proposals. Negligence on the part of the respondent in preparing their proposal confers no right to withdraw their response after the scheduled closing time for filing proposals.

As a result of any of these actions, if the intent of the respondent is not clearly identifiable, the interpretation most advantageous to the City will prevail.

II.B.11.LATE PROPOSALS Proposals received after the scheduled closing time for filing will be returned to the respondent unopened. Due to heightened security measures in the Portland Building, respondents should allow extra time when delivering bids to the Procurement Services. It is the responsibility of the proposer to ensure their proposal is submitted in the proper form and in accordance with the time, date, and location specified in the RFP.

II.B.12. CANCELLATION The City of Portland reserves the right to modify, revise or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews do not obligate the City to award a contract.

PART III

PROPOSAL EVALUATION

SECTION A

PROPOSAL REVIEW AND SELECTION

III.A.1. EVALUATION CRITERIA

Each proposal shall be evaluated on the following evaluation criteria, weighting, and maximum points, as follows

Criteria	Maximum Score
III.A.1.1 Cover Letter	Ø
III.A.1.2 Project Team	10
III.A.1.3 Respondent's Technical Proposal and	25
III.A.1.4 Project Understanding Approach, and Sustainability	20
III.A.1.5 Proposed Cost	30
III.A.1.6 Diversity in Employment and Contracting Requirements	<u>15</u>
TOTAL	100

III.A.2. PROPOSAL REVIEW

A selection review committee will be appointed to evaluate the proposals received. For the purpose of scoring proposals each of the Committee members will evaluate each proposal based upon the

criteria listed above. In order to assist the evaluation committee, they may seek outside expertise, including but not limited to technical advisors. For contracts over \$500,000, the Committee's recommendation will be submitted to the Portland City Council for approval. The City has the right to reject any or all proposals for good cause, in the public interest.

The Contractor shall be selected by the following process:

III.A.2.1 A contractor evaluation committee will be appointed to evaluate and score submitted proposals.

III.A.2.2 The committee will evaluate and score the proposals according to the criteria, based on the information submitted.

III.A.2.3 The committee will require a minimum of ten (10) business days to evaluate, score, and rank the proposals.

III.A.2.4 A short list of proposers may be selected for oral interviews if deemed necessary. Otherwise the highest scoring proposal will be recommended to Procurement Services as the proposal to receive the Intent to Award notice.

III.A.2.5 If oral interviews are determined to be necessary, the initial scoring will be considered preliminary. The City may develop additional criteria and requirements for the oral interview phase, should it become necessary. These requirements will be distributed to the proposers on the short list prior to Final scores and selection, based on the same evaluation criteria, will be determined following the interviews.

III.A.2.6 References will be checked for the highest ranked proposer as part of the City's Responsibility determination according to the process outlined in Section II.B.6.9. If the City determines the highest ranked proposer is Responsible, that proposer will qualify for final selection. If a proposer fails this Responsibility check the City may choose the next highest ranked and Responsible proposer as the City's final selection, or decide to cancel the RFP according to Section II.B.12.

III.A.2.7 -Following final selection, if any, the City will issue a Notice of Intent to Award a contract to the Successful Proposer.

III.A.3. CLARIFYING PROPOSAL DURING EVALUATION PERIOD

During the evaluation process, the City has the right to require any clarification or change it needs in order to understand the respondent's view and approach to their proposal, the project and scope of the work. Any changes to the proposal will be made before executing the contract

and will become part of the final contractor contract.

III.A.4. PROPOSALS ARE PUBLIC RECORDS

All information submitted by proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions of the proposals for which proposer requests exception from disclosure consistent with Oregon Law. Any portion of a proposal that the proposer claims constitutes a “trade secret” or is “confidential” must meet the requirements of ORS 192.501(2) and ORS 192.502(4).

If a request to inspect the proposal is made, the City will notify the proposer of the request. If the City refuses to release the records, the proposer agrees to provide information sufficient to sustain its position to the District Attorney of Multnomah County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, the City will notify the proposer in order for the proposer to take all appropriate legal action. The proposer further agrees to hold harmless, defend and indemnify the City for all costs, expenses and attorney fees that may be imposed on the City as a result of appealing any decision regarding the proposers records.

III.A.5 LOCAL CONTRACTING

The City: prefers goods or services that have been manufactured or produced by a local business if price, fitness, availability and quality are otherwise equal; desires to employ local businesses in the purchase, lease, or sale of any personal property, public improvements or services; and wants the residents of the State of Oregon and SW Washington to benefit from optimizing local businesses and services, and the local employment opportunities they generate.

III.A.6 AWARD REVIEW AND PROTEST PROCEDURE

III.A.6.1 REVIEW: ORS 279B.060(5)(a) provides: “Notwithstanding ORS 192.410 to 192.505, proposals may be opened in a manner to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation, but the contracting agency shall record and make available the identity of all Proposers as part of the contracting agency’s public records from and after the opening of the proposals. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.”

III.A.6.2 PUBLIC REVIEW: Following the Notice of Intent to Award, the public may view proposal documents, but the City is entitled to withhold from disclosure any materials defined as exempt or conditionally exempt from disclosure pursuant to the Oregon Public Records Act. Proposers shall designate information they consider exempt or conditionally exempt from disclosure by stamping the word “Confidential” on such documents or by otherwise indicating the

documents are considered to be confidential. Materials so designated and meeting the requirements for exempt or conditionally exempt information will not be disclosed unless the Multnomah County District Attorney determines that disclosure is required after appeal. The City reserves the right to disclose materials inappropriately marked as exempt or conditionally exempt and to withhold from disclosure materials that meet standard but which were inadvertently not marked as confidential.

Proposers not awarded the contract may seek additional clarification or debriefing, request time to review the selection procedures or discuss the scoring methods utilized by the Evaluation Committee, subject to the City's authority to withhold documents, as stated above.

III.A.6.3 PROTESTS: Proposers are permitted to challenge the City's decision to exclude the Proposer from the next step in the evaluation process and/or to award a contract. Depending on the nature of the protest, Proposers may wish to review Portland City Code (PCC) 5.33.720, 5.33.730, and 5.33.740 regarding protest procedures, all of which may be found online at the City Auditor's website.

The Procurement Services shall post a Notice of Intent to Award to the successful Proposer. The Notice of Intent to Award shall be posted on the Bureau's Internet Web Page.

A Proposer who is adversely affected or aggrieved by the award of contract or evaluation decision shall have seven (7) days after the issuance of the "Notice" to file a protest. The contents to be included in the protest are found in PCC 5.33.740. A protest is not valid if the Proposer would not be eligible to be awarded a contract if its protest were upheld. The Chief Procurement Officer will review any protest and issue a written decision. Whether there are further appeal processes depends on the discretion of the Chief Procurement Officer.

SECTION B

CONTRACT AWARD

III.B.1 CONTRACTOR SELECTION

The City will award a contract to the contractor whose proposal is considered and evaluated as being the most advantageous to the City. The contractor selection process will be carried out under Portland City Code, Chapter 5.33.

III.B.2 CONTRACT DEVELOPMENT

The proposal and all responses provided by the contractor may become a part of the final contract. The form of contract shall be the City's Sample Contract as attached. (See Attachment A)

III.B.3. NOTICE OF INTENT TO AWARD

A notice of intent to award posted on the Procurement Services website does not constitute an authorization for shipment of equipment or

supplies or a directive to proceed with services. Before providing any equipment, suppliers and/or services, the contractor must receive a properly authorized purchase order or contract.

III.B.4. ASSIGNMENT OF ANTI-TRUST RIGHTS

By entering into a contract, the Contractor, for consideration paid to the contractor under the contract, does irrevocably assign to the City of Portland any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the contractor's obligation under this contract.

In the event the Contractor hires subcontractors to perform any of the Contractor's duties under the contract, the Contractor shall require the subcontractor to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subcontractor by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the contract.

In connection with this assignment, it is an express obligation of the contractor that it will take no action, which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Portland. It is an express obligation of the Contractor to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

III.B.4.1 In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;

III.B.4.2 Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and

III.B.4.3 The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to the Contractor, it shall promptly pay over to the city of Portland its proportionate share thereof, if any, assigned to the State hereunder.

**III.B.4. CONTRACT
PAYMENTS ARE
RECEIVED
ELECTRONICALLY**

It is the City's policy to pay its vendor invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, vendors shall execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at:

<http://www.portlandonline.com/omf/index.cfm?c=26606&a=409834>.

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered or goods provided directly into vendor accounts with financial institutions. All payments shall be in United States currency.

**III.B.4. FAILURE TO
EXECUTE CONTRACT**

Failure on the part of the respondent to whom a contract is awarded to execute the contract and deliver the Contract and required documents with the required bonding (if any) and insurance certificates within twenty (20) calendar days shall be just cause for cancellation of the award and withdrawal of the Contract. Award may then be made to the next scored proposer, or the work may be re-advertised, or otherwise as the City may decide.

**ATTACHMENT A -
SAMPLE CONTRACT FOR STREETCAR AUTOMATIC PASSENGER COUNTING SYSTEMS**

CONTRACT NO:

This “Contract” is made effective on **XX XX, 2013** (“Effective Date”) by and between the **City of Portland**, a municipal corporation of the State of Oregon, and its successors or assigns (hereinafter referred to as “City”) and (hereinafter referred to as “Contractor”), a(n) corporation, by and through their duly authorized representatives.

The Initial Term of this contract shall be {**day, month year**} through {**day month year**}, with the City’s option to extend for five (5) additional years for a maximum total term of ten (10) years. This Contract may refer to the City and Contractor individually as a “Party” or jointly as the “Parties.” The total not-to-exceed price under this Contract shall be \$ for the Initial Term and up to \$ for the total term.

