City of Seattle
CONTRACT FOR
Web-Based Online Training

This Contract is made effective June 6, 2008 (the "Effective Date"), and entered into by and between the City of Seattle ("Seattle"), a Washington municipal corporation; and PureSafety ("Contractor"), a ***corporation*** of the State of Delaware, and authorized to do business in the State of Washington.

Contractor Business	PureWorks, Inc dba PureSafety
Name of Representative	Robert Reeves
Contractor Address	1321 Murfreesboro Road, Suite 200
Contractor Phone	615-367-4404
Contractor Fax	615-367-3887
Contractor E-mail	Robert.reeves@puresafety.com

WHEREAS, the purpose of this contract is to establish an Online Training Program for the City; and

WHEREAS, Contractor was selected as a result of a Request for Proposal (SCL-2291) process initiated March, 2008 as required by SMC since costs are anticipated to exceed $42,000 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. **Entire Agreement:** This Contract, including all attachments, amendments and subsequently issued change notices, comprises the entire agreement between Seattle and the Contractor. The Request for Proposal ("RFP"), Addenda, and Contractor's Proposal are explicitly included as Attachments. Where there are conflicts between these documents, the controlling document will first be this Contract as amended, then the Contractor's proposal, the RFP and Addenda.

2. **Term of Contract.**
   This contract shall be for five (5) years, with the option to extend for two additional years. Such extensions shall be automatic, and shall go into effect with or without written confirmation from the City to the Contractor, unless the City provides the Contractor advance notice of the intention to not renew. Such notice shall be given prior to the otherwise automatic renewal date.

3. **Schedule.**
   Unless the City's Buyer requests a change in schedule, the Contractor shall deliver the items or render the services by the "Last Item Due Date" stated on the Contract signature page At the City's option, Contractor's failure to timely deliver or perform may require expedited shipping at Contractor's expense, or may be cause for termination of the Contract and the return of all or part of the items at Contractor's expense~~.~~, provided, however, that Contractor shall not be liable to the other for any delay or failure to perform due to Force Majeure Events as set forth in Section 51. If Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City's Buyer of such difficulty and the length of the anticipated delay.

4. **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.

5. **Scope of Work.**
Contractor shall provide the following services and tasks specified below and/or as attached. These services shall be termed "work" herein.

6. **Work Order Process.**
The Contractor shall furnish online training services, it's content and reports pursuant to work orders executed by both parties and issued under this Contract, and shall be listed on a "Statement of Work", attached hereto as Exhibit A. 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 the services ("deliverables") specified in the Work Order in an aggregate, single, complete transaction and not as separate items. For each work order under this Contract, Contractor shall commence work upon issuance of a notice to proceed by the City.

Work Order #1, under this contract shall be issued to City of Seattle, Seattle City Light. Execution of this Contract shall constitute notice to proceed for Statement of Work #1.

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

(1) The Work Order is within the scope of the original solicitation and contract, and within the prices for such services, reports, other material and training, as listed on the Pricing Form, attached hereto as Exhibit B , and taken from PureSafety's proposal submitted to the City for RFP, SCL-2291, dated March 2008.;

(2) The City issues a request to change quantities of any deliverable;

(3) The City orders additional custom features for the web-based online training system prior to or after the acceptance period; or

For any subsequent work order(s) mutually agreed by the parties, 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 parties may agree to add, delete or modify any part of any work order. If the parties agree, 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 does not guarantee utilization of 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.

7. **Payment/Payment Procedures.**
Vendor shall only invoice upon the City's approval of the deliverable in accordance with the approval process set out in the Work Order. 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 fully functional online training service.

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 online training services, it's content, reports and training under this Contract shall be submitted, in writing 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 Contract. Additional payment terms or invoice instructions may be mutually agreed upon by the City and the Contractor.

8. Invoices.

Invoices must show a breakdown of services provided and price for each. **Invoices must specify the Name and Phone Number of the City employee that placed the order.**

9. Taxes, Fees and Licenses.

A. 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.

B. 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.

C. Withholding payment for taxes/business license fees due the City of Seattle: Seattle Municipal Code 5.45.060 specifies that the Contractor will have taxes or fees paid in full for Seattle Business License requirements, before receiving any warrant or the final payment for performing within any contract for the City. The Director of the Department of Executive Administration may withhold payment due a City contractor pending satisfactory resolution of unpaid taxes and fees due the City under title 5.45.060.

