City of Seattle

CONTRACT FOR A HANDHELD TICKETING SYSTEM FOR THE SEATTLE POLICE DEPARTMENT

This Contract, dated this 30th day of September, 2007, is made and entered into by and between City of Seattle ("Seattle"), a Washington municipal corporation; and Advance Public Safety ("Contractor") a ***corporation*** of the State of Florida, and authorized to do business in the State of Washington.

Business Name: Advanced Public Safety
Representative: Lisa Hutchins
Address: 500 Fairway Dr Ste 204, Deerfield Beach FL 33441
Phone: 954-354-3000
Fax: 954-354-3001
E-mail: lhutchins@aps.us

WHEREAS, the purpose of this contract is to purchase all hardware and software for a complete and operational handheld ticketing system for both parking and traffic violations; and

WHEREAS, Contractor was selected as a result of a Request for Proposal process initiated November 2006 as required by Seattle Municipal Code since costs are anticipated to exceed $41,000 in value; and

WHEREAS, funds for this purpose are authorized through City of Seattle annual budget;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the scope of work contained herein, as attached and made a part hereof, Seattle and Contractor mutually agree as follows:

1. **Term of Contract.**
   This Contract shall be effective for an initial term commencing on the Effective Date and extending for five (5) years after the City's Final Acceptance. The term may be extended by the City in two-year increments.

2. **Time of Beginning and Completion**
   Contractor shall begin the work stated in the "Scope of Work" ("work") section upon receipt of written notice to proceed from Seattle. Seattle will acknowledge in writing when work is complete. Time limits established pursuant to this Contract shall not be extended because of delays for which Contractor is responsible, but may be extended by Seattle, in writing, for its convenience or for conditions beyond Contractor's control. Time is of the essence.

3. **Scope of Work.**
   Contractor shall provide the following services and tasks specified in Attachment #2, Work Order 1. These services shall be termed "work" herein.

4. **Work Order Process**
   The Contractor shall furnish all systems pursuant to work orders issued under this Contract. Each work order shall be subject to all of the terms and conditions of this Contract, and incorporated into this Contract by this reference. The Contractor shall furnish all the goods and services ("deliverables") specified in the Work Order. For each work order under this Contract, Contractor shall commence work upon issuance of a notice to proceed by the City.

Work orders under this Contract may be generated by the City under the following conditions:

(1) A post-warranty annual maintenance agreement is accepted by the City;

(2) The City issues a request to upgrade equipment, software, or to change quantities of any deliverable;

(3) The City orders additional custom features or interfaces for the Systems prior to or after the Police acceptance period; or

For any subsequent work order(s) requested by either party, the Contractor shall submit a detailed proposal for the change. The Contractor shall analyze, record, estimate and 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 completion of the work to be changed or added. Once this proposal is received and approved by the City, a new work order will be issued for the changed or additional work. Upon the City's written approval and notice to proceed, the Contractor shall implement the change or additional work and invoice for the changed or additional work consistent with the City's approval notice and the terms and conditions of this Contract.

The City may, at its option, add, delete or modify any part of any work order by giving Contractor notice of such change within five (5) days from the date of the work order kick-off meeting.. Within seven (7) days after the date of such notice, the Contractor 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 Contractor's Proposal.

The City shall not accept goods and services provided for in this Contract for which the City has not issued a work order(s). The City may itself provide these goods or services or may award contracts to other Contractors for similar goods and services. In such instances, the Contractor shall not be responsible for the operation, performance or maintenance for equipment so obtained.

5. <u>Documentation</u>

Contractor shall provide City with all associated documentation for each deliverable and any modification or enhancement thereof. The City reserves the right to withhold payment for a deliverable, modification or enhancement until it receives all documentation associated with the same.

6. <u>Payment/Payment Procedures.</u>

Contractor shall only invoice upon the City's approval of the deliverable. Once the City has received and approved the invoice, the City will provide payment within thirty (30) days. The aggregate amount set forth in the work order represents the full and final amount to be paid by the City for all expenses incurred and incidentals necessary to complete the work to provide a fully integrated and operational System.

The City shall not be obligated to pay any other compensation, fees, charges, prices or costs, nor shall Contractor charge any additional compensation for completing the work order of the Statement of Work. All costs invoiced to the City, shall be associated with an active and open work order.

Invoices for hardware and software installed in City facilities and other work performed under this Contract shall be submitted, in writing to the City's Project Director. 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 Contract. Additional payment terms or invoice instructions may be mutually agreed upon by the City and the Contractor.

If between the date of this Contract and the date the System is delivered to the City, the Contractor announces a reduction in the price for any of the System equipment or software contained herein, then the price for such System equipment or software shall be decreased by an

an amount equal to the general reduction in the price for such System equipment or software. Payment does not constitute whole or partial acceptance of the System; City acceptance of the System shall only occur by formal written notice to that effect.

