

Date: February 16, 2010



City of Portland, Oregon

RFP No. 110001

**REQUEST FOR PROPOSALS
For**

Storage Area Network (SAN) Upgrade

PROPOSALS DUE: March 16, 2010 by 2:00 p.m.

Submit one (1) original, four (4) complete copies and one (1) electronic copy (CD ROM, PDF format, in a single file) of the Proposal to:

Celeste King, CPPB
Bureau of Purchases
1120 SW Fifth Avenue, Room 750
Portland, Oregon 97204
celeste.king@ci.portland.or.us

Refer questions to:

Celeste King
Sr. Procurement Specialist
Procurement Services
Phone: (503) 823-4044
Fax: (503) 823-6865 Email: celeste.king@ci.portland.or.us

PROPOSAL TERMS AND CONDITIONS

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

City Sustainability Objectives

The City has a history of striving to be more sustainable in its operations and planning. Starting with the City's Sustainable City Principles (1994) the City has established a variety of policies to guide its work on sustainability, including: the Sustainable Procurement Policy, Green Building Policy, Local Action Plan on Global Warming, and the Stormwater Management Manual (to view these and related City policies, go to the Portland Policy Documents Website: <http://www.portlandonline.com/auditor/index.cfm?c=26818>). As applicable to City procurement, these policies guide the City to buy products and services that reduce the City's negative environmental and social impacts. While specific goals vary, the City's sustainability objectives tend to focus on: reducing energy use; reducing air, water, and land pollution; building and maintaining high-performance green buildings; reducing the use of materials toxic to the environment and human health; utilizing resources efficiently, including the use of renewable, reusable and recycled materials; utilizing minority-owned, small, and/or local businesses; preserving or enhancing biodiversity; and maintaining fiscal health in the short and long term. As such, the City seeks to do business with firms that will actively contribute to the City's sustainability objectives.

BUSINESS COMPLIANCE - Prior to execution of the contract, the Contractor shall provide City of Portland business license number, or shall provide proof of exemption from said license, as issued by the City of Portland Bureau of Revenue. Failure to do so within twenty (20) days after the respondent receives the tender of contract may result in withdrawal of the contract award. Information related to obtaining a business license may be found on the following website:

<http://www.pdxbl.org/BizInfo/blfaq.html#licenses>.

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

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

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

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

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

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

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

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

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

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

PUBLIC RECORDS - All information submitted by Offerors shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions of the proposals for which Offeror requests exception from disclosure consistent with Oregon or federal Law. Any portion of a proposal that the proposer admits constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501, ORS 192.502, ORS 646.461 or applicable federal law. If the entire proposal is marked as constituting a "trade secret" or being "confidential," at the City's sole discretion, such a proposal may be rejected as non-responsive.

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

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

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

PART I

PROPOSAL REQUIREMENTS

SECTION A	GENERAL INFORMATION
------------------	----------------------------

1. SCOPE OF WORK

THE BUREAU OF TECHNOLOGY SERVICES (BTS) is responsible for management, policy setting, strategic planning and leadership in the use of computer, radio, and telecommunications technologies, to support the delivery of effective government services.

The City's goal in this procurement is to update and expand the City's Storage Area Network (SAN) infrastructure. The City wishes to enter into a contract or contracts that will provide for the development, implementation and operation of a SAN infrastructure providing storage resources across the enterprise. There are three distinct SAN storage solution business requirements the City will contract for.

- a) Update the existing traditional fiber channel SAN storage arrays to current technology.
- b) Provide maintenance and support services of the fiber channel based SAN for a period of 3 to 5 years. This will include new products as well as any existing products as required for migratory transition and reuse in the resulting infrastructure.
- c) Contract for the acquisition, maintenance and support of iSCSI based storage products.

This Request for Proposals (RFP) is being published to invite Offerors to deliver SAN storage solutions to drive innovation into the processes, technologies and resources of the City's IT operations. This will include, but not be limited to, reengineering, development, deployment, management of and ongoing improvements to processes, technologies and resources. The Offeror will assume responsibility for project planning and management, design, engineering, equipment delivery, equipment installation, migration, removal of obsolete equipment, planned and unplanned maintenance and training to achieve the objectives set forth by the City.

Background

The City's storage architecture has evolved from direct server attached storage, either as internal hard drives or as dedicated storage arrays, to the use of a Fiber Channel based SAN. The SAN supports the City's large and mission critical applications, virtualization and disk based backup solutions. The current architecture, acquired in 2005 and expanded over 4 years, consists of Hitachi Data Systems storage arrays, OnStor NAS gateways, Cisco Fiber Channel director class switches, and Hitachi storage management applications. Server architectures supported include Windows based Intel servers in single server, clustered and virtualized (VMWare ESX with V-motion) configurations, Linux based Intel servers in single server configurations, AIX based servers on IBM p-series hardware in AIX LPARs, and IBM z-series mainframe with OS390 (connected via ESCON). The current size of the SAN is over 320 TB (unformatted).

Invitation

The City of Portland, Bureau of Purchases is seeking proposals from qualified firms or contractors with demonstrated experience in the sale, implementation and support services of Storage Area Networks. This document constitutes an invitation for sealed competitive proposals under Portland City Code Chapter 5.33. This RFP is for the City of Portland, *Bureau of Technology Services* as directed by the Bureau of Technology Services in accordance with the requirements and provisions herein.

The Contractor's scope of work shall include:

1. Design and engineering of a SAN infrastructure to update the current Fiber Channel based SAN to current technology meeting stated capacity and performance requirements.
2. Installation of the new infrastructure.
3. Assistance with migration of data and connectivity from the old to the new infrastructure.
4. Deinstallation of old infrastructure hardware.
5. Removal and disposal of old infrastructure hardware.
6. Primary contact for preventive (planned) and remedial (unplanned) maintenance and support. Specific work tasks may be performed by the Contractor's partners, but the Contractor will be the primary coordination, contact and accountability point for maintenance and support services.
7. Installation, configuration and training for management tools for storage resource management tools.

8. Engineering assistance for expansion of the SAN to meet business and performance needs as they are identified.
9. Periodic performance review and assessment of the SAN infrastructure.
10. Periodic roadmap review and assessment of the SAN infrastructure relative to current market trends and equipment offerings.

City Goals and Direction

Based upon the above Scope of Work, the City anticipates a positive outcome from this proposal and expects the successful Offeror(s), with direction from the City, to achieve the following goals:

- Installation of and migration of the fiber channel based SAN to current technology with an expected lifecycle of 3 to 5 years.
- Establishing a catalog of standard products for iSCSI based modular SAN equipment.
- Pricing catalog for component parts of the infrastructure.

The successful contractor will be expected to enter into a not-to-exceed Services Contract with the City (reference Exhibit A).

2. PROPOSAL INVITATION

This document constitutes an invitation for sealed competitive proposals under Portland City Code Chapter 5.33. This RFP is for the City of Portland, Bureau of Technology Services as directed by the Bureau of Technology Services as identified herein in accordance with the requirements and provisions herein.

SECTION B	WORK REQUIREMENTS
------------------	--------------------------

1. TECHNICAL OR REQUIRED SERVICES

The Contractor is expected to provide all required goods (hardware and software components) and services to complete the successful implementation of a new SAN system, fully integrated with existing systems as per the requirements stated within this RFP and related attachments.

The Contractor shall accept responsibility to supply a fully functional SAN system with all the specified interfaces as described in the attached.

Project Objectives

Although the methods of operation of the current system are not mandated, all outputs of the current system, in terms of functional results, reporting requirements, and interfaces are required of this proposed solution:

- a) Reuse the existing Cisco 9509 director class switches.
- b) Refresh current SAN storage array technology.
- c) Establish iSCSI hardware standards, and pricing.
- d) Reduce operational costs.
- e) Increase operational effectiveness.
- f) Ensure successful transition from the current system to the new system.
- g) Demonstrate effective project management techniques and systems to monitor timelines.
- h) Demonstrate effective cost management techniques and systems to ensure project stays within budget

Project Requirements

Although the methods of operation of the current system are not mandated, all functions of the current system, in terms of functional results, reporting and management requirements, and interfaces are required of this proposed solution.

The proposer is expected to provide an explanation of how the proposed solution meets the stated requirement.

Any tasks or functions not specifically listed within this section are the sole and exclusive responsibility of the successful Offeror. The following are the City's Project Requirements for this Project:

2. MANDATORY

2.1. FUNCTIONALITY

- 2.1.1. Ability to support network attached servers via NAS gateways for file storage over the existing Ethernet network.
- 2.1.2. Ability to support network attached servers via iSCSI. The network path for iSCSI connectivity does not necessarily exist currently and may be established as part of the project.
- 2.1.3. Ability to support Fiber Channel (FC) connected servers over the existing Fiber Channel network.

PROPOSAL NO. 110001

- 2.1.4. SAN Solution design shall be capable of storing back-up tape images from the IBM mainframe to disk ("virtual tape"), supporting both ESCON and FICON channels. The SAN solution shall include any required adapters. The ability to IPL from a "virtual tape" is required. (FC solution only, does not apply to iSCSI.)
- 2.1.5. SAN Solution shall support use of raw file systems.
- 2.1.6. Support for 3390 environment is required for mainframe disk. (FC solution only, does not apply to iSCSI.)
- 2.1.7. Support dynamic restriping when storage pools are expanded.

2.2. TOPOLOGY

- 2.2.1. Proposed SAN Solution will support 2, 4 and 8 Gb/s FC connection speeds.
- 2.2.2. Minimum storage array FC interface shall be 4 Gb/s. Storage arrays shall support 8 Gb/s FC connection speeds, either directly at time of install, or as an optional add on.
- 2.2.3. Ethernet interfaces shall support 100/1000 megabit (Mb), full duplex.
- 2.2.4. SAN Solution Proposer shall supply all SAN components (i.e., switches, hubs, bridges, host-bus-adapters, Fibre infrastructure, Ethernet cables, etc.), either through reuse of existing equipment or providing new equipment.
- 2.2.5. Provide a mixed environment of thin provisioned and statically provisioned storage pools.
- 2.2.6. Partition and dedicate SAN resources to specific servers or service functions. This includes storage, cache, storage paths, etc.
- 2.2.7. Support the following connectivity protocols: FC, iSCSI, NFS, CIFS.
- 2.2.8. Ability to interoperate between multiple sites by moving or replicating data between sites within the SAN (server free).
- 2.2.9. Ability to interoperate between multiple sites with a server residing at one site and the attached storage residing at a separate site.
- 2.2.10. The SAN has SAN-to-SAN connectivity. Explain how this will be accomplished for an 8-mile and 12 mile distance (Portland Building to 911 Center) and what would be required additionally to extend this to over 60 miles.

2.3. FAULT TOLERANCE AND HIGH AVAILABILITY

- 2.3.1. Provide the ability to take point-in-time snapshots. Describe how the snapshot is achieved, the time required to make a snapshot, and if it can be performed non-disruptively to the application.
- 2.3.2. Synchronous replication. Data is replicated in real time.
- 2.3.3. Ability to break a replication mirror and independently process data on either the original or the mirror.
- 2.3.4. Ability to non-disruptively resynchronize a broken replication mirror.
- 2.3.5. Ability to support server-free data movement within the SAN.
- 2.3.6. Ability to replicate open and mainframe storage.
- 2.3.7. Redundant components or redundancy for its major component groups is a requirement. This includes the following:
 - 2.3.7.1. N+1 power
 - 2.3.7.2. N+1 cooling
 - 2.3.7.3. Dual-Active controllers with failover.
 - 2.3.7.4. Redundant protected write-caches
 - 2.3.7.5. Redundant network interfaces (FC and/or Ethernet)
- 2.3.8. SAN Solution shall include hot swap capability for disks, and power supplies.
- 2.3.9. SAN Solution shall have the capability to replace redundant components such as cache memory and controllers non-disruptively.
- 2.3.10. SAN Solution shall have protected storage such as RAID or other technologies so that a single disk failure in a disk array unit (RAID array, appliance enclosure, or other system building block) does not cause data loss. Subsystems must support active spare disk drives unless the internal system topology can be shown to be sufficiently fault tolerant that spares are unnecessary.
- 2.3.11. SAN Solution shall provide full redundancy so no single path or component (array, switch, hub, bridge, HBA, interface, etc.) failure can prevent access to a storage pool.
- 2.3.12. Each attached server on the storage network can be configured with a minimum of two (2) network (FC or Ethernet) paths. Describe how path management is accomplished.

2.4. CONNECTIVITY

- 2.4.1. The SAN Solution proposed shall be certified by the Proposer for the following operating systems for individual servers and in cluster operation, and provide support for multi-pathing (fail over, load balance) for any of the systems listed below:

PROPOSAL NO. 110001

- 2.4.1.1. Support FC, iSCSI or NAS attachment to 32- and 64-bit hosts running Windows Server 2003 or later.
- 2.4.1.2. Support FC, iSCSI or NAS attachment to RISC based (IBM pSeries Power5 and Power6) hosts running AIX version 5.2 or later.
- 2.4.1.3. Support FC, iSCSI or NAS attachment to 32- and 64-bit Intel or RISC hosts running Linux (Redhat typically).
- 2.4.1.4. Support ESCON attachment to IBM mainframe running OS/390 v2.10.
- 2.4.1.5. Support Mainframe based virtual tape by Diligent.
- 2.4.2. Provide 12 ESCON ports for mainframe connectivity.
- 2.4.3. Provide connectivity for current inventory of 230 host connections. Directly attached host counts are 16 Windows, 34 AIX, 23 VMWare, 10 Linux, and 2 tape libraries. Physical hosts typically have a minimum of 2 fiber channel connections each. The balance of the connections are to virtual hosts.
- 2.4.4. Provide storage presentation to windows hosts via CIFS and Unix hosts via NFS.
- 2.4.5. Provide access to an entire shared database or file system for many servers providing the same service.
- 2.4.6. SAN Solution Proposer shall insure compatibility of all components during the life of the contract with the City.
- 2.4.7. Should the SAN Solution Proposer recommend a component be installed within a server that is not provided by the server manufacturer, such component must not void the existing maintenance contract or hardware warranty and such component must be serviceable by manufacturer's technicians, with any additional cost the responsibility of the Proposer.