D. 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.

10. Pricing.

Pricing shall be prepared with the following terms. The Buyer may exempt these requirements for extraordinary conditions that could not have been known by either party at the time of bid or other circumstances beyond the control of both parties, as determined in the opinion of the Buyer.

Requests for Rate Increases must be delivered to the City Purchasing Buyer in accordance to the rules below. No other employee may accept a rate increase request on behalf of the City. Any invoice that is sent to the City with pricing above that specified by the City in writing within this Contract or specified within an official written change issued by City Purchasing to this contract, shall be invalid. Payment of an erroneous invoice does not constitute acceptance of the erroneous pricing, and the City would seek reimbursement of the overpayment or would withhold such overpayment from future invoices.

1. **Discount from Manufacturer List Pricing:** For all contract items that are priced as a discount below Manufacturer List prices, there shall be no changes to the discount rate throughout the life of the contract. As manufacturer list prices change, the net price to the City will automatically change in the same percentage as the discount rate to the City.

2. **One-time Purchase Order Prices**: If the Bid is for a one-time purchase, pricing shall be firm and fixed for that purchase, and shall not be subject to requests for price increases by the Vendor.

3. **Hourly rates or Service Pricing**: For multi-year contracts that provide services. Original pricing shall be fixed and firm for the first three years of the contract. Rate increases are at the discretion of the Buyer; and must also be:
   a. The direct result of increases to wage rates that do not exceed the CPI Index or other appropriate service rate index agreed upon between the Buyer and the Vendor.
   b. Incurred after contract commencement date.
   c. Not produce a higher profit margin than that on the original contract.
   d. Clearly identify the service titles and the hours of service performed if specified within the contract.
   e. Be filed with Buyer (RFP Coordinator) a minimum of 90 calendar days before the effective date of proposed increase.
   f. Be accompanied by detailed documentation acceptable to the Buyer (RFP Coordinator) sufficient to warrant the increase.
   g. The United States published indices such as the Producer Price Index or other government data may be referenced to help substantiate the Vendor's documentation. A link to the PPI Commodity Data is available at http://data.bls.gov/PDQ/outside.jsp?survey=wp.
   h. The Adjustment (if any) shall remain firm and fixed for at least 365 days after the effective date of the adjustment.
   i. Should not deviate from the original contract pricing scheme/methodology

11. Cost Reductions.

Any cost reductions to the Vendor, such as rebates or "specials", shall be reflected in a reduction of the contract price effective immediately. Seattle will not be bound by prices contained in an invoice that are higher than those in the contract. Unless the higher price has been accepted by the City and the contract amended, the invoice may be rejected and returned to the Vendor for corrections.

12. Invoicing.

The Vendor is required to provide a method for tracking the cost of the item to the City, with the City discount calculation displayed so that pricing discounts can be easily tracked and verified by the City with each invoice. .

13. Delivery – Idling Prohibited.

Vehicles and/or diesel fuel trucks shall not idle at the time and location of the delivery to the City for more than five minutes. The City requires vendors to utilize practices that reduce fuel consumption and emission discharge, including turning off trucks and vehicles during delivery of products to the City. Exceptions to this requirement include when a vehicle is making deliveries and associated power is necessary; when the engine is used to provide power in another device, and if required for proper warm-up and cool-down of the engine. Specific examples include "bucket" trucks that allow a worker to reach wires on telephone poles or tree branches for trimming; and vehicles with a lift on the back of a truck to move products in and out of the truck. The City of Seattle has a commitment to reduction of unnecessary fuel emissions. The City intends to improve air quality by reducing unnecessary air pollution from idling vehicles. Limiting car and truck idling supports cleaner air, healthier work environments, the efficient use of city resources, the public's enjoyment of City properties and programs, conservation of natural resources, and good stewardship practices.

14. Travel and Direct Charges.

If the specifications and scope of work indicated specific travel that is to be compensated by the City, the following limitations on such compensation shall apply. If no travel or direct charges are specifically identified and allowed for in the specifications and scope of work, then the City shall provide no such reimbursement.

- City will reimburse the Contractor at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses. Direct charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants or subcontractors.

- The billing for direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant/subcontractor paid invoices, and other supporting documents used by the Contractor to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection upon request. All charges must be necessary for the services provided under this Contract.

- The City will reimburse the actual cost 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.

- **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 pay for the rental of a "Compact" or a "Mid-sized" vehicle.

- **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.

- **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred. Receipts are required for all miscellaneous expenses that are billed.

- **Subcontractor**: Subcontractor expenses will be reimbursed at the actual cost incurred. Copies of all subcontractor invoices that are rebilled to the City are required.