6.1 Contract Value.
Total Contract value shall not exceed $855,000 without approval and authorization in writing by Seattle. Such authorization is to be sought in advance of the work performed. Services performed that exceed that value shall be performed at sole choice of Contractor, and shall not be compensated, unless Seattle provides a written authorization to Contractor.

6.2 Travel After Implementation & Acceptance
In such event that certain travel is pre-approved by Seattle, Seattle will compensate travel expenses not to exceed actual travel costs given the following limitations. Contractor and Seattle shall determine the need for on-site presence and Seattle shall pre-approve travel. Contractor shall be entitled to reasonable expenses as defined below, not to exceed the actual amount of travel costs.

- **Airfare**: Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.

- **Meals**: Meals will be reimbursed at the Federal Per Diem daily rate for the city in which the work is performed and do not require receipts or additional documentation. The City will not reimburse for alcohol at any time.

- **Lodging**: Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work was performed. Receipts detailing each day/night lodging are required. The City will reimburse at the single occupancy rate. As an alternative, lodging billed at the published Federal Per Diem daily rate for the city in which the work is performed does not require receipts or additional documentation. In this case, the invoice needs to state that "the lodging is being billed at the Federal Per Diem daily rate."

- **Vehicle mileage**: Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred (currently that rate is 48.5 cents per mile.)

- **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses (the City will only pay for the rental of "Compact" vehicles unless three or more persons are sharing one vehicle in which case a "Mid-sized" vehicle rental is acceptable).

- **Miscellaneous Travel** (e.g. parking, gas, taxi, shuttle, tolls, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of $10.00 or more.

The City will reimburse the Consultant <u>at actual cost</u> for travel expenses incurred as evidenced by copies of receipts supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.

6.3 Disputed Work.
Notwithstanding all above, if Seattle believes in good faith that some portion of Work has not been completed satisfactorily, Seattle may require Contractor to correct such work prior to Seattle payment. In such event, Seattle will provide to Contractor an explanation of the concern and the remedy that Seattle expects. Seattle may withhold from any payment that is otherwise due, an amount that Seattle in good faith finds to be under dispute, or if the Contractor does not

provide a sufficient remedy, Seattle may retain the amount equal to the cost to Seattle for otherwise correcting or remedying the work not properly completed.

7. Taxes, Fees and Licenses.

A. Taxes: Where required by State statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, Seattle agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and Seattle agrees to furnish Contractor with an exemption certificate where appropriate.

B. Fees and Licenses: Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

C. Supplier is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

8. Timely Completion

Time is of the Essence
The City has an immediate need to implement the 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 Contract.

9. License for Use

As part of the price of the System, the Contractor hereby grants to the City, and the City accepts from the Contractor, for so long as the City continues to use the System, a non-exclusive, fully paid, royalty free, perpetual license to unlimited use of the Software and related documentation for use on the System acquired by the City under this Contract.

10. Escrow or Release of Source Language of Licensed Software

In the event that the Contractor is no longer a wholly-owned subsidiary of Trimble Navigation Limited, the City may request, in writing, escrow of the Software in source code format, and the Contractor shall, within 30 days, deliver to Iron Mountain Intellectual Property Management, Inc. ("Escrow Agent") one (1) copy of the Software in source code format (machine readable form suitable for use by City) (hereinafter such delivered Software to be referred to as the "Escrowed Software"). Escrow Agent shall hold such Escrowed Software for City's benefit pursuant to the terms of a mutually agreeable software escrow agreement.

City shall be responsible for costs and fees associated with the escrow contemplated hereunder. Within thirty (30) days of the date upon which Contractor updates the Software licensed to City hereunder with a new release, Contractor shall update the Software placed in Escrowed Software with such new release; provided, however, Contractor shall not be required to so update the Escrowed Software any more frequently than once in any six month period. The escrow

contemplated hereunder shall immediately terminate, and the Escrowed Software shall be released to Contractor, in the event this Agreement and the license hereunder becomes terminated for any reason.

Alternatively, the Software shall be released and delivered to City if one of the following events has occurred:

- Contractor suffers any act of insolvency or is declared bankrupt; or
- Contractor ceases its ongoing business operations; or
- Contractor stops maintenance support of the Software or any portion thereof other than as a result of non-payment of fees by the City.

If the Software is released and delivered to the City, the City shall use the Software only for maintenance and support of the City's object code license and not for any other purpose.

11. Ownership of Deliverables

Except for the licensed System Software specifically identified in this Contract, and its related documentation, all Deliverables produced under this Contract, shall be the exclusive property of the City, pursuant to Intellectual Property provisions provided herein.