Contractor Contact:

City of Portland Contact:

TEL: () -

TEL: (503) -

FAX: () -

FAX: (503) -

Recitals:

WHEREAS, in conjunction with its government operations, the City of Portland desires to retrofit its streetcar vehicles with Automatic Passenger Counting Systems (the “Project”);

WHEREAS, in its Proposal dated and submitted in response to City RFP # 114730, Contractor represents that it has the knowledge, experience and expertise in design installation and support for Automatic Passenger Counting Systems; and

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

SECTION 1 DEFINITIONS (04/10*)

General Definitions. These definitions apply to the entire Contract and subsequent Amendments, Task/Change Orders:

“Acceptance” means Product has been inspected, loaded, shipped, transported, installed, delivered, configured and diagnostics tests have been performed to demonstrate, to the City’s satisfaction, that Product conforms and operates according to the requirements of this Contract, applicable Documentation and Contractor’s representations.

“Acceptance Criteria” means all specifications, functionality and performance requirements as set forth in the RFP, the Statement of Work (as such specifications, and requirements and Statement of Work may be changed from time to time by mutual agreement in writing), Contractor’s proposal and Contractor’s representations and warranties. The City’s acceptance criteria will be based on reliance on Contractor’s experience and expertise. City and Contractor agree to establish the Acceptance Criteria in writing for the purpose of conducting Acceptance Testing. Terms and Conditions for Acceptance Criteria are set forth in Section 5.

“Acceptance Date” means the date on which the City issues a Certificate of Acceptance for the System. In regard to a particular Task Order without a requirement for an Acceptance Test, the Acceptance Date is the date when the City certifies to Contractor in writing that the Service or installation is complete.

“Acceptance Test” means the evaluation and testing method, procedures, or both, that are used to determine whether or not the System or a Product requiring Acceptance Testing operates in accordance with the Acceptance Criteria. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.

“Affiliates” means, with respect to a named individual or entity, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control with the named individual or entity. The term “control” means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

“Amendment” means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions, term, or cost provisions of the Contract or changing, adding to, or substantially altering a Statement of Work.

“Certificate of Acceptance” means a written instrument by which the City notifies Contractor either that in its sole discretion the Acceptance Criteria have been met or waived, in whole or in part.

“Change Order” means a written request to document a change to an existing Task Order that the City and Contractor may execute from time to time under this Contract.

“City Confidential Information” means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or

more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act of 2007; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPPA) and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the City including without limitation, data and information systems, any software code and related materials licensed or provided to the City by third parties; processes; applications; codes, modifications and enhancements thereto; and any work products produced for the City.

“Confidential Information” means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving party; is already known to the receiving party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving party’s possession without any obligation restricting disclosure; is independently developed by the receiving party without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing party. All usage of the term “Confidential Information” in this Contract shall be deemed to include the qualifications set forth in Section 2.29.

“Contingent Product” means a Product or Service which the City intends to use in conjunction with some other Product or Service and from which the City would not derive the essential purpose of the bargain if acquiring one without the other.

“Contract” means the Master Terms and Conditions and all the documents referenced in Paragraph 2.1.

“Contract Administrator” means the individual appointed by the City to manage the resulting Contract and to serve as the official point of contact for all administrative matters relating to the Contract.

“Contract Price” means the not-to-exceed price agreed upon by the Parties for the System, subject to the provisions herein.

“Customization” means (a) any modification to or adaptation of the Products, or (b) any new component or accessory or, in the case of Software, new code, designed to run in conjunction with the Products, that contains features unique to the City's governmental purposes, whether prepared, created, or developed (1) by Contractor at the City’s request as a work for hire, (2) by the City, or (3) by the City in conjunction with Contractor.

“Day” means a calendar day of twenty four (24) hours unless otherwise stated in the Contract.

“Delivery of Products” means Product has been received at the location specified in this Contract or a Task Order. Delivery of Products shall not be construed to represent Final Acceptance following delivery of the System.

“Documentation” means user manuals and other written materials in any form that describe the features or functions of the Products and System, including but not limited to published specifications, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

“Equipment” means any hardware, machinery, device, tool, computer, computer component, computer system, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus necessary for the proper execution, installation and acceptable completion of the System or any Task/Change Order hereunder.

“Error” means any defect, problem, condition, bug, or other partial or complete inability of the System to operate either (a) in accordance with the applicable Specifications and Documentation or (b) as to the System, in the same manner in which the System operated as of the Acceptance Date.

“Final Acceptance” means the City has determined that the System or a Product requiring Acceptance Testing: (a) has met the Acceptance Criteria and the City has provided a Certificate of Acceptance to Contractor; and (b) all Products function and perform compatibly and without Error when integrated as functional components of the System.

“Fix” means a correction to Software that does not function or operate in accordance with the Documentation. A Fix is not a Modification, Upgrade or Software Enhancement.

“Knowledge Transfer” means information and know how regarding technological or general business issues, including, without limitation, products, identified or foreseeable problems, personnel, resources, or costs, as may relate to the System or any component thereof which Contractor may be required under this Contract or any subsequent Task Order or Change Order to pass on to the City.

“Mandatory Priced Options” means features and functionality that must be available, offered and priced in the Contract, but which the City may or may not purchase at the time the Task Order or Change Order is issued. The City may purchase Mandatory Priced Options by issuing a Task Order or Change Order at any time during the Contract term. The quoted price of Mandatory Priced Options shall remain effective for one-year following Acceptance, and may be adjusted per the Contract for subsequent years.

“Manufacturers’ Warranty” means a written statement to the City from a third party or from the Contractor on behalf of the third party that one or more components of the System or its Products will operate at the required specifications, functionality and performance level.

“Manufacturer’s Warranty Period” means the time period during which a Manufacturer’s Warranty is valid and enforceable by the City.

“Master Terms and Conditions” means this portion of the Contract, the body of text from the preamble through the signature page.

“Material Breach” means any breach of this Contract that (a) causes or may cause substantial harm to the non-breaching party; or (b) substantially deprives the non-breaching party of the benefit it reasonably expected under this Contract.

“Open Source Software” means any computer program for which the license provides the rights to run the program, view and change the source code, distribute exact copies, distribute modified copies and frees parties from any obligation to pay license fees or royalties.

“Operating System Software” means any computer program product that is installed on, and is a component integral to the function of, the Equipment.

“Product(s)” means Software, Equipment, Documentation and supplies, Services including warranty services, installation and Maintenance and professional services, which may include Upgrades, Customization and training.

“Project” means the overall collection of activities required for delivery and support of the System including, without limitation, design, development, integration, testing, support and Maintenance, any of which Contractor may be providing in whole or in part.

“Repair” means to fix, patch, reprogram, or replace the System or any Equipment or Software component thereof so as to eliminate Errors or failure to the City’s satisfaction.

“Services” means both ordinary and professional services as required to be performed by Contractor under this Contract for the City. Services include, but are not limited to, Maintenance, consulting, training, site management, installation, analysis, programming, needs assessment, or technology review.

“Software” means the object code version of any proprietary or licensed computer programs, firmware, applications, or Operating System Software which are components of the System and are licensed by Contractor to City pursuant to this Contract, including, without limitation, any custom Software or Customization, application software, base software, diagnostic software, Updates, Upgrades and any related Documentation. Software may include Third Party Software and/or Open Source Software delivered by Contractor if required to produce and maintain the System.

“Software Enhancement” means a modification of Contractor’s Software Source Code to increase its capabilities.

“Software Enhancement Release” means Software Enhancements provided by Contractor to the City as part of its Maintenance and Support services.

“Source Code” means a complete copy, expressed in high-level (i.e., human readable; not machine language or object code) computer language, of the Software which, when assembled or compiled, becomes the executable object code of the Software. Source Code shall include all material including but not limited to design documentation, Software documentation, reference manuals and

documentation, libraries for the Software, and interface software (patch or whole programs), in any form (printed, electronic, or magnetic) and any other information necessary that a reasonably skilled programmer or analyst can understand and maintain the Software.

“Statement of Work” (SOW) means the written detailed specifications of the System, Product(s), or Services(s) to be delivered to the City by Contractor subject to the terms and conditions of the Contract.

“Subcontractor” means any person or business entity employed to perform all or part of an obligation of this Contract under the control of the Contractor.

“System” means collectively all Equipment, Products, Software, and Services to be provided by Contractor to City under this Contract.

“Task Order” means any written request or document issued by the City and signed by both Parties for additional Product(s) or Service(s) to be provided under this Contract that the City may require in conjunction with its use of the System. Task Orders shall document the description of goods and/or services, price, payment schedule, project and performance schedule, due dates, milestones and deliverables.

“Third Party Software” means software other than Contractor Software provided to City by Contractor under this Contract and that Contractor is authorized to license to the City subject to the original manufacturer’s standard provisions.

“Update” means a change, modification, or enhancement to the Hardware or Software, and related Documentation, which improves its performance or efficiency, but does not alter its core functionality.

“Upgrade” means a newer, better version, change, modification, or enhancement to the Hardware or Software (including Third Party Software), and related Documentation, which Contractor makes available from time to time, which incorporates major new features or increases the core functionality of the Software and may be considered a new version. Software Upgrades may include error correction, bug fixes, additions to, or patches to the Software.

“Use” means the City’s right to install, integrate, configure, implement, test, access, maintain and operate the System; any Contractor-provided software tools to customize the System; Documentation listed in the Contract; training materials City may acquire to provide internal training on the System to City Users; any Software Enhancements produced by or in collaboration with Contractor to develop the System to City’s unique business processes and/or programming environment for purposes of installing, operating, configuring or using the System.