15. Delivery.

Except when instructed otherwise, delivery must be made during normal work hours and within timeframes proposed by Contractor herein and as accepted by Seattle. Failure to comply may subject Contractor to non-delivery assessment charges and/or damages as appropriate. Seattle reserves the right to refuse shipment when delivered before or after normal working hours. Contractor shall verify specific working hours of offices and so instruct carrier(s) to deliver accordingly. The acceptance by Seattle of late performance without objection or reservation shall not waive the right of Seattle to claim damages for such breach, nor preclude Seattle from pursuing any other remedy provided herein, including termination, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor. All deliveries are to be made to the applicable delivery location in accordance with Interstate Commerce Commission rules or as indicated in Purchase Order. When applicable, Contractor shall take necessary actions to safeguard items during inclement weather.

16. Identification.

All invoices, packing slips, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this contract shall be identified by the applicable purchase order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.

17. Charges for handling.

No charges will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein.

18. Contract Notices, Deliverable Materials and Invoices Delivery.

The City of Seattle agent for Contract changes shall be the City of Seattle Buyer named below, hereinafter referred to as "Buyer." Contract notices such as change requests, shall be delivered to the Buyer at the following addresses (or such other address as either party may designate in writing):

If delivered by the U.S. Postal Service, it must be addressed to:

Carmalinda Vargas-Thompson
City of Seattle Purchasing and Contracting Services
PO Box 94687
Seattle, WA 98124-4687

If delivered by other than the U.S. Postal Service, it must be addressed to:

Carmalinda Vargas-Thompson
City of Seattle Purchasing and Contracting Services
Seattle Municipal Tower
700 5th Ave., #4112
Seattle, WA 98104-5042

Phone: 206-615-1123
Fax: 206-233-5155
E-Mail: Carmalinda.vargas@seattle.gov

Project work, invoices and communications shall be delivered to the City Project Manager:

City of Seattle, Seattle City Light
Attention: Michele Anderson
700 5th Ave., #3200
Seattle, WA 98104

Phone: 206-233-1082

19. **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.

20. **Warranties**.
Contractor warrants the online training services, its content and reports, provided under this contract, when used in accordance with the terms and conditions of this Contract, do no infringe upon or misappropriate any copyright, patent, trade secret or other third party rights. Contractor warrants that in addition to training it has provided, proper instructions and warnings, that any goods comply with applicable safety and health standards, as required by law, and that products or services conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by Seattle shall not alter or affect the obligations of the Contractor or the rights of Seattle.

21. **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 an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that Seattle is not the exclusive user of the services that Contractor provides.

22. **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.

23. **Title, Risk of Loss, Freight, Overages or Underages.**
Unless otherwise specified herein or in the applicable purchase order, title of goods received under this contract shall remain with the Contractor until they are delivered to the address specified, at which time title passes to Seattle. 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 correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.

24. **Performance.**
Acceptance by Seattle of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

25. **Affirmative Efforts for Utilization of Women and Minority Subcontracting and Employment, 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 breach 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).

26. Equal Benefits.

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/.)

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 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 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.

27. Publicity.

No news release, advertisement, promotional material, tour, or demonstration related to Seattle's purchase or use of the Contractor's product or services performed pursuant to this Contract shall be produced, distributed, or take place, without the prior, specific written approval of the City's Project Manager or his/her designee , except that Contractor may identify City as a client of

Contractor if required by law, in which case no City approval is required, however the City shall be notified within 10 days of the release of information and the agency of record.

28. Proprietary and Confidential Information.

Contractor's Understanding and Obligations:

1. Contractor understands that any records (including but not limited to bid or proposal submittals, the Agreement, and any other contract materials) it submits to the City, or that are used by the City 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. The 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" all records related to this Agreement or the performance of this Agreement that the Contractor believes are exempt from disclosure. The Contractor is 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 exception upon which it is relying.

3. If Seattle notifies the Contractor under Paragraph B 2 of a public disclosure request, and the Contractor believes records are exempt from disclosure, it is the Contractor's responsibility to make determination and pursue a lawsuit under RCW 42.56 to enjoin disclosure. The Contractor must obtain the injunction and serve it on the City before the close of business on the tenth business day after the City sent notification to the Contractor. It is the Contractor's discretionary decision whether to file the lawsuit.

4. If the 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) the City's ability to use goods and services provided under this Agreement or (b) the Contractor's obligations under this Agreement.