2.5. COMPATIBILITY

- 2.5.1. The SAN Solution proposed shall be certified by the Proposer, and provide support for multipath (fail over, load balance) of the interface for the following applications:
 - 2.5.1.1. Supports connectivity to VMWare ESX and ESXi with multiple servers in a server pool connected to the same storage pool.
 - 2.5.1.2. Support Microsoft SQL Server and PostgreSQL databases.
 - 2.5.1.3. Support Oracle databases.
 - 2.5.1.4. Support Exchange 2007 or later.
 - 2.5.1.5. Support for IBM Tivoli Storage Manager backing up AIX and Linux hosts to disk and to IBM 3494 Tape Libraries located at the Portland Building and at the 911 center.
 - 2.5.1.6. Support for Asigra backup solution.
- 2.5.2. Describe interoperability capability of the proposed SAN Solution with other SAN vendor components and sub-systems.

2.6. CAPACITY AND SCALABILITY

For the purposes of this document, the City defines Tier 1 storage as 15,000 or 10,000 rpm fiber channel drive pools in the Hitachi USP. Tier 2 storage is defined as 10,000 rpm fiber channel or SAS drives in secondary storage arrays. Tier 2 storage pools may be virtualized through the USP, or may be connected directly to a host. Tier 3 is defined as 7,200 rpm SATA drives in secondary arrays. Tier 3 storage pools may be virtualized through the USP, or may be connected directly to a host. **This paragraph is simply for clarity regarding the current fiber channel SAN infrastructure and is not a statement indicating a mandatory use of a Hitachi USP.**

- 2.6.1. Describe how the proposed solution will provide storage equivalent to the following current capacities (formatted and usable)
 - 2.6.1.1. 15,000 rpm Tier 1 Fiber Channel: 3.5 TB Raw, ~2.6 TB usable, with 0 TB free.
 - 2.6.1.2. 10,000 rpm Tier 1 Fiber Channel: ~22 TB Raw, ~ 15.9 TB usable, with 0 TB free
 - 2.6.1.3. 10,000 rpm Tier 2 Fiber Channel: ~132 TB Raw, ~100 TB usable, with 12.6 TB free.
 - 2.6.1.4. 7,200 rpm Tier 3 SATA: 184 TB Raw, ~138 TB usable, with 11 TB free.
- 2.6.2. Describe how the proposed solution will accommodate anticipated growth of 100% per year over a 3 year period.
- 2.6.3. Provide typical ratio of raw storage required to usable yield.
- 2.6.4. The storage subsystems shall support LUN sizes up to 2 TB.

2.7. PERFORMANCE

- 2.7.1. SAN Solution design shall support both high performance and lower cost disk options for storage within the SAN.
- 2.7.2. Proposer shall explain how they will maintain and ensure that high levels of performance are delivered in their proposed SAN Solution.
- 2.7.3. For 15,000 rpm Tier 1 fiber channel pools, provide a minimum of 1,000 IOPS @ 64K block size, averaged across all hosts requiring this class of service, with less than 1 millisecond (ms) response time. The maximum observed metric for this class of service is 1,400 IOPS with less than 1 ms response time. Target uptime goal is 99.999%.

PROPOSAL NO. 110001

- 2.7.4. For 10,000 rpm Tier 1 fiber channel pools, provide a minimum of 500 IOPS @ 64K block size, averaged across all hosts requiring this class of service, with less than 3 ms response time. The maximum observed metric for this class of service is 700 IOPS with less than 3 ms response time. Target uptime goal is 99.999%.
- 2.7.5. For 10,000 rpm Tier 2 fiber channel pools, provide a minimum of 500 IOPS @ 64K block size, averaged across all hosts requiring this class of service, with less than 5 ms response time. The maximum observed metric for this class of service is 500 IOPS with less than 5 ms response time. Target uptime goal is 99.99%
- 2.7.6. The SAN solution must support a FC attached Tape Tier operating at 3 Gb/s per storage path. (FC solution only, does not apply to iSCSI.)
- 2.7.7. Independently configure storage pools to meet specific performance or capacity characteristics.
- 2.7.8. Mainframe connectivity supporting ESCON channels must be capable of maintaining an IOSQ time of not more than .2 milliseconds.

2.8. MANAGEMENT

- 2.8.1. Provide a centralized storage management console for management of all SAN components.
- 2.8.2. From the centralized console, the storage administrator must have the:
 - 2.8.2.1. Ability to perform all storage administrator functions via web interface.
 - 2.8.2.2. Ability to perform discovery of all existing SAN elements and has the ability to discover new elements as they are added.
 - 2.8.2.3. Ability to create, view, monitor and manage multiple thin storage pools.
 - 2.8.2.4. Ability to create, view, monitor and manage all static storage allocations.
 - 2.8.2.5. Ability to provision static or dynamic storage to the host systems on the storage network.
 - 2.8.2.6. Availability of Automated Capacity Analysis tools that provide a summary of storage capacity growth and free space by attached server, operating system, file system type and file system, and predict when the storage pool will run out of capacity by host, operating system and file system.
 - 2.8.2.7. Availability of Automated Performance Analysis tools.
 - 2.8.2.8. Perform non-disruptive ("hot") data movement between tiers.
 - 2.8.2.8.1. Manually on demand.
 - 2.8.2.8.2. Automatically based on Quality of Service rules.
 - 2.8.2.8.3. Automatically based on other SLA policy such as retention, frequency of access, etc.
 - 2.8.2.9. Have visibility into storage allocation to virtual VMWare guests.
- 2.8.3. The SAN management console supports the SNMP MIBs and/or syslog services.

2.9. SECURITY

- 2.9.1. Storage Management Software shall be Microsoft Active Directory aware and utilize AD account credentials and groups for authentication and permissions.
- 2.9.2. Ability to utilize zoning within the SAN for data security.

2.10. MAINTENANCE AND SUPPORT

- 2.10.1. Describe service and support strategy and options.
- 2.10.2. SAN Solution shall have remote maintenance failure notification with "call home" feature.
- 2.10.3. Proposer shall provide an initial three (3) year warranty for the entire SAN Solution, including both hardware and software.
- 2.10.4. Proposer shall provide three (3) years maintenance and support for components of the existing SAN that are reused in the new configuration.
- 2.10.5. Proposer shall provide "bridge" maintenance and support for the existing SAN infrastructure through the migration until the equipment is decommissioned.
- 2.10.6. Proposer shall provide 7 days x 24 hours x 365 day warranty support for three (3) years of operation, which includes on-site service and parts.
- 2.10.7. Proposer shall provide cost estimates for the subsequent 4th and 5th years after the initial warranty period for all products and services provided to the City, specifying all services and product costs that are included.
- 2.10.8. The Terms and Conditions in the above three (3) to five (5) year maintenance contract period shall be extended to any additional SAN Solution hardware and software items purchased via this Contract.
- 2.10.9. Hardware and software maintenance contract levels of support shall be extendable on an annual basis beyond the initial five (5) year Contract period.
- 2.10.10. SAN Solution shall support Concurrent Maintenance capabilities (all maintenance activity will be done concurrently while the subsystem is active on the storage pool. This includes dynamic replacement of the major component groups, capacity upgrades and microcode updates). Proposer must describe how this is accomplished.

2.11. TRAINING

PROPOSAL NO. 110001

- 2.11.1. Provide pre-installation training on the proposed SAN Solution for up to five (5) City BTS staff. Training shall cover all relevant hardware and software that must be used during the use, maintenance, and troubleshooting of the SAN Solution being deployed.
- 2.11.2. Provide post-installation and evaluation follow-up training at City BTS location. Training will encompass forty (40) hours total, for up to five (5) City BTS staff.
- 2.11.3. Itemize the costs for all training in the Financial Proposal.
- 2.11.4. Complete Training Plan (Exhibit D).

2.12. LICENSING

- 2.12.1. Proposer shall provide detailed information on all software and associated licensing costs that the City must purchase and maintain in order to effectively and efficiently use the proposed SAN Solution during the life of the Contract.
- 2.12.2. Proposer shall provide all initial license costs for both hardware and software for the SAN Solution, the type of license (own, perpetual, etc.) and the maintenance costs for each license over the term of the contract.
- 2.12.3. Proposer shall provide detailed information for calculating license costs for each license upgrade to acquire newer versions and functionality.
- 2.12.4. Proposer shall provide all copies of all software and hardware agreements associated with their SAN Solution.

2.13. INSTALLATION

- 2.13.1. Describe the overall approach to completing the implementation.
- 2.13.2. Proposer shall agree to install the SAN Solution, both during and if necessary, outside regular business hours as determined by the City to lessen possible impacts on existing production environment.
- 2.13.3. Proposer shall perform all installations with City BTS supervision.
- 2.13.4. Proposer shall remove and dispose of all packaging and shipping materials to be collected by the Contractor for reuse and/or recycling. In keeping with the City's sustainability program, effort will also be made to minimize the use of packaging and shipping materials.
- 2.13.5. Proposer shall specify any environmental requirements including, but not limited to, AC power, physical space, HVAC, etc.
- 2.13.6. Proposer shall provide physical space requirements for moving the SAN Solution into the BTS location (e.g. height, width, weight, etc.)
- 2.13.7. Proposer's SAN Solution equipment cannot exceed the following limitations:
 - 2.13.7.1. Elevator: inside dimensions of 5' 5" D x 8' 10" W.
 - 2.13.7.2. Elevator Door: 4' W x 8' H
 - 2.13.7.3. Elevator Capacity: 5,000 pounds.
 - 2.13.7.4. Narrowest passage (door or hallway): 4'.
 - 2.13.7.5. Lowest passage (door or ceiling): 6' 10"
- 2.13.8. Describe how fees for services will be assessed for activities such as expansion of storage, installation of additional storage arrays, and tasks such as those described in "Scope of Work - Invitation" numbers 8 to 10.
- 2.13.9. Proposer shall provide assistance with the data migration from the existing SAN Solution to the proposed SAN solution.

2.14. ACCEPTANCE

- 2.14.1. Proposer shall demonstrate that the SAN solution meets or exceeds the functional and performance requirements as described herein.
- 2.14.2. Proposer shall provide SAN Solution hardware and software orientation on-site to City staff to meet the test plan objectives negotiated in the Contract.
- 2.14.3. Proposer shall test all SAN Solution hardware and software after installation and provide certification that all SAN Solution systems are functionally normally after the 45 day Acceptance Period of the Contract.
- 2.14.4. Proposer shall provide documentation of the new SAN Solution, including but not limited to, initial setup, configuration, installation, options, as built diagrams, and other specific site parameters and information as identified.

3. DESIRABLE

All items in this section (2. Desirable) include the following designations:

- | | |
|---------------------------------|--|
| (S) STRONGLY Recommended | Proposer is expected to meet or exceed this requirement. |
| (H) Highly Desirable | Proposer is expected to meet this requirement. |
| (D) Desirable | Describe your ability to address this requirement. |

PROPOSAL NO. 110001

(O) Optional

Optional feature or function that the City may be interested in. Describe your ability to address this requirement.

3.1. FUNCTIONALITY

- 3.1.1. (S) SAN Solution shall have the ability to be dynamically configured when the subsystems are pre-configured with specified RAID Groups, RAID levels, LUN sizes and/or storage pools when installed on the storage network.
- 3.1.2. (S) SAN Solution shall have the capability of dynamically changing its configuration under the control of the SAN system administrator. Describe the degree which the reconfiguration of an existing volume or storage pool can be accomplished without disruption.
- 3.1.3. (S) SAN Solution shall have secure remote management access as a function of its design.

3.2. TOPOLOGY

- 3.2.1. (S) Connectivity to the storage array can be increased as additional throughput is required.
- 3.2.2. (O) Ability to de-duplicate primary storage.
 - 3.2.2.1. Describe if the de-duplication occurs in-line (in-band) or post-process (out-of-band).
 - 3.2.2.2. Describe the overhead introduced by de-duplication such as increased latency and increased storage requirements.

3.3. FAULT TOLERANCE AND HIGH AVAILABILITY

- 3.3.1. (H) Applications having specific performance requirements can be configured with sufficient paths to maintain performance in the case of path or switch failure.
- 3.3.2. (D) Supports differential replication. Only the modified data is synchronized.
- 3.3.3. (D) Supports delayed replication. Data is replicated with a pre-determined delay interval between modification and replication to the secondary site.

3.4. COMPATIBILITY

- 3.4.1. (D) The SAN solution proposed supports VMWare virtual desktop solutions.
- 3.4.2. (D) The SAN solution proposed supports Citrix MetaFrame virtual desktop solutions.

3.5. MANAGEMENT

- 3.5.1. (S) Storage management console has redundancy.
- 3.5.2. (H) SAN management element provides a common method for both in-band (preferred) and out-of-band monitoring and management.
- 3.5.3. (D) SAN Management functions can be performed both in-band (preferred) and out-of-band.
- 3.5.4. (H) SAN management element provides topology mapping (switch zones, host-to-storage and storage-to-host mappings).
- 3.5.5. (H) SAN management element provides Event Monitoring (the collection and consolidation of events, fault-isolation and problem determination in the SAN).
- 3.5.6. (H) Event management element has drill-down capability to view configuration information, alert and failure information.
- 3.5.7. (H) Event monitoring has remote capabilities. Describe method of remote access.
- 3.5.8. (S) SAN Solution shall support allocating volumes/logical units (LUNs) and storage pools "on-the-fly". Describe the degree to which an existing volume may be reconfigured without disruption.
- 3.5.9. (S) Proposer shall provide copies of sample reports for performance analysis and storage use as part of this RFP.
- 3.5.10. (H) Proposer should indicate with which network management systems SAN Solution is compatible with.

