VENDOR CONTRACT

The City of Seattle
PURCHASING SERVICES
700 – 3rd AVE #910
Seattle, WA 98104-1808

Vendor Contract #	Date	Change Order #
0000001025	02/26/03	
Payment Terms	**Freight Terms**	
N30	Golden, CO	
Buyer:	**FAX:**	**Phone:**
Vivian Uno	206-233-5155	206-684-0449

Vendor #: 0000162670
Locution Systems Inc.
1745 Cole Boulevard, Suite 295
Golden, Colorado 80401

Contact: Glenn Neal
Phone #: 303-932-0014
Fax #: 303-384-9014
E-mail: Nealg@locution.com

Ship To:
SEATTLE FIRE DEPARTMENT

Bill To:
SEE BELOW

LOCUTION SYSTEMS, INC. is awarded a fifteen (15) year contract to provide the SEATTLE FIRE DEPARTMENT WITH LOCUTION SOFTWARE, HARDWARE, AND SERVICES in accordance with "AUTOMATED VOICE ANNOUNCEMENT AND ALERTING SYSTEM AGREEMENT BETWEEN CITY OF SEATTLE AND LOCUTION SYSTEMS, INC." executed February 26, 2003.

Contract Period: 02/26/2003 through 02/25/2018

THE CITY OF SEATTLE DEPARTMENT OF INFORMATION TECHNOLOGY and THE SEATTLE FIRE DEPARTMENT are the only City of Seattle Departments authorized to place work orders under this contract. Invoices shall be mailed in duplicate to The City of Seattle Department of Information Technology or The City of Seattle Fire Department. Each invoice shall indicate Contract #0000001025. Invoice mailing addresses for The City of Seattle Department of Information Technology and The City of Seattle Fire Department are as follows:

City of Seattle
Department of Information Technology
Accounts Payable
700 Fifth Avenue, #2700
Seattle, WA 98104
Attention: Gwendolyn Johnson

City of Seattle
Fire Department
Accounts Payable
301 Second Avenue S.
Seattle, WA 98104
Attention: Sheila Kelly

If prompt delivery/service or pick-up of contract materials cannot be performed, please notify Vivian Uno, Purchasing Services Div., at 206-684-0449 or vivian.uno@seattle.gov

Authorized Signature/Date 2-26-03

AUTOMATED VOICE ANNOUNCEMENT AND ALERTING SYSTEM AGREEMENT BETWEEN CITY OF SEATTLE AND LOCUTION SYSTEMS, INC.

A.1 PARTIES

THIS AGREEMENT is made and entered into by and between THE CITY OF SEATTLE ("City"), a municipal corporation of the State of Washington and Locution Systems, Inc. ("Vendor"), a corporation organized and existing under the laws of the State of Colorado and authorized to do business in the State of Washington.

A.2 TERM

This Agreement shall be effective for an initial term commencing on the Effective Date and extending for fifteen (15) years after the City's Acceptance of the Work; *provided, however,* that if there is a major change in hardware recommended by Vendor or if Vendor makes major modifications to its software which the City declines to purchase, install or use, then Vendor's maintenance obligation to functionally maintain the City's version of the CADVoice System shall expire five years following the City declining to obtain the new hardware or accept and use the then-current software as provided for in Appendix K to Exhibit 1; *provided further, however,* that the performance of any additional work (other than maintenance services) requested by the City following during the Term of this Agreement and following Acceptance of the Work shall be subject to the agreement of the Vendor; *provided further, however,* that the Vendor will perform any additional maintenance services (in accordance with the applicable terms and conditions of this Agreement) which may be requested by the City during the Term of this Agreement and following Acceptance of the Work.

A.3 STATEMENT OF WORK

The Vendor shall furnish Vendor's CADVoice System for Fire and EMS Dispatching ("CADVoice System") to the City pursuant to the CADVoice System Statement of Work ("Work"), attached hereto as Exhibit 1 and incorporated herein by this reference, and accordance with individual work orders issued under this Agreement. Vendor shall commence that portion of the Work called for in a work order upon issuance of a notice to proceed by the City.

With respect to any additional work requested by the City related to this Agreement, the Vendor shall submit a detailed proposal for the change. The Vendor shall submit to the City for its approval the proposed scope for the changed or new work, a work schedule,

and a rate or price adjustment for satisfactory completion of the work to be changed or added. Once such proposal is approved by the City, a new work order will be issued for the changed or additional work. Upon the City's issuance of a notice to proceed, the Vendor shall implement the change or additional work and invoice the City for the changed or additional work consistent with the City's approval notice and the terms and conditions of this Agreement.