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

City's Obligations:

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

   (a) the City receives a public disclosure request, in which case steps 2 and 3 below will be exercised before release of the information or

   (b) The Contractor has given the City 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 the City.

   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 Agreement.

2. If the City receives a public disclosure request for records that the Contractor has marked as "proprietary" information, the City may promptly notify the Contractor of the request. The City may 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 the City has notified the Contractor of a public disclosure request, and the Contractor has not obtained an injunction and served the City with that injunction by the close of business on the tenth business day after the City sent notice, the City will then disclose the record.

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

29. 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.

B. 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.

C. Taxes: The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

30. American 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.

31. OSHA/WISHA.

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

32. Indemnification.

To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, 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, or 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, contract provision or term, or condition of regulatory authorization or permit, 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.

33. Insurance.

a. Contractor shall at all times during the term of this Contract maintain the insurance and/or self-insurance coverage's in force as attached. If not attached, insurance specified below, shall apply.

b. Contractor and Seattle agree that the risk of accidental loss required to be covered by insurance or self-insurance under this Section 12 shall not be subject to any limitation of liability or similar provision.

c. Except when the ITB or RFP includes more rigorous requirements, the following requirements shall be in effect.

d. Contractor shall not be required to provide evidence of insurance, unless required to do so by the solicitation.

e. Contractor shall maintain at its own expense at all times during the term of this Contract the following insurance:

(1) **Commercial General Liability** insurance, including premises/operations, products/completed operations, personal/advertising injury, contractual liability, fire legal/tenant liability, stop gap/employer's liability and independent contractors liability; (2) if any vehicle, watercraft or aircraft is used in the performance of this Purchase Order/Vendor Contract, of a minimum of $1,000,000 per occurrence;

(2) **Automobile Liability, Watercraft Liability** and/or **Aircraft Liability** insurance, including coverage for owned, non-owned, leased or hired vehicles, watercraft and aircraft, as appropriate of a minimum of $500,000 per occurrence;

(3) **Worker's Compensation** ("Industrial Insurance") as required by Title 51 of the Revised Code of Washington.

(4) The insurance as provided under (1) and (2) above shall include by endorsement the City of Seattle as an additional insured (as respects item (1), per ISO form CG 20 10 or CG 20 26 or equivalent additional insured endorsement wording, or equivalent blanket additional insured policy wording) and such additional insured status for the City shall apply as respects the full limits of all valid and collectible Automobile Liability, Watercraft Liability and/or Aircraft Liability insurance, whether primary, excess, contingent, or otherwise; shall be primary insurance as respects the City, and any other insurance or self-insurance maintained by the City shall be excess and non-contribututory with the Contractor's insurance; and, shall be placed with insurers with not less than an A- VII A.M. Best's rating unless insurance has been procured under the provisions of chapter 48.15 RCW (Unauthorized "Surplus Lines" Insurers). It is specifically agreed that the insurance requirements in this solicitation and contract shall override any limitation of liability or similar provision in any other agreement or statement of work between the City and the Contractor and that no Contractor's insurer shall assert the right to invoke any such.

f. If required in the solicitation, Contractor shall send a copy of the certification to:

City of Seattle
Risk Management Division
P.O. Box 94669
Seattle, WA 98124-4669
Email: riskmanagement@seattle.gov
Fax: (206) 470-1270

The Certification sent to the City shall:

- Include either an additional insured endorsement or a copy of blanket additional insured policy wording that documents Seattle's status as an additional insured (1); should third party legal liability insurance be self-insured, Contractor shall disclose the self-insured retention(s), state that Seattle would be protected under the self-insurance as an additional insured to the same extent as if a primary commercial liability insurance policy had been issued and shall provide the address to which a tender of claim should be directed.

- State that coverage shall not be cancelable without forty-five (45) days prior written notice of cancellation, except ten (10) days notice with respect to non-payment of premium.

- Specify any deductible or self-insured retention in excess of $100,000. Payment of any such deductible or self-insured retention shall be the responsibility of Contractor except to the extent to which Seattle may be liable.

34. 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 but only to the extent such books and records are related to the Work. 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.

35. 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.

36. 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, provided however, that Contractor may, without the prior written consent of City, assign all of its rights under this Contract to (i) its subsidiary, (ii) a purchaser of all or substantially all of its stock or assets, or (iii) a third party participating in a merger or other corporate reorganization in which the assigning party is a constituent. Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract except for Equal Benefit provisions. Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions. 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.

37. Supervision and Coordination.

Contractor shall:

- Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified herein.
- Designate in its bid or proposal to Seattle, a representative(s) with the authority to legally commit

Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor.