“User” means any person employed or working on behalf of the City, its Bureaus, Divisions, Offices, Directors, and any person or entity under contract or authorized by the City to provide it with services and to use the City’s resources in whole or in part, in the course of assisting the City .

SECTION 2 GENERAL PROVISIONS

2.1 Order of Precedence: (04/10*) In the event there is a conflict between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict will be resolved by designating which portion of the Contract documents takes precedence over the other for purposes of interpretation, except where a clear statement of precedence other than that set forth in this section is included in the document. In this Contract the order of precedence shall be:

1. Amendments
2. Master Terms and Conditions
3. Change Orders
4. Task Orders
5. Exhibit A, Contractor's Price
6. Exhibit B, Statement of Work
7. Exhibit C, Sample Task Order
8. Exhibit D, Sample Change Order
9. Exhibit E, Sample Status Report
10. Exhibit F, Sample Certificate of Acceptance
11. Exhibit G, City Specification Document
12. Contractor's Proposal, incorporated by reference
13. Contractor Documents (including any licenses, EULA, maintenance agreement, support agreement or others)

2.2 Point of Contact: (04/10) Contractor shall be the sole point of contact for the City with regard to the Contract.

2.3 Capacity to Contract. (04/10) Contractor warrants it has the legal authority and capacity to enter into and perform this Contract.

2.4 Compliance with Law/Venue

2.4.1 Authority to Conduct Business. (04/10) Contractor warrants it is duly authorized to operate and do business in all places where it shall be required to do business under the Contract; that it has obtained or shall obtain all necessary licenses and permits required in connection with the Contract, and that it shall fully comply with all laws, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.

2.4.2 Oregon Venue/Choice of Law. (04/10) This Contract shall be construed according to the laws of the State of Oregon without reference to its conflict of laws provisions. Any litigation between the City and Contractor arising under this Contract or out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

2.4.3 Compliance with Applicable Law. (04/10) Contractor warrants it has complied and shall comply with all applicable law, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs in connection with the execution, delivery, and performance of this Contract and any Task/Change Order subject to this Contract.

2.4.4 Conflict of Interest. (04/10) Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under the Contract.

2.4.5 Rule of Construction/Contract Elements/Headings. (04/10) This Contract has been drafted by the City in the general format by the City as a convenience to the Parties only and shall not, by reason of such action, be construed against the City. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of the Contract.

2.5 Term. (04/10) Unless terminated earlier under the provisions herein, this Contract shall remain in effect during the Initial Term through design and implementation of the Project as well as the period for Services agreed to by the City and Contractor, including option years exercised at the City's discretion. Initial Term cannot exceed five (5) years. City Contracts can be no longer than ten (10) years total.

2.6 Changes to Contract

2.6.1 Amendment of the Contract. (04/10) No provision of this Contract may be amended or modified unless such Amendment or modification is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. All changes that would permanently change any provisions of this Contract shall be memorialized in the form of an Amendment. If the requirements for Amendment or modification of this Contract as described in this section are not satisfied in full, then such Amendments or modifications automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect.

2.6.2 Task Orders. (04/10) The City and Contractor agree that if the City requires additional Services or Products, including Maintenance and Upgrades, it may submit a Task Order to Contractor. Task Orders are subject to the terms of this Contract. Agreed-upon changes shall not be retroactive and shall apply as of the effective date of the respective Task Order. Changes to a Task Order shall be done via the Change Order process, outlined below.

2.6.3 Change Orders to a Task Order. (04/10) The City reserves the right to make changes, at any time to the Task Order in the form of a Change Order agreed to in writing by the Parties. Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall execute an Amendment to the Contract as needed or adjust the fee accordingly, and if the amount of such

adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified fee.

- 2.7 Survival of Orders. (04/10) In the event that a Task Order/Change Order is not completed prior to the expiration of this Contract, the Task Order/Change Order shall survive the expiration of such until completion and all provisions of this Contract shall be considered active and in full force until the Task Order/Change Order reaches conclusion. In no case shall a new Task Order/Change Order be placed by the City or be accepted by Contractor after the expiration date of this Contract.
- 2.8 Delivery. (04/10) Contractor shall deliver the System and Products freight and insurance prepaid; F.O.B. the City's designated location at the time indicated herein or on any Task/Change Order. Shipments will be complete and partial shipments will be avoided unless the City agrees in writing to the partial shipment in advance of such a shipment. The risk of loss or damage in transit shall be upon Contractor until Product is received by the City at the delivery site. Contractor shall furnish on-site or other assistance, as may be required to install the Product at no additional cost to the City, if required by the City. Acceptance shall not relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment for a Product prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor. In the case of the System, delivery of Products shall not be deemed to be complete until the System is available for commencement of the Acceptance Test.
- 2.9 Delivery Schedule. (04/10) Contractor shall use best efforts to deliver Product(s) and/or Services(s) on time, in accordance with the scheduled delivery date as set forth in this Contract or an individual Task/Change Order. If Contractor delivers Product more than () days later than the scheduled delivery date as listed in this Contract or an individual Task/Change Order, the City may cancel the Task/Change Order without penalty.
- 2.10 Written Notifications. (04/10) All written notifications and written Amendments shall be sent to the following:

For City of Portland:	For Contractor:
Name: Gary Cooper	Name:
Title:	Title:
Address:	Address:
City, State:	City, State:
e-mail:	e-mail:
Copy to: Technology Contracts	Copy to:
Procurement Services	
1120 SW Fifth Avenue Room 750	
Portland OR 97204	

- 2.11 City Reporting Requirements. (04/10) The City is required to track certain types of contract data for reporting purposes. Items which the City must report on may include, but are not limited to, Subcontractor utilization, Minority, Women, and Emerging Small Business (M/W/ESB) participation and Subcontractor/Supplier Payment. Contractor shall submit a Monthly Sub-

consultant Payment and Utilization Report reporting ALL Subcontractors employed in the performance of this Contract. The City will enforce all diversity in workforce and M/W/ESB subcontracting commitments. A copy of the Monthly Sub-consultant Payment and Utilization Report can be found online at:

<http://www.portlandonline.com/omf/index.cfm?c=45663&>

- 2.12 Payment. (04/10*) Unless subject to successful completion of an Acceptance Test or other payment milestone specified in any respective Task/Change Order, payment for the System and/or any Product shall be in accordance with the Payment Schedule attached hereto as Exhibit . Payment shall be issued by the City net forty-five (45) days from receipt and acceptance of a proper invoice from Contractor. Contractor invoices must contain Contractor's name and address; invoice number; date of invoice; Contract number and date; description of Products and/or Services; quantity, unit price, (where appropriate), and total amount; City-required reporting, if any, and the title and phone number of the responsible official to whom payment is to be sent. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to vendor.

2.12.1 ACH Payments The Parties recognize the City policy to pay invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, Contractor shall execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at:

<http://www.portlandonline.com/omf/index.cfm?c=26606&a=409834>.

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered or goods provided directly into the Contractor's account(s) with financial institution(s). All payments shall be in United States currency.

- 2.13 Payment of Taxes/Contractor Shall Withhold. (04/10) Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations. Contractor shall also assure that any Subcontractors shall comply with the foregoing obligations.
- 2.14 Independent Contractor/No Duty for the City to Withhold. (04/10) Contractor is a contractor independent of the City and, accordingly, no Task/Change Order for Services pursuant to this Contract is entered into as a joint venture, partnership, or agency between the Parties. No employment relationship is or is intended to be created between the City and any individual representing Contractor. During the term of this Contract, employees of Contractor and any authorized Subcontractors shall at all times remain employees of Contractor or authorized Subcontractors and ultimately shall remain under Contractor's sole control.
- 2.15 Assignment. (04/10) Neither Party shall assign, transfer, subcontract, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld, except that (a) either Party may assign to any corporate Affiliate

pursuant to any merger, consolidation or other reorganization, without the other Party's consent but upon written notice to the other Party, (b) in the event that the City's business needs change or the City enters into an agreement with a provider for outsourcing services, Contractor agrees that the City shall have the right to assign this Contract to a successor of all, substantially all, or specified area(s) of the City's business, including an outsourcing provider, provided such outsourcing provider operates the Software licensed hereunder expressly and solely for the City's benefit, upon written notice to the other Party, and (c) Contractor may, without the other Party's consent but upon prior written notice to the other Party, assign its right to payment under this Contract or grant a security interest in such payment to any third party without requiring that the third party be liable for the obligations of Contractor under this Contract.

- 2.16 Delegation of Obligations/Subcontractors. (04/10) Contractor shall not subcontract any work, assign any rights (including, without limitation, in connection with the sale of all or substantially all of Contractor's assets, stock, or the line(s) of business applicable to any Task/Change Order), or delegate any obligations under this Contract, cancel or change any previously approved subcontract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its Subcontractors at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between Contractor and its Subcontractors for Products and/or Services authorized under this Contract.

All M/W/ESB subcontractors/suppliers identified in Contractor's proposals shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any M/W/ESB subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Purchasing Agent before such substitutions can be made. In the event that Contractor shall subcontract any work, assign any rights, or delegate any obligations under this Contract without the City's prior consent.

- 2.17 Warranties. Contractor and its Subcontractors warrant as follows:

2.17.1 Disclosure and Assignment of Manufacturer's Warranties. (04/10) In all cases where Product or Services are covered by a Manufacturer's Warranty, Contractor will provide the City with a complete and accurate list of all Manufacturer's Warranties pertaining to all Services or Products provided by Contractor. Contractor will assign to the City any Manufacturer's Warranty applicable to any respective Product or Service. Notwithstanding the foregoing, Contractor shall be held responsible by the City for correction to or replacement of the System or any of its components during the period of Warranty and Maintenance.