The City may, with the consent of the Vendor, add, delete or modify any part of any work order by giving Vendor notice of such change within the time period specified in the applicable work order. Within seven (7) days after the date of such notice, the Vendor shall deliver to the City an amended work order reflecting the change in description, schedule and/or dollar amount due using the unit prices as proposed for the specific work order in Vendor's Proposal.

At the request of the City, Vendor will instruct the City in the installation of the CADVoice System and recommended voice cards. The City is responsible for power, wiring, outlets, conduit and conduit cable routing and the environment within which the CADVoice System will operate.

A.4 DOCUMENTATION

Vendor shall timely provide the City with all appropriate documentation for each Work deliverable and any modification or enhancement thereof. The City reserves the right to withhold final payment to the Vendor under this Agreement until its receipt of all such documentation.

A.5 PAYMENT

Payments to the Vendor shall be made pursuant to the conditions set forth in a work order and within 30 days following the City's receipt of a Vendor invoice and accompanying service delivery report documenting the overall progress made on the Work since the date of the invoice most recently submitted by the Vendor, which portion of the Work delivered with the invoice is consistent with the Work in quantity and quality. The aggregate amount set forth in an invoice shall represent the full and final amount to be paid by the City for all portions of the Work included in such invoice and associated work order, including: (i) hardware, software, and/or services rendered, (ii) any investigation, analysis, design and supervision performed, (iii) all labor, supplies, materials, equipment or use thereof provided, and (iv) all other expenses incurred and incidentals necessary to complete all portions of the Work included in such invoice.

The City shall not be obligated to pay any other compensation, fees, charges, prices or costs, nor shall Vendor charge any additional compensation to complete any portion of the Work included in any such invoice.

Invoices for hardware and software installed in City facilities and other Work performed under this Agreement shall be submitted to the City's Project Manager. In addition to agreed-upon charges, invoices shall include such information as is necessary for the City

to determine the exact nature of all expenditures and shall reference this Agreement. Additional payment terms or invoice instructions may be mutually agreed upon by the City and the Vendor.

If between the date of this Agreement and the date the City receives productive use of the CADVoice System, the Vendor implements a reduction in the price for any of the CADVoice System equipment or software contained herein, then the price for such CADVoice System equipment or software shall be decreased by an amount equal to the general reduction in the price for such CADVoice System equipment or software.

Individual invoice payments by the City do not constitute whole or partial acceptance of the CADVoice System; City acceptance of the CADVoice System shall only occur by formal written notice to that effect and as provided for in Appendix K to Exhibit 1.

A.6 TIME IS OF THE ESSENCE

The City has an immediate need to implement the CADVoice System because it is critical to the management and operation of the City. Therefore, time is of the essence in all matters relating to this Agreement.

A.7 TAXES

The City shall pay sales and use taxes imposed on the City's acquisition of software licensed hereunder. The Vendor shall pay all other applicable state, local or federal taxes including, but not limited to, state and local business and occupational tax, taxes on the Vendor's gross or net income.

A.8 LICENSE FOR USE

As part of the price of the CADVoice System, the Vendor hereby grants to the City, and the City accepts from the Vendor, a non-exclusive and nontransferable license for the use of the software and related documentation for use on the CADVoice System acquired by the City under this Agreement for so long as the City continues to use the CADVoice System. The City will not further distribute or in any manner transfer the software or its use without the prior consent of Vendor. The City will not attempt to create the software by reverse engineering, reverse assembly or otherwise. Title to the software and all proprietary rights, including copyright, shall remain in Vendor.

A.9 ESCROWING OF SOURCE LANGUAGE OF LICENSED SOFTWARE

Concurrent with the installation of the CADVoice System at the City and thereafter, as soon as any update or modification is made to the software, the Vendor shall deposit with an escrow agent (the "Escrow Agent") mutually acceptable to the Vendor and the City, a copy of all software in that software's source language form and its documentation

(including but not limited to all relevant commentary and explanations as well as instructions to compile the source code) provided under this Agreement. Such depositing shall be subject to an escrow agreement that is subject to the City's prior approval. Such escrow agreement shall obligate the Vendor to identify, in a notice to the Escrow Agent and the City sent concurrently with such depositing, what material is being deposited with the Escrow Agent.

The City may access any or all of the escrowed material upon the occurrence of any one of the following instances of default:

A. Vendor defaults with respect to any of the terms or conditions of this Agreement and such default adversely affects the City's use of the software;
B. Vendor ceases its ongoing business operations;
C. Vendor stops maintenance support of the software or any portion thereof;
D. Vendor fails to perform its obligations under this Agreement in a timely fashion and such default adversely affects the City's use of the software;
E. Vendor suffers any act of insolvency or is declared bankrupt;
F. Vendor fails to maintain technical staff capable of supporting or modifying the CADVoice System; or
G. Any software is no longer protected by the laws respecting copyright interests.