- Promote and offer to Purchasers only those materials, equipment and/or services as stated herein and allowed for by contractual requirements. Violation of this condition will be grounds for contract termination.

38. 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.

39. Anti-Trust.

Seattle maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore the Contractor hereby assigns to Seattle any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to Seattle under an escalation clause.

40. 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.

41. No Gifts or Gratuities.

Contractor shall not directly or indirectly offer gifts and resources to any person employed by the City that is intended, or may be reasonably intended, to benefit the Vendor by way of award, administration, or in any other way to influence purchasing decisions of the City. This includes but is not limited to, City Purchasing office employees and City employees that do business with, order, purchase or are part of decision-making for business, contract or purchase decisions. The Vendor shall not offer meals, gifts, gratuities, loans, trips, favors, bonuses, donations, special discounts, work, or anything of economic value to any such City employees. This does not prohibit distribution of promotional items that are less than $25 when provided as part of routine business activity such as trade shows. 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.

42. Error & 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.

43. Intellectual Property Rights.

Contractor's System is comprised of computer programming/formatting code, operating instructions, graphics, designs, information and/or other material, any and all Contractor provided training courses accessible by City on the System or for use on City's or a third party software system (whether in written, graphical, or other form, collectively "System Content"). The System Content protected by copyright, trademark, trade secret, patent, or other intellectual property rights laws. The System and

System Content is and shall remain the property of Contractor and its licensors. City shall comply with all such laws and shall not assert any rights in the System or System Content, other than its right to access and otherwise use the System as provided for in a purchase order or statement of work. City may not modify, copy, provide to any third party, sell, transfer, or create derivative works of the System or any System Content, in whole or in part, provided, however, that City may copy the Courses only as needed for backup or disaster recovery purposes. City shall not decompile, disassemble, reverse engineer, or in any way derive source code from System. Contractor shall own all right, title and interest (including all associated intellectual property rights) in and to the System and System Content, including all customizations, enhancements, modifications, improvements, derivations, or other changes thereto resulting from the joint effort or collaboration of the parties or made solely by Contractor. Unless otherwise agreed to in writing on a case-by-case basis, City shall own all right, title and interest (including all associated intellectual property rights) in and to any modifications to the System Content created solely by Customer through the Contractor's Content Editing System ("CES") or otherwise. This Contract does not provide City with title or ownership of the System Content, but only a right of limited use. Notwithstanding the foregoing, in no event shall Contractor obtain any rights in City's logos, trademarks, trade name, service marks, or any other graphics, designs, picture, or text peculiar to City's business that may be used in Course Development ("Customer Data"). 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.

44. Omitted

45. Interlocal Cooperation Act.

RCW 39.34 allows cooperative purchasing between public agencies, and other political subdivisions. SMC http://clerk.ci.seattle.wa.us/~scripts/ - h0http://clerk.ci.seattle.wa.us/~scripts/ - h220.60.100 also allows non profits to use these agreements. If a public agency files or has filed an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle, those agencies are eligible to purchase from Contracts established by the City. Such agencies may ask City of Seattle Contractors to accept orders from the agency, citing the City of Seattle contract as the basis for the order. The Vendor may accept or decline such orders. If the Vendor accepts an order from another public agency using the City of Seattle contract as the basis, the Vendor agrees to sell additional items at the contract prices, terms and conditions. The City of Seattle accepts no responsibility for the payment of the purchase price by other governmental agencies.

46. Extra Work.

Extra work shall be defined to include additional products or services ordered in connection with this project other than that expressly provided for in the "Scope of Work" section of this Contract. Contractor shall not proceed with extra work unless authorized by a written amendment issued by the RFP Coordinator. Such extra work may be authorized by a Contractor proposal and a written acceptance from the City through a Change Order issued to the Contractor, or may be authorized by a Change Order signed by both parties, whichever the City Buyer requires. 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, the RFP Coordinator may make reasonable and immaterial changes to this Contract, including place of delivery, installation or inspection, the method of shipment or packing, labeling and identification, extension of the contract, and ancillary matters that Contractor may accommodate without substantial additional expense to Seattle.

47. 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.

48. Disputes.

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 decline or discontinue such discussions and may then pursue other means to resolve such disputes including termination as allowed for within the contract, 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.

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.

49. Termination.

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

B. 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.

C. 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.

D. 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 therefor to any City official, officer or employee.

E. 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.

F. Actions Upon Termination: In the event of termination by either party for any reason, 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, and it shall not include any City claims against the Contractor due to the Contractor's material breach of the Contract. 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.