12. Warranties

12.1 Warranty of the System

Commencing on the date that the City issues its Final Acceptance Certificate, and extending for a period of one (1) year, Contractor warrants that the Software furnished hereunder shall be free from programming errors and that the Software shall be free from defects in workmanship and materials and shall operate in conformity with the performance capabilities, specifications, functions and other descriptions and standards applicable thereto and as set forth in this Contract including but not limited to the City's Request for Proposals; that the services shall be performed in a timely and professional manner by qualified professional personnel; and that the services, Software and Hardware shall conform to the standards generally observed in the industry for similar services and Software. If Contractor is not the original Software or hardware manufacturer, Contractor 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, Contractor shall replace or repair any defect appearing in the Software, or deficiency in service provided at no additional cost to the City.

12.2 Warranty Against Planned Obsolescence

The Contractor warrants that the products proposed to and acquired by the City under this Contract are new and of current manufacture, and that it has no current plans for announcing a replacement line that would be marketed by Contractor as a replacement for any of the products provided to the City under this Contract and would result in reduced support for the product line within which the System furnished to the City is contained. The Contractor further warrants that, in the event that a major change in software occurs that radically alters the design architecture of the System and makes the current design architecture obsolete within three (3) years after full execution of this Contract, and if the City continues its annual maintenance Contract with the Contractor, the Contractor shall provide the City with a replacement software that continues the full functionality of the systems, at no extra cost to the City.

12.3 No Surreptitious Code Warranty

The Contractor 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 Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "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 Contract, "Unauthorized Code" means any "virus," "Trojan horse," "worm" or other Software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data or to perform any other actions. The term Unauthorized Code does not include Self-help Code.

The Contractor shall defend City against any claim, and indemnify the City against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

Notwithstanding, the Contractor may enable an expiration date in non-production code being tested by the City. Upon acceptance, all such code will be removed in the version provided to the City."

12.4 Title Warranty and Warranty against Infringement

The Contractor warrants and represents that the Software provided under this Contract is the sole and exclusive property of the Contractor or that the Contractor is authorized to provide full use of the Software to the City as provided herein. The Contractor warrants that it has full power and authority to grant the rights granted by this Contract 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 patent, copyright, trade secret, or proprietary right violation involving the System acquired by the City hereunder or any portion thereof, Contractor shall defend, at its expense, and shall indemnify the City against any loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful; provided, however, that Contractor 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 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, Contractor shall, at the City's option and at Contractor's expense:

1) procure for the City the right to continue full use of the 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 System conforms with applicable specifications); or
3) if the product was purchased and the actions described in item (1) or (2) of Section 11.4, are not practicable, re-purchase the product from the City at a price mutually agreed upon, which shall relate to the value and utility of the product to the City; or
4) if the System was leased, licensed, or rented, and the actions described in item (1), (2), or (3) of Section 11.4, are not practicable, remove such System from the City's site(s) and pay the City promptly after notification for all direct and consequential damages suffered by the City as a result of the loss of the infringing product and any other continued utility of which to the City is adversely affected by the removal of the infringing product, and hold the City harmless from any further liability therefore under any applicable Order, Settlement, or other Contract.

In no event shall the City be liable to Contractor for any lease, rental, or maintenance payments after the date, if any, that the City is no longer legally permitted to use the System because of such actual or claimed infringement. In the event removal or replacement of the System is required pursuant to this paragraph, Contractor shall use reasonable care in the removal or modification thereof and shall, at its own expense, restore the City's premises as nearly to their

condition immediately prior to the installation of the System as is reasonably possible.

No settlement that prevents the City from continuing to use the Software, other products or Software documentation as provided in this Contract 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 Contract.

12.5 No Liens

The Contractor warrants that the Software and Equipment is the sole and exclusive property of the Contractor and that the Contractor is authorized to provide full use of the Software to the City as provided herein and that such Software is not subject to any lien, claim or encumbrance inconsistent with any of the City's rights under this Contract and that the City is entitled to and shall be able to enjoy quiet possession and use of the Software and Equipment without interruption by Contractor or any other person making a claim under or through the Contractor or by right of paramount title.

12.6 Prices for Maintenance

Prices offered for maintenance shall be firm-fixed throughout the first 5-years of the contract. Any price increases, thereafter, will be considered on a pass through basis only, increases which do not produce a higher profit margin than those prices established on the contract. After the first 3-years.the Vendor may request a price increase annually, at least 45 days prior to the contract anniversary date, clearly identifying the cause of the increase including sufficient documentation to justify it. Any increases must be based on U.S. published indices such as the CPI. The decision to accept any price increase will be at the sole discretion of the Buyer and, if not acceptable, the City may exercise option to cancel the contract. Any cost reductions to the Contractor shall be reflected in a reduction of the contract price effective immediately.