The City shall give written notice by certified mail to the Escrow Agent and the Vendor of the occurrence of any instance of default. The Vendor shall have thirty (30) calendar days from the date the notice is sent to cure the default, but if the default has not been cured within such period, then upon the thirty-first (31st) calendar day and the Escrow Agent's receipt of notice from the City, the Escrow Agent shall deliver to the City all of the escrowed material without the payment of any compensation to the Vendor or the Escrow Agent. In the event of the occurrence of any of the conditions listed in subparagraphs (A) through (G) above, or upon the direct request from the Vendor, the City shall have the unconditional right to immediately obtain and use the escrowed material. Should the City obtain the escrowed material it may use such material (the software) only for its own use in using the CADVoice System and the City may not permit any other third party to use the software in any manner except to support the City's use of the CADVoice System.

A.10 OWNERSHIP OF HARDWARE

All CADVoice System hardware delivered by Vendor under this Agreement, and its related documentation, shall be the exclusive property of the City. Vendor will pass through to the City all manufacturer's warranties with respect to the hardware, but Vendor makes no warranties with respect to the hardware.

A.11 RISK OF LOSS

The Vendor shall bear the risk of loss or damage to all Work deliverables during the period of transportation and until safe delivery to the City.

A.12 TERMINATION

A.12.1 Termination for Default

A.12.1.1 Vendor's Default

In the event the Vendor fails to comply with a material provision of this Agreement ("Default") and such Default has not been cured by the Vendor within the time specified below for such cure, the City may immediately terminate this Agreement by delivering written notice of such termination to the Vendor. The Vendor shall have thirty (30) days to affect a cure of any Default involving the delivery of any hardware or software item that is to be delivered to the City and ten (10) days to affect a cure of any other Default. Each such cure period shall commence upon the Vendor's receipt of the City's notice specifying such Default and demand for its correction.

A.12.1.2 City Default

The City shall not be in default under this Agreement unless the City fails to perform a material obligation required of it within thirty (30) days after written notice by the Vendor to the City specifying the particular obligation that the City has failed to perform.

A.12.1.3 Extension of Cure Period

Notwithstanding the time deadlines established in Subsections A.12.1.1 and A.12.1.2, if the nature of either obligation is such that more than thirty (30) days are required for performance, then such party shall not be in default if it commences performance within such specified period and thereafter diligently prosecutes the same to completion.

A.12.2 Termination for Convenience of the City

The City may terminate this Agreement at any time by giving thirty (30) days written notice to the Vendor of such termination, and the effective date thereof. The Vendor shall be paid for all services performed to the reasonable satisfaction of the City up to the effective date of termination at the rates set forth in Appendix B of Exhibit 1. The amount paid shall in no event exceed the total Agreement amount for the services rendered as set forth in such Appendix B. If the City terminates this Agreement for its convenience prior to full payment of the total Agreement amount, then the City shall thereupon cease and terminate all productive use of the CADVoice System and return the software to Vendor. If the City terminates this Agreement after payment to Vendor of the total Agreement amount, then the City shall have a license for the use of the CADVoice System as provided in paragraph A.8.

A.12.3 Acts of Insolvency

The City may terminate this Agreement by written notice to the Vendor if the Vendor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

A.12.4 Force Majeure; Suspension and Termination

In the event that either party is unable to perform all of its obligations under this Agreement or to enjoy any of its anticipated benefits because of a natural or human disaster or action or decree of a superior governmental body (hereinafter referred to as a "Force Majeure Event" or "Event"), the party that 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, the affected party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event; but if the period of the non-performance exceeds fifteen (15) days from the date of the other party's receipt of the notice of the Force Majeure Event, the party that has not had its ability to perform so affected may terminate this Agreement by giving written notice of termination to the party suffering from the effect of the Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

A.12.5 Notice of Termination

Termination of this Agreement may only occur under the conditions specified herein, and must be by written notice to the other party specifying the date when the termination shall be effective.

A.13 INSURANCE

A.13.1 Insurance Required; Insurance Documentation Required

Prior to undertaking any work under this Agreement, the Vendor shall obtain, and shall thereafter maintain continuously, at no expense to the City, and file with the City of Seattle Fire Department and the City's Risk Manager evidence of a policy or policies of insurance as specified below.