50. 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.

51. 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, and 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) The City may request that the Contractor provide either increased or decreased quantities from traditional orders, or may request Contractor provide additional products or services.
(c) Upon such notice by the City, the Contractor shall make reasonable efforts to provide the City the materials in the quantities requested and within the schedule specified by the City, adhering to the conditions in this Section.
(d) The City of Seattle shall be the customer of first priority for the Contractor, except where preceded by State or Federal government mandates. 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, except as mandated by State or Federal governments.
(e) If the Contractor is unable to respond in the time and/or quantities requested by the City, the Contractor shall promptly assist the City to the extent practicable, to gain access to alternative materials 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.

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.

52. 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.

53. 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.

54. Miscellaneous Provisions.

A. Amendments: No modification of this Contract shall be effective unless in writing and signed by an authorized representative of the City and contractor, except as otherwise authorized herein. The City shall issue change notices to Contractor, and such notices shall take effect under the signature of the City and Contractor upon Contractor receipt of the change notice.

B. Conflict: In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford Seattle the maximum benefits.

C. Liens, Claims and Encumbrances: All materials, equipment, or services shall be free of all liens, claims or encumbrances of any kind and if Seattle requests a formal release of same shall be delivered to Seattle.

D. 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.

E. 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, Washington

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

G. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.

H. Severability: Any term or provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Contract.

I. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, 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 the acceptance by Seattle of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by Seattle of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Seattle, in writing. The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

J. Entire Contract: This document, along with any attachments and work orders, constitutes the entire agreement between the parties with respect to the Work. 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.

K. 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.

L. No personal liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract, except in cases of fraud or gross negligence or intentional misconduct.

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.

PureWorks, Inc. dba PureSafety

By _____ 6/6/08
Signature Date

_____
Mike Kroll, SVP-Sales

_____

City of Seattle

By _____ 6/9/8
Signature Date

NANCY LOCKE, City Purchasing Manager

Washington State Unified Business Identifier Number (UBI): 602275065

Federal Tax ID Number: 621777630

PureSafety >>> Beyond Compliance	PureSafety 1321 Murfreesboro Rd. Ste 200 Nashville TN 37217
PureSafety Statement of Services	
Account Executive:	**Reeves/Goodall**

Exhibit A – Statement of Work

Statement of Work No. X:, System Access, Training, CES, Professional Services and Content To the Service Agreement #0000002291 Between PureWorks, Inc. and Customer Name

The following is Statement of Work No. X (the "Statement"), made as of XX, 20XX, pursuant to the Service Agreement between PureWorks, Inc. ("PureSafety") and City of Seattle ("Customer"), dated June 6, 2008 (the "Agreement"). Except as specifically stated herein, each capitalized term used in this Statement shall have the same meaning as is assigned to it in the Agreement.

1. **Summary of Services and Fees.**
   In addition to the work and Services to be performed by PureSafety pursuant to any other Statements of Service existing under the Agreement, PureSafety agrees to provide Services as specified below. Such Services shall be rendered in accordance with and shall be deemed rendered pursuant to this Statement and the Agreement.

Item	Type	Value	Fees Due	Anticipated Delivery Date**
System Access - Set Up Fee	Implementation Services	$1,500	$1,500	X/X/X
System Access – 36 Months (X @User IDs @ $38.25/ID, Annually)	System Access Services	$XX	$XX	X/X/X
PureSafety Overview/Admin Training (Customer Site, X days @ $500/Day)*	Training Services	$XX	$XX	X/X/X
Content Editing System – 36 Months (X Editor Licenses @ $6,800/License)	Other Services	$XX	$XX	X/X/X
Training Courses From The PureSafety Library (X Courses – To Be Determined)	Content	$XX	$XX	X/X/X
Library Course Development – XX	Professional Services	$XX	$XX	X/X/X
		Total Price:	**$XX**	

* Travel to be compensated by the City, as stated in Agreement 0000002291. Training schedule can be found in Exhibit A of this Statement.

This delivery date is contingent upon the Statement of Services being signed and delivered back to PureSafety on or before **XX. Receipt of signed Statement of Services after this date will cause the delivery date to be pushed beyond the anticipated delivery date.

Contract Term	Start Date	End Date
36 Months	X/X/X	X/X/X

2. **Fees and Payment**

   Upon execution of this Statement of Service, Customer will be invoiced according to the schedule below. Payment Terms are Net 30.