3.6. SECURITY

- 3.6.1. (S) SAN Solution provides LUN security.

4. OTHER

4.1. REUSE OF EXISTING SAN COMPONENTS

- 4.1.1. The City expects to reuse the following SAN equipment.
 - 4.1.1.1. Director Class Cisco 9509 FC switches as the core of the FC infrastructure.
 - 4.1.1.2. Existing HBA cards in servers.

4.2. EXPANSION PARTS AVAILABILITY

4.2.1. Provide pricing as a firm discounted rate from list for all components and expansion cards for the Cisco 9509.

5. WORK PERFORMED BY THE CITY

City Responsibilities

As part of the Offeror's response, the Offeror shall provide a complete and detailed listing of project tasks and responsibilities that the Offeror believes only the City can perform. Such responsibilities may include, but shall not be limited to: work, tasks, access to City facilities or the City data and transmission network, issuance of permits, gaining approval, providing test witnesses, and providing trainees. Prior to the execution of a contract, the successful Offeror and the City shall agree upon and approve the final list of City responsibilities and a schedule for completion. This listing will represent the City's limit of responsibilities for the project, and unless otherwise notified by the Contractor, it shall be understood that the city shall have met all obligations under the contract.

Third-Party Responsibilities

As part of the Offeror's response the Offeror shall provide a complete and detailed listing of project task responsibilities that are required for completion of the project scope of work. During contract negotiation with the successful Offeror, the City will review and discuss this listing with the successful Offeror. At that time, each and every unassigned project responsibility will be assigned to the successful Offeror (subcontractors, if any), the City, or a designated third party. Tasks or functions not specifically listed within this section are the sole and exclusive responsibility of the successful Offeror/Contractor.

The following are the City's commitments to this project:

- SAN Team
- Network pathways (copper and fiber, Internet Protocol and Fiber Channel based)
- Floor space, power and cooling in a secured environment per equipment requirements.
- Security screening for contractor employees working on the project.
- Access to City locations where the equipment will be housed.
- Access to data networks as required for execution of contractor duties.

6. DELIVERABLES AND SCHEDULE

Deliverables shall be considered those tangible resulting work products which are to be delivered to the City, Bureau of Technology Services such as reports, draft documents, data, drawings, schematics, training, meeting presentations, final reports, etc. Deliverables and schedule for delivery of such shall include:

- a) Supply all SAN hardware and software components and install, configure, and test the proposed SAN Solution. Milestone dates will be determined as part of the project plan development.
- b) Provide weekly written status reports to the City Project Manager.
- c) Provide on-going maintenance and support for a minimum period of three (3) years *[with a proposal for a five (5) year maintenance and support agreement]*.
- d) Provide at least one (1) master and one (1) electronic copy of the SAN Solution hardware, operating software, system administration and training documentation.
- e) Provide pre-/post-installation training for 3 BTS staff members *[within five (5) days of installation. Include all training materials upon completion of the training]*.
- f) As-built documentation of the SAN Solution.

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

7. PLACE OF PERFORMANCE

Performance of the work necessary to complete deliverables for this project will be performed throughout the City of Portland at specified locations. On-going status reviews and meetings with City staff may occur either at the City's or Successful Proposer's facilities.

8. PERIOD OF PERFORMANCE

The City anticipates having the successful Contractor begin work within 10 days of contract execution. The contract is expected to remain in effect through design implementation, acceptance, and on-going support of the project for a period of at least 3 years, optionally renewable by the City annually to a period of 5 years.

9. INSURANCE – PROOF OF COVERAGE

Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Purchasing Agent or the Auditor.

PROPOSAL NO. 110001

Commercial General Liability Insurance – Public Liability and Property Damage

The contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence that protects the contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from the contractor's work under this contract

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

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the contract, the contractor shall provide a new policy with the same terms. The contractor agrees to maintain continuous, uninterrupted coverage for the duration of the contract.

Automobile Liability

Automobile liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the contractor. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.

Workers' Compensation

Prior to the performance of any work under a contract awarded by the City, the contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the contract.

Certificate of Insurance

As evidence of the required insurance coverage, contractor shall furnish acceptable insurance certificates to the City with the return of the signed contract. The certificates shall specify the City of Portland as additional insured and shall include a 30-day notice of cancellation clause.

Errors and Omissions.

Liability insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the Services under this Agreement will be maintained. The coverage shall be placed with an insurer with an AM Best Rating of A-VII or better and shall include the following coverage parts:

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

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

Such insurance shall include limits of coverage of the local currency equivalent of not less than USD \$ 1,000,000 (one Million U.S. dollars) and shall remain in effect for not less than three (3) years following the date of termination of this Agreement. Evidence of coverage must be sent to the City for three years following termination of this agreement.

The coverage shall name the City as an additional insured and shall indemnify the City for loss for any errors or omissions on the part of the Contractor, its agents, officers, employees, subcontractors or any other authorized person, regardless of any negligence or lack thereof.

The Insurance Policy shall also be endorsed as follows: The City of Portland, Oregon is named as an additional insured but only as respects the vicarious liability of such person or entity for the Wrongful Act of the Insured otherwise covered by this Insurance.

Notwithstanding the naming of additional insured, said policy will protect each insured in the same manner as though a separate policy has been issued to each; but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The Contractor shall file with the City of Portland Auditor a certificate evidencing such insurance, together with the proper endorsement, which will be subject to the approval of the City Attorney as to the adequacy of protection.

10. PUBLIC SAFETY

Public safety may require limiting access to public work sites, public facilities, and public offices, sometimes with little advance notice. The contractor shall anticipate delays in such places and include the cost of delay in the costs in its proposal. The contractor's employees and agent shall carry sufficient identification to show by whom they are employed and display it upon request to security personnel. City project managers have the discretion to require the contractor's employees and agents to be escorted to and from any public office, facility or work site if national or local security appears to require it.

SECTION C ATTACHMENTS

1. Exhibit A - TECHNOLOGY SYSTEM MASTER CONTRACT

The sample services contract, shown as Exhibit A is the City's standard contract for these services and will be used as a result of this selection process. Any deviations from this contract shall be clearly identified in the proposal.

2. Exhibit B - SUMMARY OF RATES AND SERVICES

The Summary of Services and Rates shall be completely filled out. The proposer will identify in what areas the firm meets, exceeds or how they anticipate they will comply.

3. Exhibit C – PROJECT DATA

Diagram of the existing SAN infrastructure

4. Exhibit D – TRAINING PLAN

The training plan shall illustrate the recommended course(s) of study for each of the indicated positions. Specific dates of training are not required, but will be helpful.

PART II PROPOSAL DEVELOPMENT

SECTION A PROPOSAL PREPARATION

1. PRE-PROPOSAL MEETING

There will be a pre-proposal meeting and site visit scheduled for this project on March 1, 2010 at 2:30 p.m. at 1120 SW 5th Ave, Portland OR 97204 in the Columbia River Room on Floor 7. This is a mandatory meeting therefore, all proposers will be required to attend if they intend to submit a proposal.

2. INVESTIGATION

The Offeror shall make all investigations necessary to inform itself regarding the work or services to be furnished

3 QUESTIONS OR CLARIFICATIONS

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

Every attempt shall be made to ensure that the proposer receives an adequate and prompt response. However, in order to maintain a fair and equitable RFP process, all respondents will be advised, via the issuance of an addendum to the RFP, of any relevant or pertinent information related to the procurement. Questions and requests for clarification regarding this Request for Proposal must be directed in writing, via email or fax, to the person listed below at least ten (10) calendar days prior to the proposal due date. Therefore, respondents are advised that any questions received less than ten (10) calendar days prior to the RFP opening date may not be answered.

Celeste King, CPPB
Bureau of Purchases
1120 SW Fifth Avenue, Room 750
Portland, Oregon 97204
celeste.king@ci.portland.or.us

Phone: (503) 823-4044
Fax: (503) 823-6865

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

4. CONTRACT REVIEW

The Services Contract as attached hereto contains the terms and conditions that will govern this Contract between the City of Portland and the successful proposer. The City of Portland is not inclined to negotiate any portion of this contract, however, if a proposer believes any of the terms and conditions contained in the City's contract are unnecessarily restrictive, limit competition, or would like to request that specific terms and conditions contained in the contract document be considered for negotiation, they shall submit a written request for negotiation to the City at least seven (7) working days prior to the proposal due date as indicated above.

The request shall identify the specific provision the proposer would like to negotiate, an explanation of why the proposer believes the provision should be a negotiable provision, and the suggested revised language. Requests that are not submitted in this format may not be considered. **Requests that state the entire contract be negotiated will not be considered.** If the City decides that a contract term can be changed, or is willing to consider negotiation of a term, an addendum will be issued. If no addendum is issued, the City will not consider negotiation of its standard contract terms.

THIS WILL BE THE OFFEROR'S ONLY OPPORTUNITY TO TAKE EXCEPTION TO ANY OF THE TERMS AND CONDITIONS CONTAINED WITHIN THE CONTRACT AND TO REQUEST THE NEGOTIATION OF PROVISIONS CONTAINED IN THE CONTRACT. **ANY PROPOSAL WHICH TAKES EXCEPTION TO TERMS AND CONDITIONS OF THE SAMPLE CONTRACT THAT HAVE NOT BE IDENTIFIED BY ADDENDUM AS SUBJECT TO NEGOTIATION OR WHICH MAKES THE PROPOSAL CONTINGENT UPON ACCEPTANCE OR NEGOTIATION OF OTHER TERMS AND CONDITIONS SHALL BE DEEMED NON-RESPONSIVE AND THE PROPOSAL SHALL BE REJECTED.**

5. ORAL INSTRUCTIONS

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

6. COST OF RESPONDING

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

7. PERMITS AND LICENSES

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

8. INTERGOVERNMENTAL CO-OPERATIVE PURCHASING

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

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

9. CHANGES TO THIS RFP

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

SECTION B	PROPOSAL SUBMISSION
------------------	----------------------------

1. PROPOSALS DUE

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

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

2. PROPOSAL

Proposals must be clear, succinct and not exceed 250 pages, excluding Attachment materials. Proposers who submit more than the pages indicated may not have the additional pages of the proposal read or considered.

For purposes of review and in the interest of the City's Sustainable Paper Use Policy and sustainable business practices in general, the City encourages the use of submittal materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings, and plastic or glossy covers or dividers. Firms are encouraged to print/copy on both sides of a single sheet of paper wherever applicable (if sheets are printed on both sides, it is considered to be two pages). Color is acceptable, but content should not be lost by black-and-white printing or copying.

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

3. PROPOSAL SUBMISSION

Security and confidentiality of the transmitted data: For purposes of this proposal submission, one (1) complete original printed copy of the proposal shall be submitted along with Four (4) copies and one (1) exact copy on a CD ROM, PDF format, in a single file. The entire proposal shall be received at the place and on or before the time and date specified on the first page of the proposal document.

4. CONFLICT OF INTEREST

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

5. PROPOSAL ORGANIZATION

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

5.a. COVER LETTER

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

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

5.b. PROPOSERS QUALIFICATIONS AND EXPERIENCE

Briefly describe other projects executed by your firm that demonstrate relevant experience. Also, list at least three (3) public sector project references of similar size and complexity that you have performed similar work for in the past five (5) years. For each project mentioned, include the name, address and phone number of a person who can be contacted regarding your performance on the project. When submitting projects for which your firm worked in an auxiliary capacity or in a joint venture or partnership, include the name of the lead firm. Please remember that any extensive descriptions of vaguely related projects are discouraged and could negatively impact the overall outcome of the evaluation.

Provide a professional resume for the key people proposed to be assigned to the project (including any important subcontractors), and describe their relevant related experience. Describe key personnel's proposed roles and responsibilities on this project. The Proposer must designate an Account Manager whom will be the primary point of contact with the City on matters regarding Contract Administration and other duties described in this RFP. The Proposer must also designate a Project Manager to oversee the installation, testing, and acceptance of the SAN system. The same person may fill these two positions. The Project Manager would be responsible for the day-to-day management of project tasks and would be the primary point of contact with your firm. Identify who the second level production person will be; provide a description of their experience as it relates to the project at hand.

This section will be scored on the Proposer's demonstrated ability to provide a complete SAN Solution based on Proposer's prior installation record and customer references.

5.c. PROPOSED SOLUTION

This section addresses the Mandatory, Desired and Other features and functionality as described in Section B Work Requirement – Project Requirements.

Points will be awarded based on the evaluation of how the proposed solution meets the mandatory requirements. City BTS services are mission critical and support public functions. Reliability and redundancy are extremely important. Proposals will be scored based upon reliability levels, when it can be verified from the information submitted, references, or independent sources. SAN Architecture that supports higher reliability, such as better integration, fewer SAN elements, and greater flexibility, will receive higher point scores. This area will also evaluate the level and complexity of integration/interface of the proposed SAN solution with existing City systems. Items such as the technical, operational, and functional interface, ease of user interface, cost of integration/interface, commonality of components, method of serving multiple locations, additional City facilities and hardware requirements, space and other environmental considerations will be considered.