12.7 Services Warranty

The Contractor warrants that, in performing the services under the Maintenance Agreement appended as Attachment 2, Section7. The Contractor 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 Contract and in the Contractor's response to the City's Request for Proposal. 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 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 Contractor. Errors or omissions committed by the Contractor in the course of providing Services shall be remedied by the Contractor at its own expense.

12.8 Equipment

The Contractor warrants and represents that the Equipment provided to meet the requirements of 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 the Contractor's Proposal and the City's RFP for a period of one (1) year from and after the Acceptance Date. During the warranty period, Contractor shall promptly, without additional charge, repair or replace the equipment or any part thereof that fails to function according the Contractor's specifications or the specifications of the manufacturer thereof.

12.9 Merchantability and Fitness Warranty

Contractor represents and warrants that the Software, other products and Software Documentation will be merchantable and will be fit for the particular purposes established in the City's RFP and the Contractor's response to the City's RFP.

12.10 Compliance with Applicable Law

The Contractor warrants that the System, and the manufacture and production thereof, are in compliance with any and all applicable laws, rules, and regulations.

12.11 Survival of Warranties and Representations

The representations and warranties of the Contractor made pursuant to this Contract shall survive the delivery of the System, the payment of the purchase price, and the expiration or earlier termination of this Contract.

13. Risk of Loss, Freight, Overages or Underages.

Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Contractor from any obligations under. Prices include freight prepaid and allowed. Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall match the Work Order; any unauthorized advance or excess shipment is returnable at Contractor's expense.

14. Protection of Persons and Property

14.1 Property

The Contractor shall take reasonable steps to protect the City's property from injury or loss arising in connection with the Contractor's performance or failure of performance under this Contract.

14.2 Persons

The Contractor and the City shall each take reasonable precautions for the safety of employees of the other, and shall each comply with all applicable provisions of federal, state, and local laws, codes and regulations to prevent or avoid any accident or injury to a person on, about or adjacent to any premises where work under this Contract is being performed.

14.3 Cleaning Up

The Contractor shall ensure that project work sites are maintained in a clean and orderly fashion. Immediately after completion of the work contemplated in this Contract, the Contractor shall clean up and remove all refuse and unused materials resulting from such work.
Upon the Contractor's failure to complete such clean-up and removal activity within twenty-four (24) hours after having been notified in writing by the City of the Contractor's obligation to complete such activity, the clean-up and removal activity may be done by one or more other parties at the direction of the City. The cost of all such clean-up and removal activity performed by a person or entity other than the Contractor shall be charged to the Contractor or deducted from any payment due to the Contractor.

14.4 No Smoking

The Contractor shall not allow any employee of the Contractor or any subcontractor or agent thereof to smoke inside any City facility.

14.5 OSHA/WISHA

The Contractor certifies that it is in compliance with the conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health act of 1973 (WISHA), and the standards and regulations issued there under and certifies that all items

furnished or purchased under this Contract will conform to and comply with said standards and regulations. The Contractor shall indemnify, defend, and hold the City harmless from all damages assessed against the City as a result of the Contractor's failure to comply with the OSHA and WISHA and the standards issued there under and for the failure of any of the items furnished to the City under this Contract to so comply.

15 Contract Notices and Work Order

15.1 Contract notices shall be delivered to:
City of Seattle Purchasing & Contracting Services
Attn: Vivian Uno or assigned representative
P.O. Box 94687
Seattle, WA 98124-4687

Phone: 206-684-0449
Fax: 206-233-5155
E-Mail: vivian.uno@seattle.gov

Erin Quinn
10/19/07

15.2 Work Orders, Deliverables & Invoices will be initiated/delivered to:
Seattle Police Department - IT Section
Attn: Patti DeFazio or assigned representative
Physical Address: 610 5th Ave, Seattle, WA 98104
Mailing Address: P.O. Box 94986, Seattle WA 98124-4986

Phone: 206-684-4570
Fax: 206-684-5109
E-mail: patti.defazio@seattle.gov

16. Representations.

Contractor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

17. Independent Contractor.

It is the intention and understanding of the Parties that Contractor shall be an independent contractor and that Seattle shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Contractor shall not be deemed to convert this Contract to any employment contract. It is recognized that Contractor may or will be performing professional Work during the term for other parties and that Seattle is not the exclusive user of the Work that Contractor will provide.

18. Inspection.

The Work shall be subject, at all times, to inspection by and with approval of Seattle, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Contract, notwithstanding Seattle's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Contractor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

19. Affirmative Efforts for Utilization of Women and Minority Subcontracting, Non discrimination in providing services

A. Employment Actions: Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall 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 employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.