   Billing address goes here

   Payment Schedule

3. System Access Details

Start Date

PureSafety's Services shall begin on the start date shown above and continue until the end date shown above. System Access shall begin on the Launch Date and continue for **36** months.

Pricing Assumptions for System Access

The fees relating to System Access assume no more than **XX** Customer employees accessing the System at any time. Upon mutual agreement, SOW #1 can be amended if Customer's usage of the System is greater than **XX** employees.

Customer Materials

Customer or its representatives will provide PureSafety with the following Customer Materials in the formats set forth in the table below:

Required Items	Detailed Description	Required Format	Required Delivery Methods	Date Due
Organizational Chart	Accurate depiction of organization for integration into PureSafety; Refer to Implementation Guidelines for further detail	Graphic depiction; Text with tiers	Email attachment; fax; 3.5-inch floppy disk; CD-ROM; other formats mutually agreed to between Customer and PureSafety	Upon Signing
Trainee Data	Trainee information including (* denotes required) *first name*, middle name, last name*, title, email address, login name*, password*, organizational level*, group*; Refer to Implementation Guidelines for further detail	Comma or tab delimited file; XML; Excel; Access	Email attachment; 3.5-inch floppy disk; CD-ROM; other formats mutually agreed to between Customer and PureSafety	Upon Signing

Timetable and Services Delivery

PureSafety has described the major milestones and dates for delivery of the Services in the table below.

Milestone	Description	Anticipated Completion Date	Responsible Party
Trainee Database Preview	Upon receipt of Customer Materials, PureSafety will create the trainee database, integrate the organizational chart, and import trainee data	X/X/X	PureSafety
Administrator Training	PureSafety Overview/Admin Training (Customer Site, X days @ $500/Day)	X/X/X	Customer/ PureSafety
Launch Date	The Learning Management System is ready for use	X/X/X	PureSafety

This timetable may change due to circumstances unforeseen by either party. The parties agree the PureSafety Project Manager and Customer Project Manager can authorize reasonable changes to the timetable without execution of a change order

Continuing Services

Listed below are Services provided by PureSafety to Customer under Agreement 0000002291:

- Live Customer Support from 7:00am – 7:00pm Central Time Zone, Monday through Friday through the toll-

free phone number (888-202.3018) or online at support@puresafety.com. Live Customer Support is not available on all major holidays including, but not limited to, New Years Day, Memorial Day, Independence Day, Thanksgiving Day, Christmas Eve, and Christmas Day. PureSafety will notify Customer at least seven (7) business days in advance for additional holidays not included in the list.

- Emergency Customer Support is offered outside of regular customer support hours and on major holidays with a four-hour response time. Emergencies are defined as the System is out of operation, terminal errors within the System, or issues with hardware purchased from PureSafety.
- Primary Customer Support Contact (continuation of PureSafety Project Manager)
- Training for new system releases.
- Training for new Customer administrators
- Support Services are available to assist Customer with technical issues and general System knowledge. Support Services is not responsible for the routine administration of the System, including making and managing training assignments, managing the employee hierarchy, running reports, marking trainees complete, etc. To the extent Support Services performs any activities in Customer's System database, such activities will only be done at the direction and documented approval of Customer.

Minimum System Requirements – As stated in RFP SCL-2291

- 600MHz Intel® Pentium® processor or equivalent
- 128MB+ of RAM
- 256Kbps Internet connection
- 16-bit sound card and speakers
- 65,000-color video display card
- 1025x768 resolution
- Windows® 98, Windows 2000
- Microsoft® Internet Explorer 5.5 SP2 Internet browser or Netscape® Navigator/Communicator 7.1 Internet browser
- RealPlayer® 8 Basic from RealNetworks® (only required for video purchases)
- Macromedia Flash® 8.0 Player

Recommended System Requirements – As stated in RFP SCL-2291

- 1.5GHz Intel® Pentium® processor or equivalent
- 256MB+ of RAM
- 512Kbps Internet connection
- 16-bit sound card and speakers
- 65,000-color video display card
- 1280x1024 resolution
- Windows 2000, Windows XP
- Microsoft® Internet Explorer 6.0 SP1 Internet browser or Firefox 1.0 Internet browser
- RealPlayer® 10 Basic from RealNetworks® (only required for video purchases)
- Macromedia Flash® 9.0 Player

Customer Network Configuration – As stated in RFP SCL-2291

- The following is the required network configuration required to access the System:
- Port 80 is required to be open to access the System
- Port 443 is required to be open to use the optional Secure Socket Layer (SSL) for data security purposes
- Security settings on the network and on all workstations used for training must be configured to allow plug-ins to communicate with System servers using HTML and XML
- Network and all workstations used for training must be configured to allow URL lengths up to 2,048 characters to access the System
- Cookies must be enabled on the network and all workstations used for training to access the System
- HTTP 1.1 must be enabled on the network to access the System
- The use of third-party caching services is not recommended

PureSafety reserves the right to make changes to the System Requirements at any time with advance notice.