Points will also be awarded for the proposed solution's ability to perform various of the strongly recommended, highly desirable, desirable and optional requirements. The City may award up to five (5) points in this category for additional features and functionality not specifically requested by the City that are offered by the Proposer and are determined to be of value to the City. In no case will the total points for this category exceed thirty (30) points.

5.d SUPPORT AND MAINTENANCE

PROPOSAL NO. 110001

This section addresses the post-cutover maintenance and support for the system (Section B, 1.10); the ongoing support; stocking plan, and repair and return process; future upgrades offered; and training (Section B, 1.11) and deployment (Section B, 1.13, 1.14) plans; shall be considered in this category.

5.e. VISION AND ROADMAP

The Proposer's understanding and approach to the overall project, the City's requirements (current and future), the City's concept of operations for the system, and the Proposer's demonstrated willingness to form a strategic partnership for the project, will be evaluated based on the content, clarity, and completeness of the Proposal.

Describe the product roadmap with descriptions of anticipated key changes in functionality, compatibility, cost, standards support, and virtualization capabilities anticipated over the next 18-24 months.

5.f PROPOSED COST

This statement shall specify the number of hours each staff member will work on each task. The proposal shall **include the contractor's true estimated cost to perform the work irrespective of the City's anticipated cost.**

5.g DIVERSITY IN EMPLOYMENT AND CONTRACTING REQUIREMENTS

The City values diversity in its workforce and in the workforce of those who contract with the City and has a significant interest in extending contracting opportunities to Minority, Women, and Emerging Small Businesses (M/W/ESB) at both a prime and subcontracting level. The City is committed to ensuring that such firms receive opportunities and equal consideration to be awarded City contracts.

The City recognizes that there are several ways to meet this goal. The list below is provided as a catalyst to generate ideas on how proposers may meet this goal:

- Internal work force, Equal Employment Opportunity, technical training and mentoring;
- Emphasize the way this project will provide developmental opportunities and sustainable business growth for certified M/W/ESB;
- Point to a long-term history of strategic alliances and partnership with M/W/ESBs that will be used to perform a commercially useful function on this project;
- Placing a particular emphasis on a project-specific partnership with M/W/ESBs;
- Carving out a meaningful scope of work based on the expertise of their M/W/ESB partner firm(s).

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

- a. MBE, WBE & ESB Certification
- b. Indicate if your firm is currently certified through the State of Oregon as an MBE, WBE or ESB. If no, what percentage of the project will be subcontracted out to M/W/ESBs?
- c. EEO & Workforce Diversity
 - Describe how your firm has historically provided opportunities for minorities and women to receive training and work within your firm.
 - Describe your existing relationships with M/W/ESB firms including a description of your supplier diversity program.
 - If your company currently has under representation of minorities or women within your current workforce, describe how over time you propose to remedy the underutilization.
 - Discuss any project-specific opportunities for technical training and/or employment of underrepresented groups you would commit to. Are there other outreach (through local schools or community-based organizations) that you consider to be viable in light of the size and scope of this project? What resources might your firm address to such needs?

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

PROPOSAL NO. 110001

- a. Provide a narrative description of the company's experience in promoting participation on the part of Minority-owned, Women-owned and Emerging Small Business (M/W/ESB) enterprises as partners, consultants or suppliers on previous projects.
- b. Include a description of your firm's supplier diversity program:
 - How long has it been in existence and what were the driving factors for establishing the program?
 - What results has it had to increase your company's M/W/ESB participation?
 - Who is the individual responsible for your company's M/W/ESB initiative? Provide their experience with the M/W/ESB community.
- c. Discuss any innovative or particularly successful measures that your firm has undertaken to work with M/W/ESB firms on other projects.
- d. Include a list of those certified M/W/ESB firms with which your firm has had a contractual relationship during the last twelve (12) months.
- e. Describe your diversity solution where you, as the prime contractor, sub-contract services in a partnering relationship with a certified M/W/ESB firm:
 - How do the M/W/ESB(s) that you partner with benefit from the relationship with your firm?
 - Describe what you consider your first-tier diversity solution where you utilize a certified M/W/ESB firm as the prime contractor and your company works as an alliance partner.
 - How do you evaluate the credentials of your M/W/ESB suppliers?
 - Describe how your firm could increase the utilization of certified M/W/ESB firms in service of the City contract if you are the winning proposer?

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

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

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

- identify probable subcontracting opportunities by type of work, potential size of subcontract, etc.,
- advertising in the *Daily Journal of Commerce*, *Skanner*, *Oregonian*, *Observer*, *El Hispanic News*, *Just Out*, *Asian Reporter*, and/or other trade publications to notify potential M/W/ESBs and other diverse groups of contracting opportunities;
- utilizing certified M/W/ESB firms from the State of Oregon certification list, or other source, as a basis for direct outreach in likely subcontracting areas.
- meeting with potential M/W/ESB subcontractors in order to encourage collaboration and partnering.
- documenting proposals received from M/W/ESB firms and identify proposal(s) accepted and reasons for rejection of such proposals, if and proposals are rejected.
- providing mentoring, technical or other business development services to M/W/ESB team members.
- initiating other efforts as might be useful for this particular project.

M/W/ESB COMPLIANCE AND REPORTING

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

- The name of ALL subcontractors on the project;

PROPOSAL NO. 110001

- The names of all MBE, WBE and ESB firms. If firms have more than one certification (ESB and MBE) note that on the form; and
- The proposed scope or category of work for each subcontract
- If the proposer will not be using any subcontractors, the proposer will indicate "NONE" with the proposal.

6. WITHDRAWAL, MODIFICATION OR ALTERATION OF PROPOSAL

Prior to the RFP opening, changes may be made provided the change is initialed by the respondent or authorized agent. Also, a proposal may be withdrawn upon written request of the respondent prior to the scheduled closing time for accepting proposals. Negligence on the part of the respondent in preparing their proposal confers no right to withdraw their response after the scheduled closing time for filing proposals.

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

PART III

PROPOSAL EVALUATION

SECTION A PROPOSAL REVIEW AND SELECTION

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

CRITERIA	MAXIMUM SCORE
Cover Letter	0
Proposer's qualifications and experience	10
Proposed Solution (i.e., architecture, features and functionality, implementation approach)	30
Support and Maintenance	10
Vision and Roadmap	5
Proposed Cost	25
Diversity In Employment And Contracting	15
Acceptance of Contract Terms and Conditions	5
TOTAL	100

2. **PROPOSAL REVIEW**

A selection review committee will be appointed to evaluate the proposals received. For the purpose of scoring proposals each of the Committee members will evaluate each proposal based upon the criteria listed above. In order to assist the evaluation committee, they may seek outside expertise, including but not limited to technical advisors. For contracts over \$500,000, the Committee's recommendation will be submitted to the Portland City Council for approval. The City has the right to reject any or all proposals for good cause, in the public interest.

The Contractor shall be selected by the following process:

- a. A contractor evaluation committee will be appointed to evaluate submitted proposals.
- a. The committee will score the proposals according to the criteria, based on the information submitted.
- b. The committee will require a minimum of 10 working days to evaluate and rank the proposals.
- c. A short list of proposers may be selected for oral interviews if deemed necessary.
- d. If oral interviews are determined to be necessary, the initial scoring will be considered preliminary. Final scores, based on the same evaluation criteria, will be determined following the interviews.
- e. Negotiations will follow with the selected contractor, and if successful, the contractor and City will enter into a professional services contract for the work.

3. **ANTICIPATED SCHEDULE**

Milestone	Target Date
RFP released	Feb 16, 2010
MANDATORY Proposers Meeting	Mar 1, 2010
All questions due	Mar 5, 2010
Proposals due date	Mar 16, 2010
PROPOSERS selected for short list	Apr 2, 2010
Short-listed PROPOSERS in-person interviews	Week of April 12, 2010
Notice of Intent to Award Issued	Apr 20, 2010
Contract executed	May 14, 2010
Implementation begins	May 17, 2010

The City reserves the right to adjust this schedule as necessary.

4. CLARIFYING PROPOSAL DURING EVALUATION PERIOD

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

5. PROPOSALS ARE PUBLIC RECORDS

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

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

6. LOCAL CONTRACTING

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

7. AWARD REVIEW AND PROTEST PROCEDURE

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

REVIEW: Following the Notice of Intent to Award, the public may view proposal documents, but the City is entitled to withhold from disclosure any materials defined as exempt or conditionally exempt from disclosure pursuant to the Oregon Public Records Act. Proposers shall designate information they consider exempt or conditionally exempt from disclosure by stamping the word "Confidential" on such documents or by otherwise indicating the documents are considered to be confidential. Materials so designated and meeting the requirements for exempt or conditionally exempt information will not be disclosed unless the Multnomah County District Attorney determines that disclosure is required after appeal. The City reserves the right to disclose materials inappropriately marked as exempt or conditionally exempt and to withhold from disclosure materials that meet standard but which were inadvertently not marked as confidential.

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

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

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

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

SECTION B	CONTRACT AWARD
------------------	-----------------------

1. CONTRACTOR SELECTION

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

2. CONTRACT DEVELOPMENT

The proposal and all responses provided by the contractor may become a part of the final contract. The form of contract shall be the City's Contract for Services.

3. NOTICE OF INTENT TO AWARD

A notice of intent to award posted on the Bureau of Purchases website does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing any equipment, suppliers and/or services, the contractor must receive a properly authorized purchase order or contract.

4. ASSIGNMENT OF ANTI-TRUST RIGHTS

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

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

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

- a. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- b. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- b. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

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

4. FAILURE TO EXECUTE CONTRACT

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

EXHIBIT A – TECHNOLOGY SYSTEM MASTER CONTRACT

CONTRACT FOR PROCUREMENT, LICENSING, AND MAINTENANCE OF A SYSTEM

CONTRACT NO:

This “Contract” is made by and between the City of Portland, a municipal corporation of the State of Oregon, and its successors or assigns (“City”) and (“Contractor” or “Contractor”), a(n) corporation, by and through their duly authorized representatives. The Initial Term of this contract shall be {day, month year} through {day month year}, with the City’s option to extend for { } additional option period/years. This Contract may refer to the City and Contractor individually as a “Party” or jointly as the “Parties.” The total not-to-exceed price under this Contract shall be \$

Contractor Contact:

City of Portland Contact:

TEL: () -

TEL: (503) -

FAX: () -

FAX: (503) -

Recitals:

WHEREAS, in conjunction with its business operations, the City of Portland desires to (the “Project”);

WHEREAS, in its Proposal No. dated and submitted in response to City RFP # , Contractor represents that it has the knowledge, experience and expertise in for ; and

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

SECTION 1 DEFINITIONS (10/08)

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

“Acceptance” see “Delivery of Products”

“Acceptance Criteria” means all specifications, functionality and performance requirements as set forth in the RFP, the Statement of Work (as such specifications, and requirements and Statement of Work may be changed from time to time by mutual agreement in writing), Contractor’s proposal and Contractor’s representations and warranties. The City’s acceptance criteria will be based on reliance

on Contractor's experience and expertise. City and Contractor agree to establish the Acceptance Criteria in writing for the purpose of conducting Acceptance Testing. Terms and Conditions for Acceptance Criteria are set forth in Section 5.

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

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

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

"Agreement" means this portion of the Contract, the body of text from the preamble through the signature page.

"Amendment/Modification" means a written document required to be signed by both parties when changing, adding to, or in any way altering the substantive terms, conditions, Term or cost provisions of the Contract.

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

"Change Order" means a written request to document a change in the scope of an existing Statement of Work or Task Order that the City and Contractor may execute from time to time under this Contract. A change order does not include a change to Term or the Contract price." See Schedule 2 Change Order Form.

"City Confidential Information" means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act of 2007; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPPA) and (7) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the City including without limitation, data and information systems, any software code and

related materials licensed or provided to the City by third parties; processes; applications; codes, modifications and enhancements thereto; and any work products produced for the City.

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

“Contract” means this Agreement and all the documents referenced in Paragraph 2.1.

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

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

“Coverage Hours” means those hours specified in this Contract or subsequent Task Order during which period Contractor shall provide Maintenance.

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

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

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

“Delivery of Products” means Product has been inspected, loaded, shipped, transported, installed, delivered, configured and diagnostics tests have been performed to demonstrate, to the City’s satisfaction, that Product conforms and operates according to the requirements of this Contract, applicable Documentation and Contractor’s representations. Delivery of Products shall not be construed to represent Final Acceptance following delivery of the System.

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

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

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

“Existing Product” means Product acquired by the City on or before the date of this Contract.

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

“Fix” means a correction to software that does not function or operate in accordance with the Documentation. A Fix is not a modification, upgrade or enhancement.

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

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

“Maintenance” means services provided by Contractor to the City designed to keep System operating in optimum condition.

“Maintenance Fee” means the fee paid by the City for Maintenance.

“Maintenance Period” means the time period when Contractor provides Maintenance to the City, which begins upon expiration of the Warranty Period.

“Maintenance Request” means a request by the City to Contractor for Maintenance.

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

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

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

“Mission-Critical System” means any System that (a) if partially or fully inoperable or otherwise incompatible with other integrated City systems, would have a material adverse affect on one or more of the City’s business operations; (b) if partially or fully inoperable or incompatible, would create a substantial work stoppage for City personnel; or (c) has been defined by the City as “Mission Critical” in the Contract.

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

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

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

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

“Repair” means to fix, patch, reprogram, or replace the System or any hardware or software component thereof so as to eliminate Errors or failure to the City’s satisfaction. A work-around or patch which temporarily eliminates the symptoms of the particular Error or failure reported, but impairs the efficiency of the City’s operations, shall be deemed an “interim repair,” not a Repair. An interim repair cannot last longer than seven (7) calendar days, unless otherwise mutually agreed in writing by both Parties.