B. In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when necessary and commercially useful for purposes of fulfilling the scope of work required for this Contract. Contractors shall actively solicit subcontracting bids from subcontractors as needed to perform the work of this contract, from qualified, available and capable women and minority businesses. Contractors shall consider the grant of subcontracts to women and minority bidders on the basis of substantially equal proposes in the light most favorable to women and minority businesses. At the request of Seattle, Contractor shall promptly furnish evidence of the Contractor's compliance with these requirements.

C. If upon investigation, the Director of Executive Administration finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall notified in writing. The Director of Executive Administration shall give Contractor an opportunity to be heard, after ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director of Executive Administration still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.

D. Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

20. Equal Benefits.

A. Compliance with SMC Ch. 20.45: The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At Seattle's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at http://cityofseattle.net/contract/equalbenefits/.)

B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section shall be a material breach of Contract for which the City may:

a. Require the Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
b. Terminate the Contract; or
c. Disqualify the Contractor 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.

21. General Legal Requirements.

A. General Requirement: Contractor, at no expense to Seattle, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Contractor shall specifically comply with the following requirements of this section.

C. Licenses and Similar Authorizations: Contractor, at no expense to Seattle, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

D. Performance Standard. All duties by Contractor or designees shall be performed in a manner consistent with accepted practices for other similar Work.

E. Use of Recycled Content Paper: Contractors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Contractors are to use 100% post consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

F. Americans with Disabilities Act: Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs or activities to Seattle employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities, to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

G. Fair Contracting Practices Ordinance: Contractor shall comply with the Fair Contracting Practices Ordinance of Seattle of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

22. Indemnification.

Contractor shall protect, defend, indemnify and hold the City harmless from and against all third party claims, demands, damages, costs, actions and causes of actions, liabilities, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark, or trade secret arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, except for damages resulting from the sole negligence of the City. As to the City of Seattle, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

23. Insurance.

Insurance Required

Upon award of the contract, Contractor shall, at its sole expense and for the entire term of the contract, maintain in force minimum coverages and limits of liability of insurance as specified below or the City may withdraw its intent to award:

(1) Commercial General Liability (CGL) Insurance including Premises/Operations, Products/Completed Operations, Personal/Advertising Injury, Contractual, Independent Contractors, Fire/Tenant Legal and Stop Gap/Employers Liability with minimum limits of liability of $ 1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage except:

$ 1,000,000	Each Offense Personal/Advertising Injury
$ 100,000	Each Occurrence Fire Damage/Tenant Liability
$2,000,000	Products/Completed Operations Aggregate
$2,000,000	General Aggregate
$1,000,000	Each Accident/ Disease-Policy Limit/ Disease-Each Employee Stop Gap (may be covered under Part B "Employers Liability" of a Workers Compensation insurance policy where applicable)

(2) Automobile Liability insurance, including coverage as required for owned, non-owned, leased, or hired vehicles as appropriate, with a minimum limit of liability of 1,000,000 each occurrence combined single limit bodily Injury and property damage.
(3) Technical Errors and Omissions (Professional Liability) insurance with a minimum limit of liability of $1,000,000 each claim.

Terms and Conditions of Required Insurance.

(1) CITY OF SEATTLE AS ADDITIONAL INSURED: The CGL and Business Automobile liability insurance shall include the City of Seattle as an additional insured for primary and non-contributory limits.

(2) NO LIMITATION OF LIABILITY: Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only. They shall not be construed to limit the liability of Contractor or any insurer for any claim that is required to be covered hereunder. Moreover, the City shall be an additional insured, where additional insured status is required, for the full available limits of liability maintained by Contractor, whether those limits are primary, excess, contingent or otherwise. Contractor expressly understands and agrees that this provision shall override any limitation of liability or similar provision in any

agreement or statement of work between the City and Contractor.

(3) CLAIMS MADE FORM: If any policy is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this contract. Claims made coverage shall be maintained by the Contractor for a minimum of three (3) years following the expiration or earlier termination of this contract, and the Contractor shall provide the City with evidence of insurance for each annual renewal. If renewal of the claims made form of coverage becomes unavailable or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability assumed under the contract.

(4) REQUIREMENT FOR WORKERS COMPENSATION INSURANCE: The State of Washington is a monopolistic state where organizations are required to purchase workers' compensation insurance from the state unless they are an authorized self-insurer. The Contractor shall insure its liability for industrial injury to its employees in accordance with the provisions of RCW 51. The Contractor shall also be responsible for Workers' Compensation Insurance for any sub-Contractor or subcontractor that provides services under the contract. If the Contract requires working on or around a navigable waterway, the Contractor shall secure United States Longshore and Harbor Workers (USL&H) coverage and coverage for Jones Act (Marine Employers Liability) in compliance with Federal Statutes.