2.17.2 Equipment and Parts Warranty. (04/10) Contractor warrants that Equipment and parts will be new, the latest model and free from material defects in material and workmanship during the Manufacturer's Warranty Period when put into normal Use and service. If Contractor proposes to provide refurbished, reclaimed or remanufactured parts or Equipment to the City, Contractor shall request the City's acceptance in writing in advance of delivery and the City retains the right to accept or refuse Contractor's use of refurbished, reclaimed or remanufactured parts. If the City accepts the use of refurbished, reclaimed, or remanufactured parts or Equipment, Contractor warrants such Products have the same warranty as that of new and current Products and are

subject to all the same provisions of this Contract. If Contractor uses refurbished, reclaimed or remanufactured parts without the prior consent required by the City, Contractor may be required, at the City's sole discretion, to replace such parts and Equipment with new and current manufactured parts and Equipment at Contractor's sole expense.

2.17.3 Warranty Against Planned Obsolescence and Reclaimed Parts and Equipment. (04/10) The Contractor warrants that at the time of Delivery of Products, it has no plans in the next 12 months for announcing a line of products to replace the ones delivered pursuant to this Contract or any plans that would result in reduced support for the product line delivered.

2.17.4 Industry Standards. (04/10) The System and all components of the System are compliant with all other generally accepted industry standards at time of any respective Task/Change Order.

2.17.5 Warranty and Representations: Contractor warrants and represents the following:

2.17.5.1 Performance to Specifications. (04/10) The System, including all components and Upgrades supplied by Contractor shall operate in accordance with Acceptance Criteria and all Documentation during the Warranty Period.

2.17.5.2 All Necessary Materials. (04/10) The City has all necessary materials and that no other Equipment, Software, interfaces, applications, or other products and/or services are required to be used in conjunction with the System in order for the System to operate in accordance with the Acceptance Criteria and Documentation.

2.17.5.3 System Compatible. (04/10) The System is compatible with the City's existing data files and systems as may be applicable and identified at the time of a Task/Change Order, and shall run in accordance with the Documentation.

2.17.5.4 No Material Defects or Viruses/Illicit Code. (04/10) The System (A) is free of any defect in material of the media in which it is delivered; and (B) is free of any virus, Trojan horse, spyware, malware, or other program routine designed to erase, disable or otherwise harm the City's hardware, data or other programs that Contractor or any Subcontractor to Contractor knew or should have known was contained in the Software or other code or program.

2.17.5.5 Illicit Code. (04/10) Contractor's Software and Third Party Software shall not:

- A) contain any hidden files that Contractor or any Subcontractor to Contractor knew or should have known were contained in the Software or programming
- B) replicate, transmit, or activate itself without the control of an authorized person operating computing equipment on which it resides, unless requested or authorized by the Contract Manager
- C) alter, damage or erase any data or computer programs without the control of an authorized person operating the computing equipment on which it resides
- D) contain any key, node lock, time-out or other function, whether

implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed under this contract, based on residency on a specific hardware configuration, frequency of duration of use or other limiting criteria (any of the foregoing shall constitute “illicit code”)

2.17.6 Documentation Explains Use. (04/10) Contractor warrants that the Documentation shall explain the operation of the System in terms understandable by City Users of reasonable technical competence.

2.17.7 No Third Party Conflict or Infringement. (04/10) Contractor warrants the execution, delivery, and performance of this Contract and any Task/Change Order subject to this Contract shall not contravene the terms of any contracts with third parties or any third-party rights in any patent, trademark, copyright, trade secret, or similar right; and, as of the date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision.

2.17.8 Commencing of the Warranty Period. (04/10) Where Contingent Products are ordered and no Acceptance Test is required, the Warranty Period shall not commence until Acceptance by the City of all required or all Contingent Products. The City may, at its election, postpone Services in support of Products so as to coincide with Delivery and Acceptance of all Contingent Products. The City shall not incur any additional fees whatsoever for reordered or replacement Contingent Products.

2.18 Indemnification. (04/10) Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature (including all attorneys’ fees and costs), resulting from or arising out of the activities, errors or omissions of Contractor or its officers, employees, Subcontractors, or agents, including intentional acts, under this Contract.

Contractor agrees to hold harmless and indemnify the City and its Affiliates against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the City or its Affiliates may be required to pay arising from Products and/or Services provided by Contractor under any Task/Change Order to this Contract. The City of Portland, as a municipal corporation of the State of Oregon, is a tax-exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.

2.19 Force Majeure

2.19.1 (04/10) In the event that either Party is unable to perform any of its obligations under this Contract (including any Task/Change Order(s) or loss of any Software licensed or developed hereunder) due to natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected Party (hereinafter referred to as a “Force Majeure Event”), the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, this Contract and/or any affected Task/Change Order shall immediately be suspended.

2.19.2 (04/10) If the period of nonperformance exceeds fifteen (15) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by

giving written notice, terminate this Contract or any Task/Change Order or any license granted hereunder.

2.19.3 (04/10) If delay in delivery due to a Force Majeure Event does not exceed thirty (30) days, such delays in delivery shall automatically extend the delivery date for a period equal to the duration of such events; any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event so long as it does not exceed thirty (30) days.

2.19.4 (04/10) If delay in delivery due to Force Majeure Event is longer than thirty (30) days, the City shall have the right to terminate this Contract, a Task/Change Order, Maintenance agreement or any license hereunder upon written notice to Contractor, in accordance with this Section.

2.19.5 (04/10) If this Contract involves the acquisition of Equipment or Software that contains personally identifiable information and/or processes credit card transactions, a security breach of Contractor's system shall not be considered a Force Majeure Event.

2.20 Insurance and Bonding. (04/10) Work shall not commence until all insurance requirements listed below have been met and certificates have been approved by the City Attorney and filed with the Auditor. All required insurance must be issued by companies or financial institutions that are financially rated A or better and duly licensed, admitted and authorized to do business in the State of Oregon.

2.20.1 Insurance Certificate. (04/10) As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the City prior to or with the return of the signed contract. The certificates shall include a 30-day notice of cancellation clause and a 10-day notice for non-payment. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance. If the insurance is canceled or terminated prior to completion of the Contract, Contractor shall provide a new policy with the same terms. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. Failure to maintain insurance as required by this Contract may be cause for immediate termination of the Contract by the City. Contractor's insurance will cover damages excluded from any limitation of liability to the extent of its policy limits indicated herein.

2.20.2 Additional Insureds. (04/10) The coverage shall apply as to claims between insureds on the policy. The insurance shall be without prejudice to coverage otherwise existing. The insurance certificate shall name as additional insureds "the City of Portland, Oregon, and its officers, agents and employees." Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

2.20.3 Insurance Costs. (04/10) Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

2.20.4 Required Coverage is as follows: (04/10)

2.20.4.1 Public Liability and Property Damage. (04/10) ☒ **Required** ☐ **Waived by City Attorney.** Contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000.00 (one million U.S. dollars) per occurrence that protects Contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from Contractor's work under this Contract.

2.20.4.2 Automobile Liability. (04/10) ☒ **Required** ☐ **Waived by City Attorney** Contractor shall carry automobile liability insurance with a combined single limit of not less than \$ 1,000,000.00 (one million U.S. dollars) each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by Contractor.

2.20.4.3 Workers' Compensation. (04/10) ☒ **Required** ☐ **Meets Exceptions in ORS 656.027** Contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656. Contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under this Contract.

Contractors who are non-subject workers meeting one of the exceptions in ORS 656.027 may not be required to carry workers compensation insurance. Any Contractor requesting an exemption from the workers compensation coverage listed above must make that request in writing to the City Attorney, stating Contractor's qualification for exemption under ORS 656.027.

2.20.4.4 Technology Errors and Omissions; Information Security & Privacy Liability. (04/10) ☒ **Required** ☐ **Waived by City Attorney.** Contractor shall maintain liability insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the Services under this Contract. The coverage shall be placed with an insurer with an AM Best Rating of A or better and shall include the following coverage:

Technology Products & Services E&O - Information Security & Privacy Liability for Service Provided to Others.

Such insurance shall cover any and all errors, omissions and/or negligent acts in the delivery of Products, Services and Software under this Contract. Such errors and omissions insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and infringement of intellectual property, such as copyrights, trademarks, service marks and trade dress.

Such insurance shall include limits of coverage of the local currency equivalent of not less than \$1,000,000.00 (one million U.S. dollars) and shall remain in effect for not less

than three (3) years following the date of termination or expiration of this Contract. Evidence of coverage must be sent to the City for three years following termination or expiration of this Contract.

2.20.4.5 Insurance Requirements for Subcontractors. (04/10) Should Contractor subcontract any part of the Contract, Contractor will require those Subcontractors or Affiliates if not covered under Contractor's insurance, to obtain and keep in force for the duration of the Contract, insurance equal to the minimum values indicated above.

- 2.21 Ownership of Property. (04/10) Contractor agrees the City will, upon completion of the Initial Term of this Contract, have full ownership of the System. Should the Contract be terminated prior to the completion of the Initial Term of the Contract, the City shall negotiate in good faith with Contractor to resolve the disposition of the System. Contractor warrants that, with the exception of property that is leased or subject to a properly perfected security interest, it shall at all times own Equipment and Software proposed for this Contract, with the exception of Third Party Software, telecommunications services and buildings, and shall keep such property free and clear of any and all security interests, liens, charges, levies, assessments or encumbrances. Any work products produced or created by Contractor for the City shall be understood to be, to the fullest extent of the law, works made for hire unless the Parties have expressly agreed otherwise in writing.
- 2.22 Proprietary Rights. (04/10) Except Customizations, all trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights in or related to the Product or Service are and will remain the exclusive property of Contractor or its designees. City shall not decompile, disassemble, or otherwise reverse engineer the Software.
- 2.23 Return of Parties' Property. (04/10) When the Contract or any Task/Change Order placed pursuant to the Contract is terminated or expires, each Party shall return to the other all papers, materials, and properties of the other Party then in its possession. The City will retain one (1) copy of the Documentation for the express purposes of public record archiving.