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

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

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

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

“Source Code” means a complete copy, expressed in high-level (i.e., human readable; not machine language or object code) computer language, of the Software which, when assembled or compiled, becomes the executable object code of the Software. Source Code shall include all material including but not limited to design documentation, Software documentation, reference manuals and documentation, libraries for the Software, and interface software (patch or whole programs), in any form (printed, electronic, or magnetic) and any other information necessary that a reasonably skilled programmer or analyst can understand and maintain the Software.

“Statement of Work” (SOW) means the written detailed specifications of the System, Product(s), or Services(s) to be delivered to the City by Contractor under a Task Order, subject to the terms and conditions of the Contract. The Statement of Work, Exhibit A is attached to this Contract.

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

“Task Order” means any written request or document issued by the City for additional Product(s) or Service(s) that the City may require in conjunction with its use of the System. Task Orders shall document the scope and Statement of Work, price, payment schedule, project and performance schedule, due dates, milestones, deliverables for both Parties; and any modifications to the provisions subject to the General Provisions below. A unique number shall be assigned to each Task Order to allow tracking a request from Task Order through invoice payment. Work shall not be performed without a valid written Task Order. For products only, the City may issue a Release Order under the Contract in lieu of a Task Order.

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

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

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

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

SECTION 2 GENERAL PROVISIONS

2.1 Order of Precedence: **(10/08)** In the event there is an perceived or actual conflict between the terms and conditions of one portion of this contract with another portion of this contract, the conflict will be resolved by designating which portion of the contract documents takes precedence over the other for purposes of interpretation, except where a clear statement of precedence other than that set forth in this section is included in the document. In this contract the order of precedence shall be:

1. Amendments
2. This Agreement
3. Change Order
4. Task Order
5. Exhibit A, Statement of Work (including Schedules A-1, A-2, and A-3)
6. Exhibit B, Source Code Escrow Agreement (separately executed)
7. Exhibit C, Acceptance Criteria
8. Exhibit D, Acceptance Test Plan and Acceptance Test
9. Exhibit E, Certificate of Acceptance
10. Exhibit F, Payment Schedule
11. Exhibit G, Pricing Sheet
12. City RFP # (including any addenda issued)
13. Contractor's Proposal, incorporated by reference
14. Contractor Documents (including any licenses, EULA, or others)
15. Exhibit H, Sample Source Code Escrow Agreement

2.2 Point of Contact: **(10/08)** Contractor shall be the sole point of contact for the City with regard to the Contract.

2.3 Capacity to Contract. (10/08) Contractor warrants it has the legal authority and capacity to enter into and perform this Contract.

2.4 Compliance with Law/Venue

2.4.1 Authority to Conduct Business. (10/08) Contractor warrants it is duly authorized to operate and do business in all places where it shall be required to do business under the Contract; that it has obtained or shall obtain all necessary licenses and permits required in connection with the Contract, and that it shall fully comply with all laws, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is lawfully organized and constituted under all Federal, State and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance

with all legal requirements of its domicile.

2.4.2 Oregon Venue/Choice of Law. (10/08) This Contract shall be construed according to the laws of the State of Oregon without reference to its conflict of laws provisions. Any litigation between the City and Contractor arising under this Contract or out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

2.4.3 Compliance with Applicable Law. (10/08) Contractor warrants it has complied and shall comply with all applicable law in connection with the execution, delivery, and performance of this Contract and any Task/Change Order subject to this Contract; and shall not contravene the terms of any contracts with third parties, or any third-party rights in any patent, trademark, copyright, trade secret, or similar right; and, as of the date of this Contract, there are no actual or threatened legal actions with respect to the matters in this Provision.

2.4.4 Conflict of Interest. (10/08) Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under the Contract.

2.4.5 Rule of Construction/Contract Elements/Headings. (10/08) This Agreement has been drafted by the City in the general format by the City as a convenience to the Parties only and shall not, by reason of such action, be construed against the City. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of the Contract.

2.5 Term. (10/08) Unless terminated earlier under the provisions of this Agreement, this Contract shall remain in effect during the Initial Term through design and implementation of the Project as well as the period for Services agreed to by the City and Contractor, including option years exercised at the City's discretion. Initial Term cannot exceed five (5) years. City Contracts can be no longer than ten (10) years total. In the event of default under this Contract, the happening of which shall give the non-defaulting party the option (upon the expiration without cure of any applicable cure period) to: (a) terminate in whole or in part this Contract or any related Task/Change Order, (b) seek remedies pursuant to this Contract (c) seek any other remedies in the Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract , or (d) any combination thereof.

2.6 Changes to Contract

2.6.1 Amendment/Modification of the Contract. (10/08) No provision of this Contract may be validly amended or modified unless such Amendment or modification is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. All changes that would permanently change any of provisions of this Contract shall be memorialized in the form of an Amendment as required. If the requirements for Amendment or modification of this Contract as described in this section are not satisfied in full, then such Amendments or modifications automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect.

2.6.2 Task Orders. (10/08) The City and Contractor agree that if the City requires additional

Services or Products, including Maintenance and Upgrades, it may submit a Task Order to Contractor. Task Orders are subject to the terms of this Contract. Agreed upon changes shall not be retroactive and will apply as of the effective date of the respective Task Order. Changes to a Task Order shall be done via the Change Order process, outlined below.

2.6.3 Change Orders to a Statement of Work or Task Order. (10/08) The City reserves the right to make changes, at any time to the Scope of Work, specifications, or schedules contained in a Statement of Work or Task Order in the form of a Change Order agreed to in writing by the Parties. Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall amend the Contract as needed or adjust the fee accordingly, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified fee.

2.7 Survival of Orders. (10/08) Task/Change Orders placed under this Contract are not required to expire or be terminated in synchronization with the expiration of this Contract, but shall survive the expiration of such until completion. In these cases all provisions of this Contract shall be considered active and in full force until the applicable Task/Change Orders reach conclusion. In no case shall a new Task/Change Order be placed by the City, or be accepted by Contractor after the expiration date of this Contract.

2.8 Delivery. (10/08) Contractor shall deliver the System and Products F.O.B. to the City's location at the time and place indicated on any Task/Change Order. Shipments will be complete and partial shipments will be avoided unless the City agrees in writing to the partial shipment in advance of such a shipment. The risk of loss or damage in transit shall be upon Contractor until Product is received by the City at the delivery site. Contractor shall furnish on-site or other assistance, as may be required to install the Product at no additional cost to the City, if required by the City and requested within the Task/Change Order. Acceptance shall not relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment for a Product prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor. In the case of the System, delivery of Products shall not be deemed to be complete until the System is available for commencement of the Acceptance Test.

2.9 Delivery Schedule. (10/08) Contractor shall use best efforts to deliver Product(s) and/or Services(s) on time, in accordance with the scheduled delivery date as set forth in an individual Task/Change Order. If Contractor delivers Product more than () days later than the scheduled delivery date as listed on an individual Task/Change Order, the City may cancel the Task/Change Order without penalty.

2.10 Written Notifications. (10/08) All written notifications and written Amendments shall be sent to the following:

For City of Portland:	For Contractor:
Name:	Name:
Title:	Title:
Address:	Address:
City, State:	City, State:
Copy to:	Copy to:

--	--

- 2.11 City Reporting Requirements. (10/08) The City is required to track certain types of contract data for reporting purposes. Items which the City must report on may include, but are not limited to, Subcontractor utilization, Minority, Women, and Emerging Small Business (M/W/ESB) participation and Subcontractor/Supplier Payment. The Contractor shall submit a Monthly Sub-consultant Payment and Utilization Report (Exhibit) reporting ALL subcontractors employed in the performance of this Contract. The City will enforce all diversity in workforce and M/W/ESB subcontracting commitments submitted by the Contractor in its Proposal.
- 2.12 Payment. (10/08) Unless subject to successful completion of an Acceptance Test or other payment milestone specified in any respective Task/Change Order, payment for the System and/or any Product shall be in accordance with the Payment Schedule attached hereto as Exhibit F. Payment shall be issued by the City net forty-five (45) days from receipt and acceptance of a proper invoice from Contractor. Contractor invoices must contain the Contractor's name and address; invoice number; date of invoice; Contract number and date; description of goods and/or Services; quantity, unit price, (where appropriate), and total amount; City required Reporting, if any, and the title and phone number of the responsible official to whom payment is to be sent.
- 2.13 Payment of Taxes/Contractor Shall Withhold. (10/08) Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations. Contractor shall also assure that any subcontractors shall comply with the foregoing obligations.
- 2.14 Independent Contractor/No Duty for the City to Withhold. (10/08) Contractor is a contractor independent of the City and, accordingly, no Task/Change Order for Services pursuant to this Contract is entered into as a joint venture, partnership, or agency between the Parties. No employment relationship is or is intended to be created between the City and any individual representing Contractor. During the term of this Contract, employees of Contractor and any authorized subcontractors shall at all times remain employees of Contractor or authorized subcontractors and ultimately shall remain under Contractor's sole control.
- 2.15 Assignment. (10/08) Neither Party shall assign, transfer, subcontract, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld, except that (a) either Party may assign to any corporate affiliate pursuant to any merger, consolidation or other reorganization, without the other Party's consent but upon written notice to the other Party, (b) in the event that the City's business needs change or the City enters into an agreement with a provider for outsourcing services, Contractor agrees that the City shall have the right to assign this Contract to a successor of all, substantially all, or specified area(s) of the City's business, including an outsourcing provider, provided such outsourcing provider operates the Software licensed hereunder expressly and solely for the City's

benefit, upon written notice to the other Party, and (c) Contractor may, without the other Party's consent but upon prior written notice to the other Party, assign its right to payment under this Contract or grant a security interest in such payment to any third party without requiring that the third party be liable for the obligations of Contractor under this Contract. All M/W/ESB subcontractors/suppliers identified in Contractor's proposals shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any M/W/ESB subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Purchasing Agent before such substitutions can be made. In the event that Contractor shall subcontract any work, assign any rights, or delegate any obligations under this Contract without the City's prior consent, Contractor shall remain fully responsible for the acts and omissions of its subcontractors at all levels, and their agents and employees.

2.16 Delegation of Obligations/Subcontractors. (10/08) Contractor shall not subcontract any work, assign any rights (including, without limitation, in connection with the sale of all or substantially all of Contractor's assets, stock, or the line(s) of business applicable to any Task/Change Order), or delegate any obligations under this Contract, cancel or change any previously approved subcontract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its subcontractors at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between Contractor and its subcontractors for goods and/or services authorized under this Contract. The City shall have the option to terminate any Task/Change Order for goods and/or Services, and promptly to receive a pro rata refund for fees paid for such goods and/or Services and obtain delivery of Source Code and Source Code Materials as set forth in this Contract, in the event that Contractor assigns its obligations to provide goods and/or Services under this Contract to any third party.

2.17 Warranties. Contractor and its subcontractors warrant as follows:

2.17.1 Disclosure and Assignment of Manufacturer's Warranties. (10/08) In all cases where Product or Services are covered by a manufacturer's warranty, Contractor will provide the City with a complete and accurate list of all manufacturer's Warranties pertaining to all Services or Products provided by Contractor. Contractor will assign to the City any Manufacturer's Warranty applicable to any respective Product or Service. Notwithstanding the foregoing, Contractor shall be held responsible by the City for correction to or replacement of the System or any of its components during the period of Warranty and Maintenance.

2.17.2 Equipment and Parts Warranty. (10/08) Contractor warrants that Equipment and parts will be new, the latest model and free from material defects in material and workmanship during the Manufacturer's Warranty Period when put into normal Use and service. If Contractor proposes to provide refurbished, reclaimed or remanufactured parts or Equipment to the City, Contractor shall request the City's acceptance in writing in advance of delivery and the City retains the right to accept or refuse the Contractor's use of refurbished, reclaimed or remanufactured parts. If the City accepts the use of refurbished, reclaimed, remanufactured parts or Equipment, Contractor warrants such Products have the same warranty and are subject to all the same provisions of this Contract as that of new and current Products. If the Contractor uses refurbished, reclaimed or remanufactured parts without the prior consent required by the City, the Contractor may be required, at the City's sole discretion, to replace such parts and equipment with new and current

manufactured equipment at Contractor's sole expense.

2.17.3 Warranty Against Planned Obsolescence and Reclaimed Parts & Equipment. (10/08) The Contractor warrants that at the time of Delivery of Products, it has no plans in the next 12 months for announcing a line of products to replace the ones delivered pursuant to this Contract or any plans that would result in reduced support for the product line delivered.

2.17.4 Industry Standards. (10/08) The System and all components of the System are compliant with all other generally accepted industry standards at time of any respective Task/Change Order.

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

2.17.5.1 Performance to Specifications. (10/08) The System, including all components and Upgrades supplied by Contractor shall operate in accordance with Acceptance Criteria and all Documentation during the Warranty Period.

2.17.5.2 All Necessary Materials. (10/08) The City has all necessary materials and that no other Equipment, Software, interfaces, applications, or other products and/or services are required to be used in conjunction with the System in order for the System to operate in accordance with the Acceptance Criteria and Documentation.

2.17.5.3 System Compatible. (10/08) The System is compatible with the City's existing data files and systems as may be applicable and identified at the time of a Task/Change Order, and shall run in accordance with the Documentation.

2.17.5.4 No Material Defects or Viruses/Illicit Code. (10/08) The System (A) is free of any defect in material of the media in which it is delivered; and (B) is free of any virus, Trojan horse, spyware, malware, or other program routine designed to erase, disable or otherwise harm the City's hardware, data or other programs that Contractor or any subcontractor to Contractor knew or should have known was contained in the Software or other code or program.