A.13.1.1 Commercial General Liability Insurance

A policy of commercial general liability insurance, written on an occurrence form, including all the usual coverages known as:

- Premises/Operations Liability
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual Liability
- Independent Contractors Liability
- Stop Gap or Employers Contingent Liability
- Fire Damage Legal

Such policy(ies) must provide the following minimum coverage:

Bodily Injury and Property Damage

$1,000,000	General Aggregate
$1,000,000	Products & Completed Operations Aggregate
$1,000,000	Personal & Advertising Injury
$1,000,000	Each Occurrence
$ 100,000	Fire Damage

Stop Gap/Employers Liability

$1,000,000	Each Accident
$1,000,000	Disease – Policy Limit
$1,000,000	Disease – Each Employee

A.13.1.2 Business Automobile Liability Insurance

A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage

$ 300,000 per accident

A.13.1.3 Errors and Omissions Liability Insurance

A policy of Errors and Omissions Liability Insurance appropriate to the Vendor's profession. Coverage should be for a professional error, act or omission arising out of the scope of services shown in the contract. The policy form may not exclude Bodily injury or Property damage. The minimum limit of coverage shall be $1,000,000 per Claim/Aggregate.

A.13.1.4 Worker's Compensation

A policy of Worker's Compensation. As respects Workers' Compensation insurance in the state of Washington, and to the extent legally applicable to the

Vendor, the Vendor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 RCW. If the Vendor is qualified as a self-insurer in accordance with Chapter 51.14 RCW, Vendor shall so certify by delivering to the Risk Management Administrator in the City's Contracting Services Division a letter signed by an authorized representative of the Vendor indicating that the Vendor is a qualified self-Insured, and setting forth the limits of any policy of excess insurance covering its employees; or any similar coverage required. The Vendor further waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance, which waiver was mutually negotiated by the parties hereto.

A.13.1.5 Other Requirements for Vendor's Insurance

The insurance provided to pursuant to this Section (A.13) shall be endorsed to include The City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insured, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City. In addition, Vendor's insurance shall be primary, as respects the City and any other insurance maintained by the City shall be excess and not contributing insurance with the Vendor's insurance.

A.13.2 Claims Made Form and Deductibles

If any such policy(ies) above is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this Agreement. The policy shall state that coverage is Claims Made, and state the retroactive date. Claims made form coverage shall be maintained by the Vendor for a minimum of three years following the expiration or earlier termination of this Agreement. The Vendor shall annually provide the City with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Vendor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed.

Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of the Vendor.

A.13.3 Evidence of Insurance

The following documents must be provided as evidence of insurance coverage.

(1) A copy of the policy's declarations pages, showing the Insuring Company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements including any company-specific or manuscript endorsements. The City reserves the right to require a copy or certified copy of said policy or policies including all forms and endorsements attached.

(2) A copy of the endorsement naming The City of Seattle as an Additional Insured (excluding Professional Liability Insurance), showing the policy number, and signed by an authorized representative of the insurance company on Form CG 2026 or equivalent.

(3) A copy of an endorsement stating that the coverages provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to The City of Seattle, c/o Risk Management Administrator.

(4) With respect to the Commercial General Liability and Business Automobile Liability Insurance to be provided above, a copy of a "Separation of Insureds" or "Severability of Interests" clause indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought.

A.13.4 Insurance Policy Rating

All policies shall be subject to approval by the City's Risk Manager as to company (must be rated A-(VII) or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.

A.13.4 Self-Insurance

If the Vendor is self-insured for purposes of the Commercial General Liability and the Business Automobile to be provided above, a letter to the City's Risk Manager must be submitted by the Vendor's Risk Manager or appropriate Finance Officer, indicating whether the self-insurance is actuarially funded and if so, what the fund limits are. Such letter shall be accompanied by any declaration pages of excess coverage required to meet the Agreement limit requirements. Further, this letter should advise how the Vendor would protect and defend The City of Seattle as an Additional Insured in the Vendor's Self-Insured layer, and include claims handling directions in the event of a claim.

A.13.5 Sub-Contractors

Vendor shall include all subcontractors as insureds under its policies **or** shall furnish separate evidence of insurance as stated above for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein and applicable to their profession.