If the City has paid in full for licensed Product prior to the expiration date of this Contract the City shall retain licenses to Product for which the City may continue to order Maintenance and Upgrades. Terms of this Contract relating to such licensed Product, Maintenance and Upgrades shall survive expiration of the Contract.

- 2.24 Financing of Property. (04/10) If Contractor finances any property, real or personal, that comprises any part of the System, the term of such financing shall not exceed the term of the Contract. If Contractor finances or leases any such property or equipment, Contractor shall ensure that any agreements ancillary to or supporting the principal lease or financing agreement (e.g., hardware, software, maintenance, insurance) are coterminous to the principal financing or leasing arrangement. In addition, if the Contract is terminated, Contractor shall ensure that the City or any successor contractor shall have the right to terminate, renegotiate or be assigned any lease of property or equipment or ancillary agreement (other than, in the case of the City, any financing agreement or insurance).

- 2.25 Disclosure of Litigation or Financial Condition. (04/10) Contractor warrants and represents that there are no suits, actions or other proceedings – pending, or threatened – in any judicial or quasi-judicial forum that will or may adversely affect Contractor’s ability to fulfill its obligations under this Contract. Contractor further warrants that it will immediately notify the City if, during the term of this Contract or any extension of this Contract, Contractor becomes aware of any lawsuits, actions or proceedings – pending or threatened – in any judicial or quasi-judicial forum that involve Contractor or any Subcontractor and that will or may adversely affect Contractor’s ability to fulfill its obligations under this Contract or extension of the Contract. For purposes of the disclosure requirement, any litigation, actions or other judicial or quasi-judicial proceedings that, in the aggregate, involve claims against Contractor totaling at least ten percent (10%) of the total amount of this Contract shall be presumed to adversely affect the ability of Contractor to fulfill its duties under this Contract.
- 2.26 Notice of Change in Financial Condition. (04/10) Contractor must maintain a financial condition commensurate with the requirements of the Contract. If, during the Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform, or changes the ownership or control, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition or change in ownership or control is sufficient grounds for terminating the Contract.
- 2.27 Audits and Access to Records
- 2.27.1 Records Retention. (04/10) Contractor shall maintain current financial records in accordance with professional accounting standards. Contractor agrees to maintain and retain supporting financial and Contract related documents during the term of the Contract and for a period of three (3) years after the date of submission of the final billing or until the resolution of all audit questions or claims, whichever is longer. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by Contractor for a minimum of three (3) years.
- 2.27.2 City Audits. (04/10) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services during the records retention period listed above. City audits shall be conducted in accordance with generally accepted auditing standards. Contractor shall provide the City’s internal auditor or external auditor, and their designees with a copy of all reports, including any management letters issued as a result of the specified audits.
- 2.27.3 Access to Records. (04/10) The City internal auditor or City external auditor, and their designees, shall be given the right, and the necessary access, to review the work papers of Contractor audits if the City deems it necessary. Copies of applicable records shall be made available upon request.
- 2.28 Overpayment. (04/10) If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of Services is not

efficient in accordance with the U.S. Government Accountability Office's Government Auditing Standards, or that the Services are not effective in accordance with these Government Auditing Standards, the City may pursue remedies as provided under Section 2.31, Termination, and Section 2.33, Remedies.

2.29 Confidentiality

2.29.1 Maintenance of Confidentiality. (04/10) Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit and in furtherance of the Products and/or Services provided by Contractor. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees and agents of Contractor who need to know the City Confidential Information in connection with the City Project, (2) exercise reasonable care with respect to the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use Confidential intellectual property of the City without the City's prior written consent.

2.29.2 Scope. (04/10) This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. This Contract shall not apply to City Confidential Information which (1) is or later becomes part of the public domain without breach of this Contract and through no wrongful act of Contractor; (2) Contractor lawfully receives from a third party; (3) was developed independently by and was reduced to writing by Contractor prior to the earlier of the date of this Contract or the date of any access or exposure to any City Confidential Information, or (4) is required to be disclosed under operation of law. Contractor's confidentiality obligations under this Contract shall survive termination.

2.29.3 Equitable Remedies. (04/10) Contractor acknowledges that unauthorized disclosure of City Confidential Information or misuse of a City computer system or network will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

2.29.4 Contractor's Confidential Information. (04/10) During the term of the Contract, Contractor may disclose to the City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information at the time of disclosure or within a reasonable time thereafter. The City shall not be deemed to have breached this Section if (1) Contractor's Confidential Information later becomes part of the public domain through no act or omission of the City; (2) is required to be

disclosed under operation of law; (3) the City lawfully receives Confidential Information from a third party with no breach of any duty of confidentiality; or (4) was developed independently by and was reduced to writing by the City prior to the earlier of the date of this Contract or the date of any access or exposure to any Contractor Confidential Information.

2.29.5 Public Records Request. (04/10) Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. Subject to the following conditions, the City agrees not to disclose any information Contractor submits to the City that includes a written request for confidentiality and as described above, specifically identifies the information to be treated as Confidential. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

2.29.6 City's Obligation to Notify Contractor. (04/10) If the City receives a public records request for information that Contractor has marked CONFIDENTIAL and submitted in confidence, the City shall notify Contractor of the request. The City shall provide Contractor with written notice and a copy of the request. Contractor shall have five (5) business days within which to provide a written response to the City, either consenting to disclosure of the requested Contractor Confidential Information or explaining why the Contractor's Confidential Information is exempt from disclosure under the Oregon Public Records Law or otherwise. If Contractor fails to submit a written response within the time period required, the City may make its own determination regarding disclosure of the information sought by the request. Whether or not Contractor submits any written response to the City, the City shall retain final discretion to determine whether to disclose the requested confidential information. If Contractor contends that the Contractor's Confidential Information is exempt from disclosure, the City shall give Contractor five (5) business days' written notice prior to disclosing such Confidential Information to allow Contractor to pursue whatever legal avenues it deems appropriate.

If the City refuses to disclose the Contractor's Confidential Information pursuant to Contractor's response under the paragraph above, and the requestor files a petition for disclosure pursuant to the Oregon Public Records Act, the City shall provide Contractor with a copy of the petition within two (2) business days of receipt of the petition by the City. Within three (3) business days of delivery of the petition by the City, Contractor will provide the City with a written evaluation of the petition, detailing why the records would be exempt from disclosure under the Oregon Public Records Act. The City shall provide notice and a copy of the District Attorney's decision on the petition within two (2) business days of receipt of the decision by the City. If Contractor desires the City to contest an order of the District Attorney requiring disclosure, or if an order of the District Attorney upholding non-disclosure is challenged as provided in the Oregon Public Records Act, Contractor shall save, indemnify and hold harmless the City and pay all reasonable costs and expenses, including reasonable attorney fees, incurred by or assessed against the City as a result of contesting or defending a public records order of the District Attorney in circuit court and on appeal. Contractor shall have the

right to intervene in any such proceeding, to the extent that Contractor's rights may be affected thereby.

2.29.7 Discovery of Documents. (04/10) In the event a party to litigation seeks discovery of information submitted by Contractor in confidence, the City will notify Contractor of the request. The City shall allow Contractor to participate in the response at its own expense. The City will comply with any effective order issued by the court having jurisdiction over the matter.

2.30 Dispute Resolution. (04/10) Contractor shall cooperate with the City to assure that all claims and controversies which arise during Contractor's performance of Services under this Contract or a Task/Change Order subject to this Contract and which might affect the quality of such Services will be resolved as expeditiously as possible in accordance with the following resolution procedure:

- A) Any dispute between the City and Contractor arising prior to completion of Contractor's services or the earlier termination of the Contract shall be resolved, if possible by the Contract Manager or their designee on behalf of the City and on behalf of Contractor.
- B) If the Contract Manager or the Contract Manager's designee and Contractor are unable to resolve any dispute within three (3) business days after notice of such dispute is given by either Party to the other, the matter shall be submitted to Bureau of Technology Services Chief Technology Officer on behalf of the City and on behalf of Contractor for resolution, if possible.
- C) Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- D) Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract.
- E) Unless ordered by the City to suspend all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services or delivery of Products without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures and shall comply with any mutually agreed upon Task/Change Orders that the City may issue regarding the acceleration of all or any portion of the Products or Services. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute, in accordance with the provisions of the Contract or Task/Change Order.

2.31 Termination. (04/10) The following conditions apply to termination of this Contract. The City, on

thirty (30) days written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.

2.31.1 The City and Contractor, by mutual written agreement, may terminate this Contract at any time.

2.31.2 Either Party may terminate this Contract in the event of a Material Breach of the Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Days of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination. In the event of default under this Contract, the non-defaulting party shall have the option (upon the expiration without cure of any applicable cure period) to: (a) terminate in whole or in part this Contract or any related Task/Change Order, (b) seek remedies pursuant to this Contract (c) seek any other remedies in the Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract , or (d) any combination thereof.