2.17.5.5 Illicit Code. (10/08) Contractor's Software and Third Party Software shall not:

- A) contain any hidden files that Contractor or any subcontractor knew or should have known were contained in the software or programming
- B) replicate, transmit, or activate itself without the control of an authorized person operating computing equipment on which it resides, unless requested or authorized by the Contract Manager
- C) alter, damage or erase any data or computer programs without the control of an authorized person operating the computing equipment on which it resides
- D) contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed under this contract, based on residency on a specific hardware configuration, frequency of duration of use or other limiting criteria (any of the foregoing

shall constitute “illicit code”)

2.17.6 Documentation Explains Use. (10/08) Contractor warrants that the Documentation shall explain the operation of the System in terms understandable by City Users of reasonable technical competence.

2.17.7 No Third Party Conflict or Infringement. (10/08) Contractor warrants the execution, delivery, and performance of this Contract and any Task/Change Order subject to this Contract shall not contravene the terms of any contracts with third parties or any third-party rights in any patent, trademark, copyright, trade secret, or similar right; and, as of the date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision.

2.17.8 Commencing of the Warranty Period. (10/08) Where Contingent Products are ordered and no Acceptance Test is required, the Warranty Period shall not commence until Acceptance by the City of all required or all Contingent Products. The City may, at its election, postpone Services in support of Products so as to coincide with Delivery and Acceptance of all Contingent Products. The City shall not incur any additional fees whatsoever for reordered or replacement Contingent Products.

2.18 Indemnification. (10/08) Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature (including all attorneys’ fees and costs), resulting from or arising out of the activities, errors or omissions of Contractor or its officers, employees, subcontractors, or agents, including intentional acts, under this Contract.

Contractor agrees to hold harmless and indemnify the City and its Affiliates against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the City or its Affiliates may be required to pay arising from Products and/or Services provided by Contractor under any Task/Change Order to this Contract.

2.19 Force Majeure

2.19.1 (10/08) In the event that either Party is unable to perform any of its obligations under this Contract (including any Task/Change Order(s) or loss of any Software licensed or developed hereunder) due to natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected Party (hereinafter referred to as a “Force Majeure Event”), the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, this Contract and/or any affected Task/Change Order shall immediately be suspended.

2.19.2 (10/08) If the period of nonperformance exceeds fifteen (15) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract or any Task/Change Order or any license granted hereunder.

2.19.3 (10/08) If delay in delivery due to a Force Majeure Event does not exceed thirty (30) days, such delays in delivery shall automatically extend the delivery date for a period equal to the duration of such events; any Warranty Period affected by a Force Majeure Event shall likewise be

extended for a period equal to the duration of such event so long as it does not exceed thirty (30) days.

2.19.4 (10/08) If delay in delivery due to Force Majeure Event is longer than thirty (30) days, the City shall have the right to terminate this Contract, a Task/Change Order, Maintenance agreement or any license hereunder upon written notice to Contractor, in accordance with this Section.

2.19.5 (10/08) If this Contract involves the acquisition of Equipment or Software that contains personally identifiable information and/or processes credit card transactions, a security breach of Contractor's system shall not be considered a Force Majeure Event.

2.20 Insurance and Bonding. (10/08) Work shall not commence until all insurance requirements listed below have been met and certificates have been approved by the City Attorney and filed with the Auditor. All required insurance must be issued by companies or financial institutions that are financially rated A or better and duly licensed, admitted and authorized to do business in the State of Oregon.

2.20.1 Insurance Certificate. (10/08) As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the City prior to or with the return of the signed contract. The certificates shall specify the City of Portland as additional insured and shall include a 30-day notice of cancellation clause (10 days for non-payment). There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance. If the insurance is canceled or terminated prior to completion of the Contract, Contractor shall provide a new policy with the same terms. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. Contractor must provide a letter of self-insurance if self insured. Failure to maintain insurance as required by this Contract may be cause for immediate termination of the Contract by the City. Contractor's insurance will cover damages excluded from any limitation of liability to the extent of its policy limits indicted herein.

2.20.2 Additional Insureds. (10/08) The coverage shall apply as to claims between insureds on the policy. The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

2.20.3 Insurance Costs. (10/08) Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

2.20.4 Required Coverage is as follows: (10/08)

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

injury arising from Contractor's work under this Contract.

2.20.4.2 Automobile Liability. (10/08) ☒ **Required** ☐ **Waived by City Attorney**
Contractor shall carry automobile liability insurance with a combined single limit of not less than \$ 1,000,000.00 (one Million U.S. dollars) each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by Contractor.

2.20.4.3 Workers' Compensation. (10/08) ☒ **Required** ☐ **Meets Exceptions in ORS 656.027** Prior to the performance of any work under a Contract awarded by the City, Contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the Contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the Contract.

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

2.20.4.4 Technology Errors and Omissions. (10/08) ☒ **Required** ☐ **Waived by City Attorney**

Liability insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the Services under this Contract will be maintained. The coverage shall be placed with an insurer with an AM Best Rating of A- or better and shall include the following coverage parts:

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

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

Such insurance shall include limits of coverage of the local currency equivalent of not less than USD \$ 1,000,000.00 (one Million U.S. dollars) and shall remain in effect for not less than three (3) years following the date of termination of this Contract. Evidence of coverage must be sent to the City for three years following termination of this Contract.

The coverage shall name the City as an additional insured and shall indemnify the City for loss for any errors or omissions on the part of the Contractor, its agents, officers,

employees, subcontractors or any other authorized person, regardless of any negligence or lack thereof.

The Insurance Policy shall also be endorsed as follows: The City of Portland, Oregon is named as an additional insured but only as respects the vicarious liability of such person or entity for the Wrongful Act of the Insured otherwise covered by this Insurance.

2.20.4.5 (10/08) Insurance Requirements for Subcontractors. Should Contractor subcontract any part of the Contract, Contractor will require those subcontractor(s), or affiliates if not covered under Contractor's insurance, to obtain and keep in force for the duration of the Contract, insurance equal to the minimum values indicated above. Prior to the performance of any work under this Contract, Contractor shall provide to the CITY AUDITOR'S OFFICE a certificate showing the required insurance including compliance with the workers' compensation law, ORS Chapter 656. If worker's compensation insurance is required by ORS Chapter 656, Contractor and its subcontractors shall maintain the required coverage for all subject workers for the entire period during which work is performed under this Contract.

2.20.5 Performance Bond. (10/08) ☐ **Required** ☒ **Not Required** Contractor shall maintain a performance bond in the amount of _____ percent (_____ %) of the value of this Contract in full force and effect throughout the Initial Term of the Contract and any renewals. The City shall accept only a performance bond furnished by a surety company authorized to do business in Oregon and who is duly listed in the United States Treasury List as published in the Federal Register or is otherwise approved by the City Attorney each in the amount of _____ percent of the Contract price unless otherwise specified in the Solicitation Document or such substitute security is approved by the City Attorney's office. The surety bond shall have the company's seal affixed to it, be signed by the surety's Attorney in Fact, and have attached the Power of Attorney for the Attorney in Fact. The City Attorney may waive the requirement of the corporate seal. The performance bond shall be forfeited to the City if Contractor fails to perform as required under the Contract.

2.21 Ownership of Property. (10/08) Contractor agrees the City will, upon completion of the Initial Term of this Contract, have full ownership of the System. Should the Contract be terminated prior to the completion of the Initial Term of the Contract, the City shall negotiate in good faith with Contractor to resolve the disposition of the System. Contractor warrants that, with the exception of property that is leased or subject to a properly perfected security interest, it shall at all times own Equipment and Software proposed for this Contract, with the exception of telecommunications services and buildings, and shall keep such property free and clear of any and all security interests, liens, charges, levies, assessments or encumbrances. Any Work Products produced or created by Contractor for the City shall be understood to be, to the fullest extent of the law, works made for hire unless the Parties have expressly agreed otherwise in writing.

2.22 Proprietary Rights. (10/08) Except Customizations, all trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights in or related to the Product or Service are and will remain the exclusive property of Contractor or its designees. City shall not decompile, disassemble, or otherwise reverse engineer the Software.

- 2.23 Return of Parties' Property. (10/08) When the Contract or any Task/Change Order placed pursuant to the Contract is terminated or expired, each Party shall return to the other all papers, materials, and properties of the other Party then in its possession. The City will retain one (1) copy of the documentation for the express purposes of public record archiving.

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

- 2.24 Financing of Property. (10/08) If Contractor finances any property, real or personal, that comprises any part of the System, the term of such financing shall not exceed the Initial Term of the Contract or any extension of the Contract except with prior written approval of the Contract Manager. If Contractor finances or leases any such property or equipment, Contractor shall ensure that any agreements ancillary to or supporting the principal lease or financing agreement (e.g., hardware, software, maintenance, insurance) are coterminous to the principal financing or leasing arrangement. In addition, if the Contract is terminated prior to the expiration of the Initial Term or any extension of the Initial Term, Contractor shall ensure that the City or any Successor Contractor shall have the right to terminate, renegotiate or be assigned any lease of property or equipment or ancillary agreement (other than, in the case of the City, any financing agreement or insurance).

- 2.25 Disclosure of Litigation or Financial Condition. (10/08) Contractor warrants and represents that there are no suits, actions or other proceedings – pending, or threatened – in any judicial or quasi-judicial forum that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will immediately notify the City if, during the term of the Contract or any extension of the Contract, Contractor becomes aware of any suits, actions or proceedings – pending or threatened – in any judicial or quasi-judicial forum that involve Contractor or any subcontractor and that will or may adversely affect Contractor's ability to fulfill its obligations under the Contract or extension of the Contract. For purposes of the disclosure requirement, any litigation, actions or other judicial or quasi-judicial proceedings that, in the aggregate, involve claims against Contractor totaling at least ten percent (10%) of the total amount of the Contract shall be presumed to adversely affect the ability of Contractor to fulfill its duties under the Contract. Contractor shall require all subcontractors to provide a similar warranty and representation based on an identical percentage of the subcontract amount.

- 2.26 Notice of Change in Financial Condition. (10/08) Contractor must maintain a financial condition commensurate with the requirements of the Contract. If, during the Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform, or changes the ownership or control, the City shall be immediately notified in writing. Failure to notify the City of such a change in financial condition or change in ownership or control is sufficient grounds for terminating the Contract.

- 2.27 Audits and Access to Records.

2.27.1 Records Retention. (10/08) Contractor shall maintain current financial records in accordance with professional accounting standards. Contractor agrees to maintain and retain supporting financial and Contract related documents during the term of the Contract and for a

period of three (3) years after the date of submission of the final billing or until the resolution of all audit questions or claims, whichever is longer. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by Contractor for a minimum of three (3) years for purposes of State of Oregon.

2.27.2 City Audits. (10/08) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services during the Records Retention period listed above. City Audits shall be conducted in accordance with generally accepted auditing standards. Contractor shall provide the City's internal auditor or external auditor, and their designees with a copy of all reports, including any management letters issued as a result of the specified audits.

2.27.3 Access to Records. (10/08) The City internal auditor or City external auditor, and their designees, shall be given the right, and the necessary access, to review the work papers of the Contractor audits if the City deems it necessary. Copies of applicable records shall be made available upon request.

2.28 Overpayment. (10/08) If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of Services is not efficient in accordance with Government Auditing Standards, or that the Services are not effective in accordance with Government Auditing Standards, the City may pursue remedies as provided under Early Termination of Contract and Remedies.

2.29 Confidentiality.

2.29.1 Maintenance of Confidentiality. (10/08) Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use Confidential Information exclusively for the City's benefit and in furtherance of the goods and/or services provided by Contractor. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such Confidential Information. Contractor shall (1) limit disclosure of the Confidential Information to those directors, officers, employees and agents of Contractor who need to know the Confidential Information in connection with the City Project/Network, (2) exercise reasonable care with respect to the Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use Confidential intellectual property of the City without the City's prior written consent.

2.29.2 Scope. (10/08) This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. This Contract shall not apply to Confidential Information which (1) is or later becomes part of the public domain without breach of this Contract and through no wrongful act of Contractor, (2) Contractor rightly receives from a third party, or (3) was developed independently by and was reduced to writing by

Contractor prior to the earlier of the date of this Contract or the date of any access or exposure to any Confidential Information. Contractor's obligations under this Contract shall survive termination.

2.29.3 Equitable Remedies. (10/08) Contractor acknowledges that unauthorized disclosure of City Confidential Information or misuse of the City System or Network will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

2.29.4 Contractor's Confidential Information. (10/08) During the term of the Contract, Contractor may disclose to the City, certain confidential information pertaining to Contractor's business ("Confidential Information"). Contractor shall be required to mark "CONFIDENTIAL" with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked or cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information at the time of disclosure or within a reasonable time thereafter. The City shall not be deemed to have breached this Section if (a) Confidential Information later becomes part of the public domain through no act or omission of the City; (b) is required to be disclosed under operation of law; or (c) the City lawfully receives Confidential Information from a third party with no breach of any duty of confidentiality.

2.29.5 Public Records Request. (10/08) Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. Subject to the following conditions, the City agrees not to disclose any information Contractor submits to the City that includes a written request for confidentiality and as described above, specifically identifies the information to be treated as Confidential. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

2.29.6 City's Obligation to Notify Contractor. (10/08) If the City receives a public records request for information that Contractor has marked and submitted in confidence, the City shall notify Contractor of the request. The City shall provide Contractor with written notice and a copy of the request. Contractor shall have five (5) business days within which to provide a written response to the City, either consenting to disclosure of the requested confidential information or explaining why the confidential information is exempt from disclosure under the Oregon Public Records Law or otherwise. If Contractor fails to submit a written response within the time period required, the City may make its own determination regarding disclosure of the information sought by the request. Whether or not Contractor submits any written response to the City, the City shall retain final discretion to determine whether to disclose the requested confidential information. If Contractor contends that the confidential information is exempt from disclosure, the City shall give Contractor at least five (5) days written notice prior to disclosing such confidential information to allow Contractor to pursue whatever legal avenues it deems appropriate.