A.14 INDEMNIFICATION

Vendor shall release, hold harmless, indemnify and defend the City, its officers, employees and agents, from and against all claims of any kind whatsoever (other than claims arising from the sole or concurrent negligence of the City) and related costs and expenses (including attorneys' fees) arising out of or otherwise related to any act or omission of the Vendor or any of its officers, employees, agents or subcontractors under this Agreement; or the sale or license to or use by the City of the CADVoice System, including but not limited to, the violation of any third party's United States trade secrets, proprietary information, trademark, copyright, or patent rights in connection with goods to be provided and services to be performed under this Agreement. In the event of concurrent Vendor and City negligence, Vendor's obligations under this section shall apply to the extent of the Vendor's concurrent negligence. The Vendor's obligation to release, hold harmless, indemnify and defend the City shall survive the expiration or termination of this Agreement by either party for any reason. Vendor shall conduct the defense in any such third party action arising as described herein and the City promises to cooperate fully with such defense. The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, in all events Vendor's liability for damages to the City shall not exceed the total amount paid to Vendor hereunder by the City.

A.15 CONFIDENTIALITY

The Vendor shall not permit the disclosure or duplication of any information received from the City unless such disclosure or duplication is specifically authorized in writing by the City or otherwise required by law. The City shall not permit the duplication by, or disclose any information conspicuously designated in advance by the Vendor as "Confidential and Proprietary" information to, any person (other than City officers, employees, or consultants who must have such information for the performance of their City duties or obligations), unless such duplication, use or disclosure is specifically authorized in writing by the Vendor or otherwise required by law. The term "Confidential and Proprietary" information is not meant to include ideas, concepts, know-how or techniques related to any information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Agreement. In the event any request is made for material that the Vendor has designated as containing Confidential Information, the City will notify the Vendor of the request pursuant to RCW 42.17.320 or its successor legislation. Upon receipt of such notice, the Vendor shall take such action as it deems necessary and appropriate to prevent the release of such information pursuant to RCW 42.17.330 or its successor legislation, and the City shall have no further obligations in this regard provided, however, that the Vendor may not take any action that would affect (a) the ability of the City to use the goods or services provided under this Agreement or (b) the obligations of the Vendor under this Agreement. In the event the Vendor does not take action to prevent the disclosure of its Confidential Information within the time period required by law, the Vendor shall be deemed to have authorized the release of such information and the City shall not be liable to the Vendor in the event the Confidential Information is released.

A.16 PUBLICITY

No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the CADVoice System shall be produced, distributed or take place without the prior, specific approval of the City's Project Manager or his/her designee; *provided, however,* that nothing contained in this section shall be construed as preventing the Vendor from disclosing to third parties the fact that the City is a client of the Vendor.

A.17 WARRANTIES

A.17.1 Warranty of the System

Notwithstanding any terms seemingly to the contrary in Exhibit 1, commencing on the date of the City's Final Acceptance of the CADVoice System as provided for in Appendix K to Exhibit 1 and extending for a period of one (1) year thereafter, the Vendor warrants that the software furnished hereunder shall be substantially free from programming errors and that the hardware provided hereunder shall be free from defects in workmanship and materials and the software and hardware will operate in conformity with the performance capabilities, specifications, functions and other descriptions and standards applicable thereto and as set forth in this Agreement. The City acknowledges that the software is complex and may contain latent defects. Vendor warrants that verifiable and reproducible malfunctions in the software which affect its usability and which are discovered during the warranty period will be corrected or circumvented by Vendor, provided that the failure is not due to misuse. Copies of software under warranty must be delivered to Vendor for reproduction and correction of the error.

Vendor further warrants for the same one year period that the Vendor's services shall be performed in a timely and professional manner by qualified professional personnel; and that the Vendor's services, software and hardware shall conform to the standards generally observed in the industry for similar services, software and hardware. If the Vendor is not the original software or hardware manufacturer, Vendor shall obtain in writing the manufacturer's consent to pass through all software and hardware warranties for the City's benefit. During this warranty period, the Vendor shall replace or repair any defect appearing in the software or hardware or deficiency in services provided at no additional cost to the City.

Disclaimer of Additional Warranties. EXCEPT AS SET FORTH IN PARAGRAPH A.17.1 AND SPECIFICALLY OTHERWISE HEREIN, THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE SPECIFICALLY DISCLAIMED. VENDOR DISCLAIMS ANY WARRANTY OR LIABILITY WITH RESPECT TO ANY PRODUCT OR SOFTWARE WHICH HAS BEEN MODIFIED BY ANY PARTY OTHER THAN VENDOR.

A.17.2 Warranty against Planned Obsolescence

The Vendor warrants that the products proposed to and acquired by the City under this Agreement are new and of current manufacture, and that it has no current

plans for announcing a replacement line that would be marketed by Vendor as a replacement for any of the products provide to the City under this Agreement and would result in reduced support for the product line within which the CADVoice System furnished to the City is contained.