(5) DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any self-insurance program or any deductible in excess of $ $10,000 must be disclosed and is subject to approval by the City's Risk Management Division. Should the Contractor be self-insured, Contractor shall state in writing that it will protect and defend the City as an additional insured within its self-insured layer and advise to whom a tender of a claim should be directed.

(6) NOTICE OF CANCELLATION: Under RCW 48.18.290 (1) (a) and (b) ("Cancellation by insurer") applicable to insurers licensed to do business in the State of Washington, the City, as a certificate holder for the insurance requirements specified herein and an additional insured, has an interest in any loss which may occur; written notice of cancellation must therefore be actually delivered or mailed to the City not less than 45 days prior to cancellation (10 days as respects non-payment of premium). As respects surplus lines placements, written notice of cancellation shall be delivered not less than 30 days prior to cancellation (10 days as respects non-payment of premium). Such notice shall be delivered to the City by mail, fax or electronic transmission (see delivery addresses in Section 1.15.3 below).

(7) QUALIFICATION OF INSURERS: Insurers shall maintain A.M. Best's ratings of A- VII unless procured as a surplus lines placement under RCW chapter 48.15, or as may otherwise be approved by the City.

(8) CHANGES IN INSURANCE REQUIREMENTS: The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to the Contractor. Should Contractor, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, it may upon thirty (30) days prior written notice request a waiver of any insurance requirement, which request shall not be unreasonably denied.

Evidence of Required Insurance

Contractor shall cause its insurance broker or agent to provide the following insurance certification:

- A Certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein, and

- An attached additional insured endorsement or blanket additional insured wording to the CGL insurance policy.

At any time upon the City's request, Contractor shall also cause to be furnished a copy of declarations pages and schedules of forms and endorsements to all policies or a full and certified copy of policies.

Evidence of required insurance shall be delivered to the City Buyer.

24. Audit.

Upon request, Contractor shall permit Seattle, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by Seattle or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in King County, Washington or other such reasonable location as Seattle or Agency selects. The Contractor shall supply Seattle with, or shall permit Seattle to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit and copying right of Seattle and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

25. Contractual Relationship

The relationship of Contractor to Seattle by reason of this Contract shall be that of an independent contractor. This Contract does not authorize Contractor to act as the agent or legal representative of Seattle for any purpose whatsoever. Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Seattle or to bind Seattle in any manner or thing whatsoever.

26. Assignment and Subcontracting

Contractor shall not assign or subcontract any of its obligations under this Contract without Seattle's written consent, which may be granted or withheld in Seattle's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract. Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. Seattle's consent to any assignment or subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

27. Involvement of Former City Employees

Contractor shall promptly notify Seattle in writing of any person who is expected to perform any of the Work and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee. Contractor shall ensure that no Work or matter related to the Work is performed by any person (employee, subcontractor, or otherwise) who was a City officer or employee within the past twelve (12) months; and as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

28. No Conflict of Interest.

Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

29. Gratuities.

Contractor shall not directly or indirectly give, pay, deliver, or perform, or agree to arrange to give, pay, deliver or perform, any gratuity, gift, bonus, donation or discount of any kind, in the form of goods, services, or any other thing of value for any purpose, at any time, to any person employed by the City that is intended, or that reasonably may be seen to be intended, to benefit the Contractor by way of award, administration, or in any other way to influence the contract or any future contract. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

30. Errors & Omissions: Correction.

Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Contractor under this Contract. The Contractor, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications, and/or other Contractor services immediately upon notification by Seattle. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract and shall be in addition to all other obligations and liabilities of the Contractor.

31. Intellectual Property Rights.

Copyright: All materials and documents prepared by Contractor in connection with the Work and Contractor shall retain the copyright (including the right of reuse) whether or not the Work is completed. Contractor grants to Seattle a non-exclusive, irrevocable, unlimited, fully-paid, royalty-free license to use every document and all other materials prepared by the Contractor for Seattle under this Contract. If requested by Seattle, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), and/or any other related documents or materials which are developed solely for, and paid for by, Seattle in connection with the performance of the Work, shall be promptly delivered to Seattle.