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

2.29.7 Discovery of Documents. (10/08) In the event a party to litigation seeks discovery of information submitted by Contractor in confidence, the City will notify Contractor of the request. The City shall allow Contractor to participate in the response at its own expense. The City will comply with any effective order issued by the court having jurisdiction over the matter.

2.30 Dispute Resolution. (10/08) Contractor shall cooperate with the City to assure that all claims and controversies which arise during the performance of Contractor's Services under a Task/Change Order subject to this Contract and which might affect the quality of such Services will be resolved as expeditiously as possible in accordance with the following resolution procedure:

- A) Any dispute between the City and Contractor arising prior to completion of Contractor's services or the earlier termination of the Contract shall be resolved, if possible by the Bureau of Technology Services Project Manager or their designee on behalf of the City and on behalf of Contractor for resolution, if possible.
- B) If the Bureau of Technology Services Project Manager or the Project Manager's designee and Contractor are unable to resolve any dispute within three (3) business days after notice of such dispute is given by either party to the other, the matter shall be submitted to Bureau of Technology Services Chief Technology Officer on behalf of the City and on behalf of Contractor for resolution, if possible.
- C) Should any dispute arise between the parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that it will be submitted to mandatory mediated negotiation prior to any party commencing arbitration or litigation. In such an event, the parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the parties.

- D) Should an equitable solution not result from the forgoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract.
- E) Unless ordered by the City to suspend all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services or delivery of Products without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures and shall comply with any mutually agreed upon Task/Change Orders that the City may issue regarding the acceleration of all or any portion of the Products or Services. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute, in accordance with the provisions of the Project/Task/Change Order.

2.31 Termination. (10/08) The following conditions apply to termination of this Contract. The City, on thirty (30) days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.

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

2.31.2 Either party may terminate this Contract in the event of a Material Breach of the Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) days of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

2.31.3 City Termination for Cause. (10/08) In addition to Material Breach, the City may terminate this Contract for the following reasons, which constitute cause for purposes of this Section:

- A) Bankruptcy. The City may terminate this Contract if Contractor: (a) becomes insolvent, makes a general assignment for the benefit of creditors; or (b) 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, and such proceeding has not been dismissed within a sixty (60) day period; or (c) has wound up or liquidated, voluntarily or otherwise.
- B) Maintenance Default. The City may terminate this Contract if Contractor fails to provide Warranty or Maintenance services or Contractor has not cured its failure to provide Maintenance as provided and paid for in this Contract.
- C) System or Product of Software Performance Default. The City may terminate this Contract if the System or Product exhibits defects causing serious disruption of Use and/or repeated periods of downtime, over a continuous period of six (6) months or more.
- D) Software Codes. Inclusion of illicit code as set forth in Section 2.17 shall be considered a Material Breach of the Contract and no notice or cure period will apply.

In addition to any other remedy available to it under this Contract with respect to any such Material Breach, the City reserves the right to pursue any civil and/or criminal penalties available to it against a Contractor, including without limitation the Deceptive Trade Practices & Consumer Protection Act, the Computer Crimes Law and any other remedy at law or equity.

2.31.4 Termination for Force Majeure. (10/08) Either party may terminate this Contract due to a Force Majeure event as set forth in this Agreement.

2.31.5 City Termination for Contractor Breach. (10/08) In the event of termination by the City due to a Material Breach by Contractor, then the City may complete the Project either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to the City the amount of the reasonable excess. In the event of any Material Breach by Contractor, which Breach shall not have been cured as agreed to between the Parties, the City shall have the ability to pursue the City's rights at law.

2.31.6 Contractor Termination for City Breach. (10/08) In the event of Material Breach of this Contract by the City, then Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in section 2.12.

2.32 Waiver. (10/08) No waiver or any breach of Contract shall be held to be a waiver of any other or subsequent breach of this Contract.

2.33 Remedies. (10/08) The remedies provided in this Contract are cumulative, and may be exercised concurrently or separately. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

2.33.1 Software. (10/08) In the event of Software failure as set out in the General Provisions above, the City shall have the right to one or more of the following non-exclusive remedies: (A) Contractor provide engineering support on site at the City's location with Source Code for the Software, if necessary for resolving the problem causing the breach. The City has the option to assign one or more of its full time employees to assist Contractor's engineer(s) in repairing the problem. Contractor retains copyright and all ownership rights to the Source Code and any changes made during this on-site period if such repair involves Software. The City agrees to maintain confidentiality of the Source Code and all residual know-how and knowledge that may be transferred to City employees as a result of this effort, however, the City shall be entitled to use the subject Software source code for purposes of error correction or operations continuity, at the City's sole discretion if such repair involves Software; or (B) the City may terminate this Contract in its entirety or solely as to the affected Task/Change Order and exercise the remedies included in this Contract/Agreement, in the City's sole discretion.

2.33.2 Maintenance. (10/08) In addition to any other remedies provided for in this Contract or at law or in equity, the City shall have the right to obtain one or more of the following non-exclusive remedies in the event of any Material Breach involving Maintenance under this Contract by Contractor: (A) suspension of contested payment obligations accruing during the period for which Contractor is in Material Breach; (B) termination of this Contract in its entirety as set forth in Termination, or of any affected Task Order for Maintenance Request, in the City's

sole discretion (C) a refund of all aggregate fees for Maintenance Requests paid by the City to Contractor for the period beginning from the date of this Contract and ending on the date of the occurrence of the Material Breach.

- 2.34 Severability. (10/08) Any section of this Contract which is held or declared, void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Contract and the remainder of this Contract shall continue to be binding and of full force and effect. This Contract shall be binding upon and inure to the benefit of the City and its successors and assigns.
- 2.35 Rolling Estoppel. (10/08) Unless otherwise notified by Contractor, it shall be understood that the City shall have met all its obligations under the Contract. The City will be conclusively deemed to have fulfilled its obligations, unless it receives a deficiency report from the Contractor by the fifteenth (15th) day of the month following the month of the alleged deficiency and the Contractor identifies the specific deficiency in the City's fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have impacted a specific performance requirement of the Contractor.
- 2.35.1 (10/08) The Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in Project timetable, the standards of performance under the Contract or the Contract price, if the Contractor knew of that problem and failed to include it in the applicable report.
- 2.35.2 (10/08) In the event the Contractor identifies a situation that is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report should contain the Contractor's suggested solutions to the situation. These suggestions should be in sufficient detail so that the City's Project Managers can make a prompt decision as to the best method of dealing with the problem and continuing the Project in an unimpeded fashion.
- 2.35.3 (10/08) If the problem is one that allows the Contractor (within the terms of the Contract) to ask for changes in the Project timetable, the standards of performance, the Project price or all of these elements, the report should comply with the Task/Change Order procedure.
- 2.36 Business License. (10/08) Contractor shall have or obtain a City of Portland business license as required by Chapter 7.02 of the Code of the City of Portland prior to beginning work under this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this contract. Failure to be in compliance may result in payments due under this Contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.
- 2.37 EEO Certification. (10/08) Contractor shall be certified as Equal Employment Opportunity Affirmative Action Employer as prescribed by Chapter 3.100 of the Code of the City of Portland and maintain their certification throughout the term of the Contract.
- 2.38 Non-Discrimination in Benefits. (10/08) Contractors must provide and maintain throughout the term of the Contract benefits to their employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 3.100 of the Code of the City of

Portland. The required documentation must be filed with the Bureau of Purchases, City of Portland, prior to contract execution.

- 2.39 Sustainability. (10/08) Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these Principles into their scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable products or services into their work performance wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.
- 2.40 Packaging. (10/08) All packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.
- 2.41 Permissive Cooperative Procurement. (10/08) Pursuant to ORS 279A.215, as additional consideration for this Contract, Contractor agrees to extend an option to purchase any Product, Equipment or Services covered under this Contract at the same prices as are specified in Exhibit G for purchase by the City, under the same terms and conditions to all regional public agencies. Each participating agency will execute its own Contract with the Contractor for its requirements.
- 2.42 Survival. (10/08) All obligations relating to confidentiality; indemnification; publicity; representations and warranties; proprietary rights; perpetual licenses, including licensing obligations as stated in this Contract or any applicable Task/Change Order; limitation of liability; and obligations to make payments of amounts that become due under this Contract or subsequent Task/Change Orders prior to termination (except that payments for services not performed by the date of termination shall be prorated) shall survive the termination or expiration of this Contract or any respective Task/Change Order and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City. Nothing in this Contract shall alter, modify, or supersede the content and survival of such provisions, except as otherwise expressly agreed to in writing by the Parties and with the prior written approval of the City Attorney's office.

SECTION 3 SOFTWARE LICENSE SPECIFIC PROVISIONS.

- 3.1 Application. (10/08) In addition to the General Provisions provided in Section 2, these provisions shall apply to all Software, including Updates, Upgrades, Software Enhancements, Customizations, or Software preloaded into Equipment. These Provisions shall not cover any Third Party Software supplied by Contractor except where specifically addressed. Should any ambiguities or conflicts arise between this section and Section 2 General Provisions, this section shall prevail over Section 1 in matters of Software, Upgrades, Enhancements, Customizations,

and Bug Fixes.

- 3.2 Grant of License. (10/08) Contractor hereby grants the City a non-exclusive, perpetual, irrevocable license to use, access, and operate all Software components of the System, or as may be specified on any respective Task/Change Order, whether or not Contractor is the original manufacturer of the Software, including that which may be preloaded on any Equipment. The City owns the perpetual license regardless of whether or not the City purchases maintenance and support. Contractor shall be responsible for effecting licensure of all Third Party Software required for the System, which shall be subject to the provisions of this Contract. Except as otherwise expressly provided in this Contract or in any applicable Task/Change Order, Contractor grants the right to use, access and operate the Software without restriction, as may be applicable, to any number of City Users, geographic area, market, location, duration, CPU, site, MIPS, or other measurement or platform restrictions, including platform operating systems. If the Software is permanently installed on the hard disk or other storage device of any computer (other than a network server) functioning as a component of the System and one person uses that computer more than eighty percent (80%) of the time it is in use, then that person may also use the Software, subject to the provisions of this Contract, via remote access, on a portable or home computer or other handheld device. In the event that any such person is unable to perform duties or is replaced for any reason whatsoever, all rights and privileges granted in this Contract shall apply to substitute/replacement personnel.
- 3.3 Copies. (10/08) The City may reproduce the Software and Documentation, and any computer based training modules (“CBTs”), if applicable, provided that each copy thereby produced shall be marked with Contractor’s proprietary markings as delivered to the City. Unlimited copies of Software may be used for testing, including testing within a City lab, or other lab as agreed to between the Parties, on a mirrored server for purposes of redundancy, back up, archive, and disaster recovery purposes and in such manner as may be necessary to facilitate the continuation of the City’s business operations.
- 3.4 Escrow of Source Code. (10/08) The escrow of Source Code for the Software shall be governed by a separately executed Source Code Escrow Agreement, the terms and conditions of which shall be agreeable to the City and which shall be incorporated and attached as Exhibit B.
- 3.4.1 (10/08) Within thirty (30) days of the Acceptance Date, Contractor shall, at its own expense deposit, with an escrow agent acceptable to the City, a complete copy of the Source Code for the Software and all current modifications and Upgrades, including Third Party Software. All escrow fees shall be paid by Contractor.
- 3.4.2 (10/08) Contractor covenants to the City that Contractor will continue to promptly deliver to the Escrow Agent all revisions, corrections, Updates, or other modifications to all versions of the Source Code (the “Changes”) so that the Source Code held in escrow constitutes a machine-readable program of the most current release of the Software, as well as any licensed version which may be in use by the City. Contractor shall promptly notify the City in writing that the Changes have been made and the Escrow Agent has been provided with all such Changes. For convenience, the Documentation segment of the Source Code may be placed in machine-readable form or in a form suitable for photocopying.
- 3.4.3 (10/08) Upon release of the Source Code pursuant to the Escrow Agreement, the City shall

have the additional right to modify the Source Code. The rights provided for in this Contract are in addition to those granted to the City as licensee.

- 3.5 Ownership. (10/08) Contractor shall retain all ownership rights, including trademarks, patents, copyrights, and other forms of intellectual property, in pre-existing or independently developed Software.

3.5.1 (10/08) Title to all tangible personal property, including title to the medium or media of delivery of the Contractor Software, shall vest in City upon delivery.

- 3.6 Credit for Technology Migration.

3.6.1 (10/08) The City shall have the right, but not the obligation, to retire any existing Software in connection with a technology migration. If the City exercises this right, Contractor shall credit the City's account with one hundred percent (100%) of fees paid in advance for any Software retired and replaced. The credit shall be applied toward the fee otherwise owing for acquisition of the new Software.

3.6.2 (10/08) If the City licenses Software for installation on a particular hardware platform, and such Software is available on multiple hardware platforms, if the City elects to migrate to another hardware platform, the City will notify Contractor of the City's intent to migrate such Software and Contractor will assist the City with the migration at no additional licensing or other cost to the City. Contractor shall promptly deliver to the City a version of such Software appropriate to the platform to which the City wishes to migrate and the City will cease to use Software licensed on the initial platform and either (a) return such Software and Documentation therefore to Contractor; or (b) certify destruction of such Software and Documentation, as may be mutually agreed to by Contractor and the City, except that the City may retain one back up copy for archive purposes.