2.31.3 City Termination for Cause. (04/10) In addition to Material Breach, the City may terminate this Contract for the following reasons, which constitute cause for purposes of this Section:

- A) Bankruptcy. The City may terminate this Contract if Contractor: (a) becomes insolvent, makes a general assignment for the benefit of creditors; (b) suffers or permits the appointment of a receiver for its business or assets; (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) day period; or (d) has wound up or liquidated, voluntarily or otherwise.
- B) Maintenance Default. The City may terminate this Contract if Contractor fails to provide Warranty or Maintenance services or Contractor has not cured its failure to provide Maintenance as provided and paid for in this Contract.
- C) System or Product of Software Performance Default. The City may terminate this Contract if the System or Product exhibits defects causing serious disruption of Use and/or repeated periods of downtime, over a continuous period of six (6) months or more.
- D) Software Code. Inclusion of illicit code as set forth in Section 2.17.5, Warranty and Representations, shall be considered a Material Breach of the Contract and no notice or cure period will apply. In addition to any other remedy available to it under this Contract with respect to any such Material Breach, the City reserves the right to pursue any civil and/or criminal penalties available to it against a Contractor, including without limitation the Deceptive Trade Practices & Consumer Protection Act, the Computer Crimes Law and any other remedy at law or equity.
- E) Void Assignment. In the event that Contractor assigns its obligations to provide Products and/or Services under this Contract to any third party in a manner other than as set forth in Section 2.15, Assignment, the City shall have the option to

terminate this Contract or any Task/Change Order for Products and/or Services, and promptly receive a pro rata refund for fees paid for such Products and/or Services.

2.31.4 Termination for Force Majeure. (04/10) Either party may terminate this Contract due to a Force Majeure event as set forth in Section 2.19, Force Majeure.

2.31.5 City Termination for Contractor Breach. (04/10) In the event of termination by the City due to a Material Breach by Contractor, then the City may complete the Project itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to the City the amount of the reasonable excess. In the event of any Material Breach by Contractor, which Breach shall not have been cured as agreed to between the Parties, the City shall have the ability to pursue the City's rights at law.

2.31.6 Contractor Termination for City Breach. (04/10) In the event of Material Breach of this Contract by the City, then Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in Section 2.12, Payment.

2.32 Waiver. (04/10) No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach of this Contract.

2.33 Remedies. (04/10) The remedies provided in this Contract are cumulative, and may be exercised concurrently or separately. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

2.33.1 Software. (04/10) In the event of Software failure a set out in the General Provisions above, the City shall have the right to one or more of the following non-exclusive remedies: (A) Contractor provide engineering support on site at the City's location with Source Code for the Software, if necessary for resolving the problem causing the breach. The City has the option to assign one or more of its full time employees to assist Contractor's engineer(s) in repairing the problem. Contractor retains copyright and all ownership rights to the Source Code and any changes made during this on-site period if such repair involves Software. The City agrees to maintain confidentiality of the Source Code and all residual know-how and knowledge that may be transferred to City employees as a result of this effort; however, the City shall be entitled to use the Source Code for purposes of error correction or operations continuity, at the City's sole discretion; or (B) the City may terminate this Contract in its entirety or solely as to the affected Task/Change Order and exercise the remedies included in this Contract, in the City's sole discretion.

2.33.2 Maintenance. (04/10) In addition to any other remedies provided for in this Contract or at law or in equity, the City shall have the right to obtain one or more of the following non-exclusive remedies in the event of any Material Breach involving Maintenance under this Contract by Contractor: (a) suspension of contested payment obligations accruing during the period for which Contractor is in Material Breach; (b) termination of this Contract in its entirety as set forth in Section 2.31, Termination, or of any affected Task Order or Maintenance Request, in the City's sole discretion; and (c) a refund of all fees for Maintenance paid by the City to Contractor for the period beginning from the date of the Material Breach to the end of the Term.

2.34 Severability. (04/10) Any section of this Contract which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Contract and the remainder of this Contract shall continue to be binding and of full force and effect. This Contract shall be binding upon and inure to the benefit of the City and its successors and assigns.

2.35 Rolling Estoppel. (04/10) Unless otherwise notified by Contractor, it shall be understood that the City shall have met all its obligations under the Contract. The City will be conclusively deemed to have fulfilled its obligations, unless it receives a deficiency report from Contractor by the fifteenth (15th) day of the month following the month of the alleged deficiency and Contractor identifies the specific deficiency in the City's fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have affected a specific performance requirement of Contractor.

2.35.1 (04/10) Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in Project timetable, the standards of performance under the Contract or the Contract price, if Contractor knew of that problem and failed to include it in the applicable report.

2.35.2 (04/10) In the event Contractor identifies a situation that is impairing Contractor's ability to perform for any reason, Contractor's deficiency report should contain Contractor's suggested solutions to the situation. These suggestions should be in sufficient detail so that the City's Project Managers can make a prompt decision as to the best method of dealing with the problem and continuing the Project in an unimpeded fashion.

2.35.3 (04/10) If the problem is one that allows Contractor (within the terms of the Contract) to ask for changes in the Project timetable, the standards of performance, the Project price or all of these elements, the report should comply with the Task/Change Order procedure.

2.36 Business License. (04/10) Contractor shall register for a City of Portland business license as required by Chapter 7.02 of the Code of the City of Portland prior to beginning work under this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this contract. Failure to be in compliance may result in payments due under this Contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.

- 2.37 EEO Certification. (04/10) Contractor shall be certified as Equal Employment Opportunity Affirmative Action Employer as prescribed by Chapter 3.100 of the Code of the City of Portland and maintain their certification throughout the term of the Contract.
- 2.38 Non-Discrimination in Benefits. (04/10) Throughout the term of the Contract, Contractor shall provide and maintain benefits to its employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with the Bureau of Purchases, City of Portland, prior to Contract execution.
- 2.39 Non-discrimination; Civil Rights. (08/12) In carrying out activities under this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Contractor shall take actions to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Actions shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices provided by City setting forth the provisions of this nondiscrimination clause. Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap, familial status, sexual orientation, or national origin. Contractor shall incorporate the foregoing requirements of this paragraph in all of other contracts for work funded under this Contract, except contracts governed by Section 104 of Executive Order 11246.
- 2.40 Sustainability. (04/10) Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these Principles into its scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable products or services into its work performance wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.
- 2.41 Packaging. (04/10) All packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.

- 2.42 Permissive Cooperative Procurement. (04/10) Pursuant to ORS 279A.215, as additional consideration for this Contract, Contractor agrees to extend an option to purchase any Product, Equipment or Services covered under this Contract at the same prices as are specified in Exhibit G for purchase by the City, under the same terms and conditions to all regional public agencies. Each participating agency will execute its own Contract with the Contractor for its requirements.
- 2.43 News Releases and Public Announcements. (04/10) Contractor shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Contract or the Project without the express written approval of the City. Such approval may be withheld in the City's sole discretion. If approval is not issued within ten (10) business days from receipt of the request, the request shall be deemed denied. Contractor shall not use the City seal without specific written permission from the Auditor.
- 2.44 Survival. (04/10) All obligations relating to confidentiality; indemnification; publicity; representations and warranties; proprietary rights; perpetual licenses, including licensing obligations as stated in this Contract or any applicable Task/Change Order; limitation of liability; and obligations to make payments of amounts that become due under this Contract or subsequent Task/Change Orders prior to termination or expiration (except that payments for Services not performed by the date of termination shall be prorated) shall survive the termination or expiration of this Contract or any respective Task/Change Order and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City. Nothing in this Contract shall alter, modify, or supersede the content and survival of such provisions, except as otherwise expressly agreed to in writing by the Parties and with the prior written approval of the City Attorney's office.

SECTION 3 SOFTWARE LICENSE SPECIFIC PROVISIONS (*)

- 3.1 Application. (04/10) In addition to the General Provisions provided in Section 2, these provisions shall apply to all Software, including Updates, Upgrades, Software Enhancements, Customizations, or Software preloaded into Equipment. These Provisions shall not cover any Third Party Software supplied by Contractor except where specifically addressed. Should any ambiguities or conflicts arise between this Section 3 and Section 2 General Provisions, this Section 3 shall prevail over Section 2 in matters of Software, Upgrades, Enhancements, Customizations, and Repairs.
- 3.2 Grant of License. (04/10) Contractor hereby grants the City a non-exclusive, perpetual, irrevocable license to use, access, and operate all Software components of the System, or as may be specified on any respective Task/Change Order, whether or not Contractor is the original manufacturer of the Software, including that which may be preloaded on any Equipment. The City owns the perpetual license regardless of whether or not the City purchases maintenance and support. Contractor shall be responsible for effecting licensure of all Third Party Software required for the System, which shall be subject to the provisions of this Contract. Except as otherwise expressly provided in this Contract or in any applicable Task/Change Order, Contractor grants the right to use, access and operate the Software without restriction, as may be applicable, to any number of City Users, geographic area, market, location, duration, CPU, site, MIPS, or other measurement or platform restrictions, including platform operating systems. If the Software is permanently

installed on the hard disk or other storage device of any computer (other than a network server) functioning as a component of the System and one person uses that computer more than eighty percent (80%) of the time it is in use, then that person may also use the Software, subject to the provisions of this Contract, via remote access, on a portable or home computer or other handheld device. In the event that any such person is unable to perform duties or is replaced for any reason whatsoever, all rights and privileges granted in this Contract shall apply to substitute/replacement personnel.

3.3 Copies. (04/10) The City may reproduce the Software and Documentation, and any computer-based training modules (“CBTs”), if applicable, provided that each copy thereby produced shall be marked with Contractor’s proprietary markings as delivered to the City. Unlimited copies of Software may be used for testing, including testing within a City lab, or other lab as agreed to between the Parties, on a mirrored server for purposes of redundancy, back up, archive, and disaster recovery purposes and in such manner as may be necessary to facilitate the continuation of the City’s governmental operations.

3.4 Ownership. (04/10) Contractor shall retain all ownership rights, including trademarks, patents, copyrights, and other forms of intellectual property, in pre-existing or independently developed Software.

3.4.1 (04/10) Title to all tangible personal property, including title to the medium or media of delivery of the Software, shall vest in the City upon delivery.