Seattle may make and retain copies of such documents for its information and reference in connection with their use on the project only. The Contractor does not represent or warrant that such documents are suitable for reuse by Seattle, or others, on extensions of the project, or on any other project. Contractor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

32. Confidentiality.

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to 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 Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

Contractor's Understanding and Obligations

1. Contractor understands that any records (including but not limited to bid or proposal

submittals, the Contract, and any other contract materials) it submits to Seattle, or that are used by Seattle even if the Contractor possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

2. Contractor must separate and clearly mark as "proprietary information" all records related to this Contract or the performance of this Contract that the Contractor believes are exempt from disclosure. Contractor is to be familiar with potentially-applicable public-disclosure exemptions and the limits of those exemptions, and will mark as "proprietary only information that the Contractor believes legitimately fits within an exemption, and will state the statutory exemption upon which it is relying.

3. If Seattle notifies the Contractor of a public disclosure request, and the Contractor believes records are exempt from disclosure, it is the Contractor responsibility to make its own determination and pursue a lawsuit under RCW 42.56 to enjoin disclosure. The Contractor must obtain the injunction and serve it on Seattle before the close of business on the tenth business day after Seattle sent notification to the Contractor. It is the Contractor's discretionary decision whether to file the lawsuit.

4. If Contractor does not timely obtain and serve an injunction, the Contractor is deemed to have authorized releasing the record.

5. Notwithstanding the above, the Contractor must not take any action that would affect (a) Seattle's ability to use goods and services provided under this Contract or (b) the Contractor's obligations under this Contract.

6. Contractor will fully cooperate with Seattle in identifying and assembling records in case of any public disclosure request.

Seattle's Obligations

1. Seattle will disclose those parts of records the Contractor has marked as "proprietary information" only to authorized persons unless:

(a) Seattle receives a public disclosure request, in which case steps 2 and 3 below are exercised before release of the information; or
(b) the Contractor has given Seattle express advance written permission to disclose the records.

"Authorized persons" means those City officers, employees, contractors and consultants for whom the proprietary information is necessary to perform their duties or obligations to Seattle. The term "proprietary information" does not 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 a breach of this Contract.

2. If Seattle receives a public disclosure request for records that Contractor has marked as "proprietary information," Seattle promptly notifies the Contractor of the request. Seattle will postpone disclosing these records for ten business days after it has sent notification to the Contractor, in order to allow the Contractor to file a lawsuit under RCW 42.56 to enjoin disclosure. It is the Contractor's discretionary decision whether to file the lawsuit.

3. If Seattle has notified Contractor of a public disclosure request, and the Contractor has not obtained an injunction and served Seattle with that injunction by the close of

business on the tenth business day after Seattle sent notice, Seattle may disclose the record.

4. Seattle has no other obligations concerning records the Contractor has marked as "proprietary information" under this Contract. Seattle has no obligation to claim any exemption from disclosure. Seattle is not obligated or liable to the Contractor for any records that Seattle releases in compliance with this Section or in compliance with the order of a court of competent jurisdiction.

33. Publicity.

No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Contractor's product or any work performed pursuant to this Contract shall be produced, distributed or take place without the prior, specific approval of the City's Project Director or his/her designee.

34. Interlocal Agreement Act.

RCW Chapter 39.34 allows cooperative purchasing between public agencies, non profits and other political subdivisions. Public agencies that file an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle may purchase from Contracts established by the City. The seller agrees to sell additional items at the bid prices, terms and conditions, to other eligible governmental agencies that have such agreements with the City. The City of Seattle accepts no responsibility for the payment of the purchase price by other governmental agencies. Should the Contractor require additional pricing for such purchases, the Contractor is to name such additional pricing upon Offer to the City.

35. Extra Work.

Seattle desires to have the Contractor perform work, render services in connection with this project other than that expressly provided for in the "Scope of Work" section of this Contract, or to extend the duration of the contract beyond that originally stated. This will be considered extra work, supplemental to this Contract and the Contractor shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment. Notwithstanding the foregoing, Seattle may make reasonable changes in this Contract, including place of delivery, installation or inspection, the method of shipment or packing, labeling and identification, and ancillary matters that Contractor may accommodate without substantial additional expense to Seattle.

36. Key Persons.

Contractor shall not transfer or reassign any individual designated in this Contract as essential to the Work, without the express written consent of Seattle, which consent shall not be unreasonably withheld. If, during the term of this Contract, any such individual leaves the Contractor's employment, the Contractor shall present to Seattle one or more individual(s) with greater or equal qualifications as a replacement, subject to Seattle's approval, which shall not be unreasonably withheld. Seattle's approval or disapproval shall not be construed to release the Contractor from its obligations under this Contract.

37. Dispute Resolution.

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and Seattle's Project Manager, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract for cause or convenience.

38. Termination.

A. For Cause: Seattle may terminate this Contract if the Contractor is in material breach of any of the terms of this Contract, and such breach has not been corrected to Seattle's reasonable satisfaction in a timely manner.