The Vendor warrants that if during the term of this Agreement or Maintenance Agreement there is a major change in hardware, software or operating systems that radically alters the design architecture of the CADVoice System and makes the current design architecture obsolete, and if Vendor modifies its CADVoice System to comply with such major changes, and if such changes are offered to and declined by the City, then Vendor, for a period of five years thereafter, will offer maintenance services to the City to functionally maintain the usability of the then current CADVoice System as is being used by the City.

A.17.3 No Surreptitious Code Warranty

The Vendor warrants to the City that no copy of the licensed software provided to the City contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Agreement as the "No Surreptitious Code Warranty."

As used in this Agreement, "Self-Help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. The term "Self-help Code" does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Agreement, "Unauthorized Code" means any "virus," "Trojan Horse," "worm" or other software routines or hardware or equipment components designed to permit unauthorized access to disable, erase, or otherwise harm software, hardware or equipment, or data or to perform any other actions. The term Unauthorized Code does not include Self-Help Code.

The Vendor shall indemnify and defend City against any claim, loss or expense (including for attorneys' fees) arising out of any breach of the No Surreptitious Code Warranty.

A.17.4 Title Warranty and Warranty against Infringement

The Vendor warrants and represents that the hardware and equipment and software provided under this Agreement is the sole and exclusive property of the Vendor or that the Vendor is authorized to provide full use of the hardware and equipment and software to the City as provided herein. The Vendor warrants that it has full power and

authority to grant the rights granted by this Agreement to the City without the consent of any other person or entity.

In the event of any claim by a third party against the City asserting a United States patent, copyright,, trade or secret, or proprietary right violation involving the System acquired by the City hereunder or any portion thereof, Vendor shall indemnify and defend, at its expense, the City against any loss, cost, expense, or liability (including attorneys' fees) arising out of such claim, whether or not such claim is successful; provided, however, that Vendor is notified by the City in writing within a reasonable time after the City first receives written notice of any such claim, action, or allegation of infringement. In the event a final injunction or order is obtained against the City's full use of either the CADVoice System or any portion thereof as a result of any such claim, suit or proceeding, and if no further appeal of such ruling is practicable, Vendor shall, at the City's option and at Vendor's expense:

(1) procure for the City the right to continue full use of the CADVoice System; or

(2) replace or modify the same so that it becomes non-infringing (which modification or replacement shall not affect the obligation to ensure the CADVoice System conforms with applicable specifications); or

(3) if the actions described in items (1) or (2) are not economically or technically practicable, then Vendor may terminate this Agreement with respect to such portions or all of the CADVoice System affected by such claim, suit or proceeding. In that event Vendor shall refund to the City an amount equal to the undepreciated value of the CADVoice System determined as though the fee paid to Vendor was depreciated over seven years, and on a straight-line basis.

No settlement that prevents the City from continuing to use the software, other products or software documentation as provided in this Agreement shall be made without the City's prior written consent. In all events, the City shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.

The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Agreement.

A.17.5 Services Warranty

Notwithstanding any terms seemingly to the contrary in Exhibit 1, the Vendor shall strictly comply with the descriptions and representations as to the services, including performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, function and requirements, which appear in this Agreement and Its products shall be uniform in appearance and clean and presentable in accordance with generally applicable standards in the industry.

Any preparation software or data analysis used in the warranty services shall be available to the City for a period of five (5) years following the completion of the

services. This warranty shall apply only to preparation software or data analysis owned by or under the control of the Vendor. Errors or omissions committed by the Vendor in the course of providing services shall be remedied by the Vendor at its own expense.

A.17.6 Hardware and Equipment

Notwithstanding any terms seemingly to the contrary in Exhibit 1, the Vendor warrants and represents that the hardware and equipment provided to meet the requirements of Exhibit 1, the Statement of Work, shall be free from all defects, shall be in good operating order, and shall operate in conformity with the descriptions and standards as set forth in this Agreement for a period of one (1) year from and after the CADVoice System Acceptance Date. During the warranty period, Vendor shall promptly, without additional charge, repair or replace the equipment or any part thereof that fails to function according the Vendor's specifications or the specifications of the manufacturer thereof.

A.17.7 Warranty of Substantial Conformity to System Specifications

Notwithstanding any terms seemingly to the contrary in Exhibit 1, Vendor represents and warrants that the software, hardware and equipment, and other products and software documentation provided by the Vendor hereunder will be in substantial conformity to the CADVoice System specifications set forth in this Agreement, including all attachments.

A.18 SURVIVAL AND EXPIRATION OF WARRANTIES AND REPRESENTATIONS

The representations and warranties of the Vendor made pursuant to this Agreement shall survive the delivery of the CADVoice System, the payment of the purchase price, and the expiration or earlier termination of this Agreement; *provided, however,* that such representations and warranties shall expire one (1) year following final Acceptance of the Work by the City.