3.5 Infringement Indemnity. (04/10) Contractor shall, at its own expense, hold harmless, indemnify, and defend the City, its directors, officers, employees, agents and Affiliates from and against any and all claims, demands, damages, liabilities, losses, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged violation or infringement by the Software of any proprietary right of any person whosoever, including any copyright, patent, trade name, trademark, or misappropriation of the trade secrets of any third party. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise. No settlement that prevents the City’s continuing use of the Software/Products shall be made without the City’s prior written consent. If any third party claim causes the City’s use of the Software to be endangered, restricted or disrupted, Contractor shall (i) cause the Software to be replaced, at no additional charge, with a compatible functionally equivalent and non-infringing product; (ii) cause the Software to be modified to avoid the infringement; (iii) obtain a license for the City to continue using the Software and pay any additional fee required for such license; or (iv) if, after Contractor uses all due diligence or standard of care none of the foregoing alternatives is possible, Contractor will terminate the license and refund to the City license fees actually paid by the City and any direct damages documented by City for the affected Software and Documentation.

SECTION 4 WARRANTY PERIOD SPECIFIC PROVISIONS - (04/10*)

4.1 In addition to the General Provisions provided in Section 2, these provisions shall apply to all

Repairs to the System, including any Software, Equipment, and Product(s). These provisions shall cover any Third Party Software supplied by Contractor as components of the System. Should any ambiguities or conflicts arise between this section and Section 2 General Provisions, this section shall prevail over Section 2 in matters of Repair.

- 4.2 Term. (04/10) Contractor's obligations in connection with the Warranty Period shall be for XXX months, commencing on the date of Final Acceptance.
- 4.3 Services Included. (*) During the Warranty Period, Contractor shall provide solutions, changes and corrections to the System as required to keep the System conforming in all material respects to the Acceptance Criteria and all applicable Documentation, and to correct reported problems that are replicated and diagnosed by the City as defects or Errors in the System. Services shall include the following:
- 4.3.1 Repair. (04/10) Within the time specified herein, Contractor shall repair all Errors that have been identified by Contractor or by the City in Maintenance Requests, by (A) if Software, providing patches on diskette, CD ROM or by download or electronic mail; or (B) if Equipment, dispatching a repair team, or authorizing items to be sent to Contractor repair facilities as applicable in which case Contractor shall provide backup Equipment as a hot swap pending repair and/or replacement of the defective component; Contractor shall provide additional or supplementary new Operating System Software code, loaner Equipment or reasonable workarounds to assist the City in reducing the impact of such failure to the City's operations. Contractor shall replace defective Software that cannot be repaired. Contractor shall replace defective Equipment with like equipment if the defect is non-repairable, and or repair costs would exceed the then depreciated value of the Equipment, less any trade-in value. In the event that neither replacement nor Repair can be made, the remedies, as stated within this Contract, at the City's sole discretion shall apply. A work around or patch which temporarily eliminates the symptoms of the particular Error or failure reported, but impairs the efficiency of the City's operations, shall be deemed an "interim repair," not a Repair. An interim repair cannot last longer than seven (7) calendar days, unless otherwise mutually agreed in writing by both Parties.
- 4.3.2 Telephone Helpline/Staffing. (04/10*) During the coverage hours of Monday through Friday 8am-5pm Pacific Time, Contractor shall maintain a no-cost telephone hotline. Contractor shall staff the hotline with competent technical consultants who shall be trained in and thoroughly familiar with the System and with the City's applicable configuration. Telephone support and all communication shall be delivered in English.
- 4.4 New Releases/Upgrades. (04/10) In the event the Software is upgraded, modified, or enhanced, including interim Updates, block releases, patches or fixes of major or minor bugs, Contractor shall automatically provide such Upgrades, Updates, changes, enhancements, or fixes to the City at no additional cost. The Software cost under this Contract is intended to include those Updates/Upgrades listed in the previous sentence and therefore will remain unchanged and will not be increased due to such Upgrades, Updates, enhancements, or fixes.
- 4.5 Training. (04/10) At the City's request, Contractor shall provide the City on-site training in connection with Upgrades or major repairs that change the functional operation of the System or any Software or Equipment component whether repair or alteration is a permanent or interim

modification. Training shall be provided at no cost to the City and a time and location convenient to the City's business operations and staff.

- 4.6 Version Support. (04/10) If the City elects not to install any Software or Product Upgrade, Contractor shall, at the City's request, maintain the ability to support up to two (2) earlier versions of the Product(s) in operation. Contractor shall provide the City with at least twelve (12) months prior written notice, before discontinuing Maintenance in support of Product(s) currently in use by the City. After such discontinuation, the City may obtain back-level support upon payment of a fee that shall not exceed one hundred and ten percent (110%) of the annual Maintenance fee for the most current version of the component Product.
- 4.7 Redundant Systems. (04/10) Unless otherwise expressly stated in a Task/Change Order, Contractor shall provide Repair Services for a redundant System/Product on the exact same basis as for a primary System /Product. All rights, obligations, warranties, and other Services which apply and extend to a primary System/Product shall apply and extend to an equal extent to a redundant System/Product.
- 4.8 Other Standard Services. (04/10) Contractor shall, at no additional cost to the City, provide other standard services which Contractor offers to its customers generally or as otherwise described in this Contract or in a specific Task/Change Order.
- 4.9 Access to City Facilities. (04/10) Contractor agrees that Contractor's physical or remote access to the City facilities shall be subject to the security interests and controls necessary to protect public property, and the City shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or systems.

SECTION 5 ACCEPTANCE TESTING

- 5.1 Right to Perform Acceptance Testing. (04/10) Prior to Accepting the System, the City shall have the right to perform Acceptance Testing. Contractor shall cooperate with the City in the development of Acceptance Criteria and the Acceptance Test Plan that shall codify and set forth the location, date, and other specifications of the test. The Acceptance Criteria and Acceptance Test Plan are listed as in the Statement of Work, Exhibit B.
- 5.2 Procedure and Timetable. (04/10) Unless otherwise specified,
- 5.2.1 The City shall commence the Acceptance Test no later than ten (10) Business Days after Delivery of the System;
- 5.2.2 Contractor shall provide, at no additional cost, reasonable and appropriate support, assistance, and consultation regarding the System in order to facilitate Acceptance Testing;
- 5.2.3. Acceptance Testing shall not exceed thirty (30) Calendar Days; and The City will make all reasonable efforts to complete the Acceptance Test within the time period specified. If the Acceptance Test is successful the City shall issue a Certificate of Acceptance, a sample of which is attached as Exhibit XXX.

5.3 Failure of Acceptance Test. (04/10) The City will notify Contractor if the System or a portion of the System, fails to pass an Acceptance Test and will specify in reasonable detail the identified failures and possible reasons for failure. After City's notification, Contractor shall correct the System, or the affected portion, within ten (10) days and notify the City that the Correction has been completed. After Contractor's Correction notification, the City shall perform a second Acceptance Test. If the System, or portion of the System, fails to pass the second Acceptance Test, the City shall notify Contractor in writing, and the City may, in its sole discretion: (a) terminate the Contract or Task/Change Order with no further liability; (b) request Contractor to replace the System or defective portion of the System at no additional cost to the City, c) request Contractor make further corrections to prepare for retesting again; (d) accept the System at a reduced cost to be negotiated between the Parties; or (e) issue an Acceptance Certificate entitled "Acceptance with Exception(s)."

5.3.1 (04/10) If the City issues an "Acceptance with Exception(s)" the City will list the exception(s) and the date for Contractor's correction. If exceptions are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the System or affected portion(s). If the System passes the Acceptance Tests, the City will issue a Certificate of Acceptance.

5.3.2 (04/10) If a System fails a second Acceptance Test (or in the event of a single Acceptance Test, the Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the System.

5.4 City Acceptance of Failure. (04/10) If the City elects to accept the System or any combination of Products even with the failure(s), then the City may request that Contractor issue a refund to the City in an amount equal to a percentage of the full fee value of the System that the Parties mutually determine represents the loss of functionality of the System.

5.5 Revocation of Acceptance. (04/10) The City shall have the right to revoke "Acceptance with Exception(s)" if the City granted an "Acceptance with Exception(s)" based on Contractor's commitment to correct the defect within a reasonable period of time, but the defect has not been so corrected.

The City shall also have the right to revoke Acceptance if the City accepted the System without discovery of the defect, and the Acceptance was reasonably induced by Contractor's assurances or by the difficulty of discovery of the defect before Acceptance. Revocation is effective only if it occurs within a reasonable time after the City discovers or should have discovered the reasons for revocation.

5.6 Termination Based on Failure of Acceptance. (04/10) If the System fails to pass the Acceptance Test(s), the City may terminate this Contract for Material Breach. Contractor shall refund all costs paid for the System or any combination of Products in U.S. Dollars within fifteen (15) Days. The refund shall be in cash or its equivalent and not in the form of future credits from Contractor.

5.7 No Waiver. (04/10) Acceptance shall not relieve Contractor from its responsibility under any Warranty. Payment for Products or the System does not constitute Acceptance nor does it constitute a waiver of any Warranty applicable to the City.