B. For City's Convenience: Seattle may terminate this Contract at any time, without cause and for any reason including Seattle's convenience, upon written notice to the Contractor.

C. Nonappropriation of Funds: Seattle may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.

D. Acts of Insolvency: Seattle may terminate this Contract by written notice to Contractor if the Contractor 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.

E. Termination for Gratuities: Seattle may terminate this Contract by written notice to Contractor if Seattle finds that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Contractor or any agent therefore to any City official, officer or employee.

F. Notice: Seattle is not required to provide advance notice of termination. Notwithstanding, the Buyer may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the Buyer until the effective date provided in the termination notice.

G. Actions Upon Termination: In the event of termination not the fault of the Contractor, Contractor shall be paid for the services properly performed prior to the effective termination date that has been specified by the Buyer, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract. Fees for software maintenance will be pro rated up until the date of termination. Contractor agrees that this payment shall fully and adequately compensate Contractor and all subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract. Upon termination for any reason, Contractor shall provide Seattle with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. Seattle shall have the same rights to use these materials as if termination had not occurred.

39. Force Majeure– Suspension and Termination.

This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Force Majeure under this Section shall only apply in the event that performance is rendered not possible by either party or its agents. Should it be possible to provide partial performance that is

acceptable to the City under Section #2 (Emergencies or Disasters), Section #2 below shall instead be in force.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such 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.

40. Major Emergencies or Disasters: The City may undergo an emergency or disaster that may require the Contractor to either increase or decrease quantities from normal deliveries, or that may disrupt the Contractor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

(a) The City shall notify the Contractor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Contractor.
(b) Upon such notice by the City, the Contractor shall provide to the City goods and/or services in the quantities and schedule specified by the City, following the conditions named in this Section.
(c) The City of Seattle shall be the customer of first priority for the Contractor. The Contractor shall provide its best and priority efforts to provide the requested goods and/or services to the City of Seattle in as complete and timely manner as possible. Such efforts by the Contractor are not to be diminished as a result of Contractor providing service to other customers.
(d) If the Contractor is unable to respond in the time and/or quantities requested by the City, the Contractor shall make delivery as soon as practical. The Contractor shall immediately assist the City to the extent reasonable, to gain access to such goods and/or services. This may include:
    a. Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;
    b. Offering the City substitutions provided the Contractor obtains prior approval from the City for such substitution.
(e) The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

41. Debarment.

In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining that any of the following reasons exist:

a. Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.

b. Contractor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.

c. Contractor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.

d. Contractor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.

e. Contractor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.

f. Contractor colluded with another contractor to restrain competition.

g. Contractor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.

h. Contractor failed to cooperate in a City debarment investigation.

i. Contractor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment following the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

42. Recycle Products Requirements.

Whenever practicable, Contractor shall use reusable products, recyclable products and recycled-content products including recycled content paper on all documents submitted to the City.

Contractors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Contractors are to use 100% post consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

43. Workers Right to Know.

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question.

44. Miscellaneous Provisions.

A. Amendments: The Parties hereto reserve the right to make amendments or modifications to this Contract by written Contract signed by an authorized representative of each party. No modification of this Contract shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

B. Binding Contract: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.

C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.

D. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.

E. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.

F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

G. Waiver: No term or condition or breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither acceptance by Seattle of Contractor performance nor payment to Contractor for any portion of Work shall constitute a waiver by Seattle of the breach or default of any term or condition unless expressly agreed to by Seattle in writing.

H. Entire Contract: This Contract, including all Appendices, Supplements and Exhibits referenced herein, constitutes the entire agreement between the City and the Contractor. The City's Request for Proposal #POL-196 ("RFP"), the Addenda to the RFP; and the Contractor's Proposal submitted in response to the RFP are explicitly included as Supplements to this Contract. Where there is any conflict between or among these documents, the controlling document will first be this Contract, as amended, then the RFP and Addenda, and then the Contractor's Proposal. No verbal agreement or conversation between any officer, agent, associate or employee of Seattle and any officer, agency, employee or associate of the Contractor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.

I. Negotiated Contract: The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.

J. Attorneys' Fees: Subject to the indemnification provisions set forth in this Contract, if any action or suit is brought with respect to a matter or matters covered by this Contract, each party shall be responsible for all its own costs and expenses incident to such proceedings, including reasonable attorneys' fees.

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

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their authorized representatives affix their signatures below.

Advanced Public Safety, Inc.

By _____ 10/10/07
Signature Date

JAMES P. FENOGLIO
(Printed Name)

CFO
Title

Federal Tax ID Number: 65-1118620

City of Seattle

By _____ 10/12/7
Signature Date

NANCY LOCKE, Purchasing Manager