A.19 ACCESS TO BOOKS AND RECORDS

For a period of six (6) years after the completion of this Agreement, the City or its agents shall have the right at reasonable times to audit in Jefferson County, Colorado, the books and records of the Vendor bearing upon or connected with the CADVoice System and conditions of this Agreement in order to determine compliance with the provisions of this Agreement. The Vendor shall require its subcontractors to allow the City or its agents to audit the subcontractors' books and records as necessary in order to determine compliance with the provisions of this Agreement. In the event that the audit reveals that there has been an error in payment, the parties agree to immediately correct such errors. A written request for audit documentation shall be provided to the Vendor. The Vendor, within

thirty (30) days from and after its receipt of the request, shall furnish the required documentation. Such documentation shall be confined to those matters directly related or pertinent to the Vendor's performance of this Agreement.

A.20 NONDISCRIMINATION

In accordance with Seattle Municipal Code ("SMC") Chapter 20.44, the Vendor will not discriminate against any employee or applicant for employment because of creed, religion, race, age, color, sex, marital status, sexual orientation, gender identity, ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action 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.

The Vendor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

A.21 NONDISCRIMINATION IN BENEFITS

A.21.1 Compliance with SMC Chapter 20.45

The Vendor shall comply with the requirements of SMC Chapter 20.45 and equal benefits program rules implementing such requirements. At the City's request, the Vendor shall provide complete information and verification of the Vendor's compliance with SMC Chapter 20.45. Failure to cooperate with such a request shall constitute a material beach of this Agreement.

A.21.2 Remedies for Violations of SMC Chapter 20.45

Any violation of Section A.21.1 of this Agreement shall be a material breach of the Agreement for which the City may:

A. Require the Vendor to pay liquidated damages in the amount of five hundred dollars ($500.00 USD) per day for each day that the Vendor is in violation of SMC Ch. 20.45 during the term of the Agreement; or

B. In the event the Vendor willfully refuses or repeatedly fails to comply with the requirements of SMC Ch. 20.45, terminate the Agreement; or

C. Disqualify the Vendor from bidding on or being awarded a City contract for a period of up to five (5) years; or

D. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

A.22 WOMEN AND MINORITY BUSINESS ENTERPRISE REQUIREMENTS

Notwithstanding any other provision in any procurement document, City women- and minority-owned business (WMBE) utilization requirements shall not apply to this Agreement. Any affirmative action requirements set forth in any federal regulations or statutes included or referenced in the Agreement shall apply.

The City encourages the Vendor to employ a workforce reflective of the region's diversity. The Vendor shall adhere to all nondiscrimination requirements as set forth in federal and state laws and regulations and Seattle municipal code provisions.

A.22.1 Nondiscrimination

The Vendor shall not create barriers to open and fair opportunities for WMBEs to participate in all City contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Vendor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

A.22.2 Record-Keeping

The Vendor shall maintain, for at least twelve (12) months after completion of this Agreement, relevant records and information necessary to document the level of utilization of WMBEs and other businesses as subcontractors and suppliers in the Agreement and in its overall public and private business activities. The Vendor shall also maintain all written quotes, bids, estimates, or proposals submitted to the Vendor by all businesses seeking to participate as subcontractors or suppliers in this Agreement. The City shall have the right to inspect and copy such records. If this Agreement involves federal funds, the Vendor shall comply with all record-keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Agreement documents.

A.22.3 Affirmative Efforts to Utilize WMBEs

The City encourages the utilization of minority owned businesses ("MBEs") and women-owned businesses ("WBEs") (collectively, "WMBEs"), in all City contracts. The City encourages the following practices by the Vendor to open competitive opportunities for WMBEs:

A. Attending a pre-bid or pre-solicitation conference, if scheduled by the City, to provide project information and to inform WMBEs of contracting and subcontracting opportunities.
B. Placing all qualified WMBEs attempting to do business in the City on solicitation lists, and providing written notice of subcontracting opportunities to WMBEs capable of performing the work, including without limitation all businesses on any list provided by the City, in sufficient time to allow such businesses to respond to the written solicitations.
C. Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses, including WMBEs.
D. Establishing delivery schedules, where the requirements of this Agreement permit, that encourage participation by WMBEs.
E. Providing WMBEs that express interest with adequate and timely information about plans, specifications, and requirements of the Agreement.
F. Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, the City, and other organizations that provide assistance in the recruitment and placement of WMBEs.