SECTION 6 PUBLIC CONTRACTING

6.1 Public Contracts. (04/10) Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A, 279B and 279C require every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this Contract, as applicable:

6.1.1 (04/10) Pursuant to ORS 279B.220, on every public contract, Contractor shall make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the work provided for in the Contract; shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

6.1.2 (04/10) Pursuant to ORS 279B.230(1), in every public contract, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

6.1.3 (04/10) Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

6.1.4 (04/10) Pursuant to ORS 279B.235(1), persons may not be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one week when the work week is five (5) consecutive days, Monday through Friday; or b) for all overtime in excess of ten (10) hours in any one day or forty (40) hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

Pursuant to ORS 279B.235(3), when performing professional services, the employee shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime

SECTION 7 TRAVEL - ☒ Required ☐ or Waived

7.1 Reimbursement. (04/10) Contractor may be reimbursed, upon advance written approval by authorized City personnel, for certain expenses incurred in connection with personnel assigned to provide services for the City on the City's site. All invoices shall be accompanied by original receipts and any additional backup that may be appropriate, and required by any subsequent Task/Change Order. Reimbursement will be made based on the following guidelines:

7.1.1 Commercial Air Travel (04/10) Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. The City shall reimburse Contractor for one round trip to the subject work location, unless otherwise agreed to by the City in writing. When possible, air travel arrangements should be reserved at least seven (7) to fourteen (14) days in advance. Direct billing for commercial air travel is NOT permitted; however, City may elect to arrange travel reservations on behalf of Contractor personnel. Weekend travel is not reimbursable, unless otherwise agreed to by the City's Project Manager in writing. In the event weekend travel is reimbursed, such reimbursement shall be made based on an amount up to and in lieu of any authorized per diem amounts and, if applicable, any other daily expense reimbursement.

7.1.2 Rental Cars/Surface Transportation. (04/10) Contractor shall choose the most economical mode of transportation. Vehicle rental will be reimbursed based on a minimum ratio of one (1) compact auto per two (2) Contractor personnel. Reimbursement for vehicle rental will not be approved for Contractor personnel falling below that ratio. Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. City does not assume any liability of any type in connection with rental vehicles reserved or operated by Contractor personnel. Direct billing for rental vehicles is not permitted. If the City's Project Manager elects to provide a per diem for auto rental, such per diem shall be the same per diem as allowed for City employees. The City will reimburse Contractor personnel for surface transportation such as taxicabs, shuttles, and mass transit, at actual cost when reimbursement requests are accompanied by original receipts.

7.1.3 Lodging. (04/10) Contractor shall arrange for their own lodging,. The City will reimburse Contractor per individual for a daily lodging expenses based on GSA per diem rates; such per diem shall be the same per diem as allowed for City employees. GSA lodging allowances can be found at the U.S. General Services Administration website:
<http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>

7.1.4 Meal and Incidental Expenses (M&IE) (04/10) The City will provide per diem for each full day (eight hours) worked for Contractor personnel assigned to deliver Services. The per diem rate will be the same as the one published on the U.S. General Services Administration website, identified as the Meal and Incidental Expenses (M&IE) for the Portland, Oregon area. GSA per diem rates can be found at the U.S. General Services Administration website:
<http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>

7.1.5 Personal Entertainment. (04/10) Expenses incurred for personal entertainment while traveling on the City business are not reimbursable. Personal entertainment includes items such as in-room movie charges, sightseeing, attendance at sporting events, reading materials, birthday gifts, haircuts, etc.

The remainder of this page intentionally left blank.

SIGNATURE PAGE

(04/10)

This Contract, together with all Exhibits, Attachments and those documents which by their reference have been incorporated herein, constitutes the entire Contract between the City and Contractor and supersedes all proposals, oral and written agreements, between the Parties on this subject.

The Parties agree the City and Contractor may conduct this transaction, including any Contract amendments, by electronic means, including the use of electronic signatures.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed.

CITY OF PORTLAND

CONTRACTOR

Chief Procurement Officer Date

Christine Moody
Printed Name

Approved as to Form

Deputy City Attorney Date

Authorized Signature Date

Printed Name and Title

Address: _____

Phone: _____

Fax: _____

Exhibit A
Contractor's Price

Exhibit B
Statement of Work

1. Summary

2. Scope of Work

3. Deliverables

The individual deliverables are described in more detail below:

4. Project Schedule

The detailed Project Schedule shall be the document provided by the Contractor and approved by the City as part of the Contract Submittals referenced in Exhibit XXX Specification Document. The most recent version of the Project Schedule as approved by the City is hereby incorporated into the Contract by this reference.

5. Status Reports

Contractor shall summarize activities under this Contract in written weekly/monthly status reports submitted to the City Project Manager. The status reports are due on the first day of the week/month and shall include summaries of all activities and deliverables completed in the prior week/month. The report shall include a list of any delayed items, a description of the problem, schedule impact, and a method of resolution. The item shall be carried over onto subsequent reports until the problem is resolved.

A Sample Status Report is included as Exhibit E.

6. Place of Performance

Contractor shall provide City with services at City locations as directed by the City Project Manager. Some portions of the work will be performed at Contractor facilities as agreed with the City Project Manager.

7. Project Management

- 7.1 The City's Project Manager will be Gary Cooper. The City may change City's Project Manager from time to time upon written notice to Contractor. Contact Information:
Phone: 503-823-2199

Email: gary.cooper@portlandoregon.gov

- 7.2 The Contractor's Project Manager will be .
Contact Information:

8. Contractor Personnel

Contractor shall assign the following personnel to do the work in the capacities designated, including all subcontractors.

Name	Role on project

9. Quality Assurance

10. Acceptance Criteria and Acceptance Test Plan

Acceptance Criteria and the Acceptance Test Plan shall be reviewed jointly by the City's Project Manager and technical experts from the City's Bureau of Technology Services. When agreed, the Acceptance Criteria and Test Plan shall be attached here and incorporated into the Contract as part of the Statement of Work.

A sample Acceptance Certificate is incorporated in this Contract as Exhibit F.

Exhibit C
Sample Task Order

<p>Task Order No. _____</p> <p>DPO No. _____</p> <p>(Leave blank - to be completed by Procurement Services)</p>

The Contract No. _____, between the **City of Portland** and _____ (name of firm)

- 1) **CITY PROJECT MANAGER** (For this Task Order)
 - a. Bureau:
 - b. Name:
 - c. Phone Number:
- 2) **PROJECT BACKGROUND:** (Information may be provided in an attachment)
- 3) **SPECIFIC SERVICES** - This Task Order identifies the following specific services to be provided by Contractor:
- 4) **DELIVERABLES** - The Contractor shall provide the following:
- 5) **SCHEDULE** - All tasks to be completed by (date)
- 6) **COMPENSATION** - The maximum compensation relating to these services shall not exceed \$_____ without written authorization by the Project Manager. Pricing shall be as indicated in the Contract.

SAP Cost Object:

(Include the hourly compensation rate for all Contractor personnel for this task order as well as the total task order not-to-exceed sum) The hourly rate for services delivered under this Task Order is \$_____ per hour.

7) **Contractor Personnel**

Contractor shall assign the following personnel to do the work in the capacities designated, including all subcontractors.

Name	Role on project

--	--

8) **SUBMIT INVOICES TO:**

Name _____
Address _____
City, Zip, State _____

Electronic submittal is acceptable.

ALL OTHER TERMS AND CONDITIONS OF THE CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT. Changes to this Task Order must be made via a Change Order.

In witness hereof, the parties have duly agreed to this Task Order as of the date written below.

CONTRACTOR:

Name:
Title:
Phone:
Fax:
Email:

CITY OF PORTLAND

(Task Order Project Manager)

Bureau:

BY: _____

BY: _____

DATE _____

DATE _____

Exhibit D
Sample Change Order

CHANGE ORDER No.: _____
to
TASK ORDER No.: _____
DPO No. _____
Contract No. _____
for _____

The following are typical Task Order amendment options. Please select and complete the applicable options.

1. Additional time is necessary and the Task Order identified above is hereby extended through * *(insert new end date)*.
2. Additional work is necessary as described in the Scope of Work and deliverables as follows *(identify changes to the scope of work and deliverables)*:
3. Additional compensation is necessary and shall not exceed \$XXX *(the amount of this task order amendment)* for a total task order value of \$XXX *(insert the new Not to Exceed amount)*.

All other terms and conditions of the Task Order shall remain unchanged and in full force and effect.

CONTRACTOR

CITY OF PORTLAND

BY: _____
Name & Title

BY: _____
Project Manager (Name & Title)

DATE _____

DATE _____

Exhibit E
Sample Status Report for Services Provided by Contractor

STATUS REPORT FOR SERVICES PROVIDED BY CONTRACTOR

Week Ending _____ Contract No. _____
 Contractor _____ Name and Title _____

1. Key Status Indicators:

<i>Description</i>	<i>No</i>	<i>Yes</i>	<i>Explanation</i>
Has scope changed?			
Will target dates slip?			
Are there resource problems?			
Any other issues?			

2. Major Activities Completed For Reporting Week (Key Accomplishments):

Activity	Comment(s)

3. Major Activities Planned For Reporting Week and Not Completed:

Activity	Comment(s)

4. Major Activities Planned For Next Week:

Activity	Comment(s)

5. Status of Key Team Deliverables:

Activity	Comment(s)

REQUEST FOR PROPOSAL NO. 114730 for Streetcar Automatic Passenger Counting System

6. Major Issues Requiring Immediate Attention:

Issue	Resolution

7. Weekly Summary of Performance

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Exhibit F

Sample Certificate of Acceptance

CERTIFICATE OF ACCEPTANCE

On this day of , 20 , the City certifies Acceptance of (name of System: state combination of Products therefore, if applicable), in accordance with that certain Contract for Procurement of a System dated as of ("the Contract"). This Certificate of Acceptance is issued subject to and in accordance with the Contract, all defined terms having the meanings as set forth in the Contract, and without prejudice to any claims which subsequently may arise in connection with defects in the System *(or combination of Products therefore)* described herein.

***The City of Portland,
Oregon***

Signature: _____

Name
(printed): _____

Title: _____

Date: _____

ATTACHMENT B – SUMMARY OF RATES AND SERVICES

See Excel Spreadsheet attached as a separate document

**ATTACHMENT C -
SPECIFICATIONS DOCUMENT**
See the attached separate document