The client assumes all responsibilities for network or system configuration changes that adversely affect use of the System. Please notify PureSafety in advance, whenever possible, of any impending changes.

4. **Content from PureSafety Library**
   Listed below are the Training Courses to be included in Customer's library on the System:
   - XX Courses

5. **Assumptions/Risks**
   Listed below are certain assumptions and risks associated with this Statement. The delivery dates set forth herein may be impacted by the following factors:
   - Delivery dates are contingent upon Customer signing and returning this Statement of Service, along with the signed Service Agreement between PureWorks, Inc. and Customer by **XX, 20XX**.

6. **PureSafety and Customer Contacts**

PureSafety Project Manager(s)	Customer Project Manager(s)
Name: Title: Project Manager Address 1: 1321 Murfreesboro Road, Suite 200 Address 2: Nashville, TN 37217 Phone: (615) 367-4404 Fax: (615) 367-3887 Email: @puresafety.com	Name: Title: Address 1: Address 2: Phone: Fax: Email:

Customer agrees that the individuals listed above have full authority to direct and provide feedback relating to the Services described in this Statement, including but not limited to the ability to execute a change order.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Statement of Work No. X as of the dates indicated below.

PureWorks, Inc.	Customer Name
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

PRICING
EXHIBIT B

Blanket Contract 0000002291

Web-Based Online Training

Project Component	Unit Price	UnitsPer User/Day/Hr/Annually)	Total Price
Initial Implementation & System Price			
Implementation/setup of as listed in Sections 5.3.4 - 5.3.9	$1,500	1	$1,500
License/membership for 36 months for 1700 City Light Users for 74 training courses, as listed in section 5.3	$38.25 per person - annually	1765 User IDs	$202,533.75
Content Editing License/membership for 36 months for six (6) City Light Administration	$6,800/per person	6 Users	$40,800
Training Implementation and Onsite Support for 15 days for: - 1700 Users - 6 Content Administrators	$500 per day plus Travel and Expenses	21 Days	$10,500
Live Customer Support from 9am - 5pm (Pacific Time)	$0	$0	$0
Emergency Customer Support (outside of regular customer support hours)	$0	$0	$0
Courses listed in Section 5.3.1 of the RFP that are not off the shelf courses and need to be developed by Vendor	$7,500	11	$82,500
Courses listed in Section 5.3.1 of the RFP that are not off the shelf courses and need to be obtain through a third party	N/A	N/A	$0
Other Support Options			
Cost of developing new accredited courses created by the Vendor on behalf of the City	Depends on Scope (typical range of $15,000 - $25,000/course)	$110/Per Hour	Depends on Scope
Cost of accreditation for new developed courses created by City Administrators	Don't know (not the normal process we follow for course accrediation)	Don't know (not the normal process we follow for course accrediation)	Depends on Scope
Cost to modify and/or accredit an existing course by the Vendor	$110/Per Hour	$110/Per Hour	Depends on Scope
Other Licensing Options	12 months	24 months	36 months
License/membership for 1 user for 1 course	$15	$30	$45
Content Editing License for 1 User	$5,000	$9,500	$12,750
New Course development for 1 course	Depends on Scope (typical range of $15,000 - $25,000/course)	Depends on Scope (typical range of $15,000 - $25,000/course)	Depends on Scope (typical range of $15,000 - $25,000/course)
Hourly Support Rate	$110/content development - $185/hour for custom progamming	$110/content development - $185/hour for custom progamming	$110/content development - $185/hour for custom progamming
Course(s) tracked by vendor, and provid Monthly usage reports (Reporting Tools)	$200/course	$200/course	$200/course
Training Support per day	$99/web conference or $500/day for onsite training + Travel & Living Expenses	$99/web conference or $500/day for onsite training + Travel & Living Expenses	$99/web conference or $500/day for onsite training + Travel & Living Expenses

Pricing Assumptions and notes: 1) Travel and Expenses for Onsite Training and Support not included in pricing.
2) System and Content upgrades are provided at no additional cost.