A.22.4 Sanctions for Violation

Any violation of the requirements of Sections A.22.1 through A.22.3 shall be a material breach of contract for which the Vendor may be subject to damages and sanctions provided for by contract and by applicable law.

A.23 FAIR CONTRACTING

The Vendor shall comply with the fair contracting requirements of SMC Chapter 14.10.

A.24 DISPUTE RESOLUTION

Any dispute concerning the Vendor's performance of this Agreement that is not disposed of by agreement between the Vendor and the City shall be referred to the City's Director of Finance and the Vendor's President, Glenn Neal. If such parties' representatives do not agree upon a decision within a reasonable period of time, either of the parties may pursue other legal means to resolve such disputes.

A.25 NOTICES

All notices and other material to be delivered hereunder shall be in writing or facsimile and shall be delivered or mailed to the following:

If to City: Mr. Stan Wu, Project Coordinator

If to Vendor: Mr. Glenn Neal, President, Locution Systems, Inc.

or such other respective name(s) and address(es) as either party may, from time to time, designate for itself, by notice to the other party in writing.

A.26 MISCELLANEOUS

A.26.1 Amendments

The Parties hereto reserve the right to make amendments or modifications to this Agreement by written agreement signed by an authorized representative of each party.

A.26.2 Applicable Law

This Agreement shall be governed by the laws of the State of Washington and the Charter and Ordinances of the City. The venue of any action thereunder shall be in King County, Washington.

A.26.3 Compliance with Law

A.26.3.1 General

The Vendor shall comply with all applicable federal or state laws and City ordinances and with applicable directions, rules and regulations of public officials and departments in enforcement of City ordinances and with directions, rules, and regulations from the State of Washington or from the United States of America with respect to any portion of this Agreement.

A.26.3.2 Licenses and Similar Authorizations

The Vendor, at no additional expense to the City, shall secure and maintain in full force and effect during the term of any Agreement resulting from this procurement process, all required licenses, and similar legal authorization, and comply with all legal requirements.

A.26.4 Attorneys' Fees

Subject to the indemnification and limitation of Vendor's liability provisions set forth in this Agreement, if any action or suit is brought with respect to a matter or matters

covered by this Agreement, each party shall be responsible for all its own costs and expenses incident to such proceedings, including reasonable attorneys' fees.

A.27 ASSIGNMENT

Neither party shall assign any of its obligations under this Agreement, in whole or in part, without the other party's written consent.

A.28 BINDING EFFECT

The provisions, covenants and conditions in this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

A.29 REMEDIES

All remedies available at law or in equity to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

A.30 GRATUITIES

The City may, by written notice to the Vendor, terminate the right of the Vendor to proceed under this Agreement upon one (1) calendar day's notice, if it is found that a gratuity in the form of a bribe, gift, or otherwise was offered or given by the Vendor, or any agent as representative of the Vendor, to any official, officer or employee of the City, provided that the existence of the facts upon which the City makes such findings may be reviewed by a competent court. In the event of such termination, the City shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of default by the Vendor. The above restrictions are not to be interpreted as prohibiting the Vendor from providing room and board for the City personnel to attend Vendor-sponsored training seminars or schools that are generally held at plant sites and are available to all Vendor's customers, and are a regular element of Vendor's training program.

A.31 HEADINGS

Section, subsection and paragraph headings are included in this Agreement for convenience only and do not change, modify or limit any right or obligation of this Agreement.

A.32 INDEPENDENT STATUS OF PARTIES

Both parties hereto, in the performance of this Agreement, will be acting in their individual capacities and not as agents, employees, partners, joint venturers or associates

of the other. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

A.33 SEVERABILITY

If any term or condition of this Agreement or the application hereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this Agreement are declared severable.

A.34 WAIVER

The waiver of any breach or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further, prior or future breach or right thereunder. No right or obligation of this Agreement shall be deemed to be waived, modified or deleted except by an instrument, in writing, signed by both parties.

Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and shall be bound by it.

A.35 GOOD FAITH

Each of the parties hereto agrees that it shall act in good faith with regard to their respective obligations hereunder.

A.36 ENTIRE AGREEMENT

This Agreement, including Exhibit 1 and its appendices, constitutes the entire agreement between the City and the Vendor.

IN WITNESS WHEREOF, the City and the Vendor have caused this Agreement to be executed.

LOCUTION SYSTEMS, INC.	**THE CITY OF SEATTLE**
By:	By:
Its: President	Its: FIRE CHIEF
Dated: February 13, 2003	Dated: FEB. 20, 2003

By: Melody Mocniski

Its: PURCHASING DIRECTOR

Dated: 2-26-03