3.6.3 (10/08) Unless otherwise agreed to by the City and expressly stated in writing in the Task/Change Order for the System or any subsequent Task/Change Order, cessation of use of any Software/Product customized or developed by Contractor for the City under this Contract shall not require return of such Software/Product to Contractor by the City. Contractor shall gain no right whatsoever in any such Software/Product due to the City's cessation of use.

- 3.7 Substitution of Software at No Charge. (10/08) In the event that Contractor ceases to provide Maintenance for any standard Software, Contractor shall substitute functionally similar new Software, which shall conform in all aspects to the Acceptance Criteria and shall in no way degrade performance or functionality of the System, at no additional cost to the City.

- 3.8 Infringement Indemnity. (10/08) Contractor shall, at its own expense, hold harmless, indemnify, and defend the City, its directors, officers, employees, agents and Affiliates from and against any and all claims, demands, damages, liabilities, losses, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged violation or infringement by the Software of any proprietary right of any person whosoever, including any copyright, patent, trade name, trademark, or misappropriation of the trade secrets of any third party. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or

compromise. No settlement that prevents the City's continuing use of the Software/Products shall be made without the City's prior written consent. (B) If any third party claim causes the City's use of the Software to be endangered, restricted or disrupted, Contractor shall (i) cause the Software to be replaced, at no additional charge, with a compatible functionally equivalent and non-infringing product; (ii) cause the Software to be modified to avoid the infringement; (iii) obtain a license for the City to continue using the Software for the term of this Contract and pay any additional fee required for such license; or (iv) if, after Contractor uses all due diligence or standard of care none of the foregoing alternatives is possible, Contractor will terminate the license and refund to the City license fees actually paid by the City and any direct damages documented by City for the affected Software and Documentation.

3.9 Security. (10/08) Contractors providing or having access to data containing City confidential or personally identifiable information (as defined in the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628) must maintain and demonstrate compliance with the following:

3.9.1 (10/08) Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628. Specifically Contractors must develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal information, including disposal of the data. Contractors must also provide immediate notification to the City of a data security breach (as defined) and in cooperation with the City, provide notice to affected consumers. Any costs or fees incurred by the City due to Contractor's data breach, including but not limited to notification, consumer credit reports or fines by the Department of Consumer and Business Services, shall be reimbursed to the City by Contractor.

3.9.2 (10/08) City of Portland, Bureau of Technology Services Security Standards. Specifically Contractors must comply with Technology Services, Information Security Administrative Rules 2.01, 2.02, 2.08, 2.12 and 2.15. These rules are located at: <http://www.portlandonline.com/auditor/index.cfm?c=26821>

Additionally, any Contractor who provides or has access to Software which process and /or interacts with credit/debit card information must also be compliant with the following:

3.9.3 (1/09) Payment Card Industry- Data Security Standard (PCI-DSS). The most current version is 1.2. These standards are maintained at www.pcisecuritystandards.org

SECTION 4 MAINTENANCE SPECIFIC PROVISIONS - (10/08) ☒ Required ☐ or Waived

4.1 In addition to the General Provisions provided in Section 2, these provisions shall apply to all Maintenance and Repairs to the System, including any Software, Equipment, and Product. These provisions shall cover any Third Party Software supplied by Contractor as components of the System. Should any ambiguities or conflicts arise between this section and Section 1 General Provisions, this section shall prevail over Section 1 in matters of Maintenance and Repair.

- 4.2 Term. (10/08) Contractor's obligations in connection with Maintenance shall be for thirty six months, commencing on the date of expiration of the Warranty Period. The City shall have the option to renew Maintenance support for 12-month periods as long as this Contract is in effect, at the price for annual Maintenance support set forth in this Contract. If the City does not renew, Maintenance shall automatically terminate as of the expiration date of the then current Maintenance term.
- 4.3 Services Included. (10/08) During the Warranty Period and any period of Maintenance, Contractor shall provide solutions, changes and corrections to the System as required to keep the System conforming in all material respects to the Acceptance Criteria and all applicable Documentation, and to correct reported problems that are replicated and diagnosed by the City as defects or Errors in the System. Services shall include the following:
- 4.4 Response. (10/08) Contractor's support specialists shall respond to a Maintenance Request from City within the times specified in this Contract. Such response times shall be measured from the time a City contact requests support.
- 4.4.1 Preventative. (10/08) Maintenance shall include preventative services and tools for the System such as, without limitation, (A) the development, release and assistance in installation of Upgrades which are designed to prevent operational errors, bugs, viruses, and the like; and (B) the monitoring, queue management, evaluation, or any other similar diagnostic applications or tools, and assistance in the installation and operation of same.
- 4.4.2 Repair. (10/08) Within the time specified herein, Contractor shall repair all errors that have been identified by Contractor or by the City in Maintenance Requests, by (A) if Software, providing patches on diskette, CD ROM or by download or electronic mail; or (B) if Equipment, dispatching a repair team, or authorizing items to be sent to Contractor repair facilities as applicable in which case Contractor shall provide backup Equipment as a hot swap pending repair and/or replacement of the defective component; Contractor shall provide additional or supplementary new Operating System Software code, loaner Equipment or reasonable workarounds to assist the City in reducing the impact of such failure to the City's operations. Contractor shall replace defective Software that cannot be repaired. Contractor shall replace defective Equipment with like equipment if the defect is non-repairable, and or repair costs would exceed the then depreciated value of the Equipment, less any trade-in value. In the event that neither replacement nor Repair can be made, the remedies, as stated within this Contract, at the City's sole discretion shall apply.
- 4.4.3 (10/08) Telephone Helpline/Staffing. During the Coverage Hours Contractor shall maintain a no-cost, local or toll-free long-distance telephone hot-line for support of the System. Contractor shall staff the hot-line with competent technical consultants who shall be trained in and thoroughly familiar with the System and with the City's applicable configuration. Contractor's technical staff shall be certified by applicable governmental or regulatory authorities, if such certification is required by law or regulations. Telephone support and all communication shall be delivered in English.
- 4.5 New Releases/Upgrades. (10/08) In the event the Software is upgraded, modified, or enhanced, including interim Updates, block releases, patches or fixes of major or minor bugs, Contractor shall automatically provide such Upgrades, Updates, changes, enhancements, or fixes to the City

at no additional cost. The Maintenance cost under this Contract is intended to include those updates/upgrades listed above and therefore will remain unchanged and will not be increased due to such Upgrades, Updates, enhancements, or fixes.

- 4.6 Training. (10/08) At the City's request, Contractor shall provide the City on-site training in connection with Upgrades or major repairs that change the functional operation of the System or any Software or Equipment component whether repair or alteration is a permanent or interim modification. Training shall be provided at no cost to the City and a time and location convenient to the City's business operations and staff.
- 4.7 Version Support. (10/08) If the City elects not to install any Software or Product Upgrade, Contractor shall, at the City's request, maintain the ability to support up to two (2) earlier versions of the Product(s) in operation. Contractor shall provide the City with at least twelve (12) months prior written notice, before discontinuing Maintenance in support of Product(s) currently in use by the City. After such discontinuation, the City may obtain back-level support upon payment of a fee that shall not exceed one hundred and ten percent (110%) of the annual Maintenance fee for the most current version of the component Product.
- 4.8 Redundant Systems. (10/08) Unless otherwise expressly stated in a Task/Change Order, Contractor shall provide Maintenance for a redundant Systems/Product on the exact same basis as for a primary System /Product. All rights, obligations, warranties, and other Services which apply and extend to a primary System/Product shall apply and extend to an equal extent to a redundant System/Product.
- 4.9 Other Standard Services. (10/08) Contractor shall, at no additional cost to the City, provide other standard services which Contractor offers to its customers generally or as otherwise described in this Contract or in a specific Task/Change Order.
- 4.10 Special and Mission Critical Services. (10/08) Unless a Task/Change Order specifies to the contrary, any Product that would be designated or deemed as a Mission Critical Product shall be subject, in addition to the terms and conditions set forth elsewhere in this Agreement, to the special terms and conditions set forth in Section 3. Any other special terms and conditions for Maintenance which are set forth in any respective Task/Change Order also shall apply with respect to the Products to which the Task/Change Order pertains.
- 4.11 Severity Level, Escalation, and Response Time. (10/08) Unless otherwise specified in a particular Task/Change Order, Contractor shall provide Maintenance as outlined in this section under the response and resolution times set forth for specific severity levels in the table below. Regardless of Service specifications in a subsequent Task/Change Order, Contractor shall, at a minimum, respond timely to Maintenance Requests by, depending upon the nature of the Error identified, diagnosing the problem on-line; assisting over the telephone; sending patches, code fixes or workarounds; replacement of any defective System, Equipment, Software or Product(s), provide loaner Product, installation and testing of the Software and Equipment; or, if necessary, sending personnel to the City's site to deliver Maintenance Service in person. In the event of an Error, the City shall have direct access, without prior escalation, to competent technical consultants who shall be trained in and thoroughly familiar with the Software, Equipment, or Product and with the City's applicable configuration. Should remote access be required, Contractor will follow all City policies regarding such including completing a Remote VPN Access Form, as may be revised.

The Remote VPN Access Form will be provided by the City upon Contractor Request.

Severity Levels of Errors or Defects

Level	Definition	Response Commitments	Resolution Commitments
1	Critical function is inoperative, causing significant impact to business operations, and no work-around is available, or errors or defects that cause significant amount of data to be lost.	Response Time shall not exceed 1 hour. Contractor shall submit progress reports outlining the status of resolution, at least once every 2 hours thereafter, unless the Parties agree to written progress reports at some other interval.	Resolution Time shall not exceed 8 business hours.
2	(a) Non-critical function or overall performance is materially impaired; or (b) Critical function is impaired but temporary work-around is available.	Response Time shall not exceed 2 hours (counting hours around the clock). Contractor shall submit progress reports at least once every 8 hours thereafter, unless the Parties agree to progress reports at some other interval.	Resolution Time shall not exceed 3 Calendar Days.
3	A problem arises which does not materially impair the City's essential operations	Response Time shall not exceed 1 Calendar Day.	Resolution Time shall not exceed 15 Calendar Days; or if Software, the next Upgrade is scheduled to be released within 30 days of the Problem Report, then at the subsequently scheduled release.
4	The City requires information or assistance about product capabilities or installation configuration.	Response Time shall not exceed 1 business day.	Restoration not necessary as no defect exists.

In the event that Contractor fails to resolve a problem within the time period set forth in Section 4, the following terms and conditions shall apply:

<u>Failure Level</u>	<u>Contractor's Obligations</u>
<u>Severity 1</u>	Upon the City's notification to Contractor of Contractor's failure to resolve a Severity 1 Error or defect within the resolution time set forth in the previous table, Contractor shall immediately provide expert personnel to resolve the problem, either on-site or by means of secure remote access, at City's sole option. All costs incurred in connection with on-site or remote support shall be borne by Contractor. Contractor shall maintain such expert support until the Error or defect is repaired to the satisfaction of the City. In the event that the failure is not resolved within twelve (12) hours from the time of the City's notification, City may deem Contractor in Material Breach of its obligations under this Contract.
<u>Severity 2</u>	Upon the City's notification to Contractor of Contractor's failure to resolve a Severity 2 Error or defect within the resolution time set forth in the previous table, Contractor shall immediately provide expert personnel to resolve the problem, either on-site or by means of secure remote access, at City's sole option. All costs incurred in connection with on-site or remote support shall be borne by Contractor. Contractor shall maintain such expert support until the Error or defect is repaired to the satisfaction of the City. In the event that the problem is not resolved within ten (10) days from the time of the City's notification, the City shall be entitled, at the City's option, to (a) continue using the System until resolution is achieved, during which time Maintenance shall be at no charge or; (b) require that Contractor replace the System, Equipment, Software, or Product; or (c) return the System, Equipment, Software, or Product to Contractor at Contractor's cost, and receive a refund of all costs paid by the City including the annual Maintenance fee in addition to any other remedies to which the City may be entitled.
<u>Severity 3</u>	Upon the City's notification to Contractor of Contractor's failure to resolve a Severity 3 Error or defect within the resolution time set forth in the previous table, the Contractor shall immediately provide expert personnel off-site to resolve the Error or defect. All remote access and off-site assistance shall be at no additional cost to the City. If Contractor cannot resolve the Error or defect off-site within five (5) days after the City's notification, Contractor shall immediately provide a sufficient number of expert personnel, (using remote access via a City-approved secure methodology), on an around-the-clock basis to resolve the problem within 48 hours. If the City elects, the City may also require Contractor to provide simultaneous on-site support. Contractor shall maintain such support until the problem is resolved to the satisfaction of the City. However, in the event Contractor's solution is a work-around or patch, the use of which, in the City's sole opinion, adversely impacts the City's business operations, Contractor is required to provide a final

resolution to the City's satisfaction.

In the event that the Error or defect is not resolved within thirty (30) days from the time of the City's initial notice of failure to resolve the Error or defect, the City is entitled, at the City's option, to (a) continue using the System until resolution is achieved; (b) require Contractor to replace the System or the failed component; or (c) return the System. Equipment, Software, or Product, at Contractor's cost, and Contractor shall promptly refund to the City all costs including the annual Maintenance fee paid by the City, in addition to any other remedies to which the City may be entitled.

- 4.12 Failure to Provide Maintenance. (10/08) In addition to the City's rights and remedies as set forth in the table above, Contractor shall pay the City a percentage or provide a refund of the annual Maintenance Fees for the System under the current year of Maintenance, calculated as follows:

Maintenance Fee Refund Schedule

Status of Maintenance Problem	Period of Failure (following Restore Time Period)	Percentage Refund of Annual Maintenance Fee
Severity Level 1 or 2	0 to 8 hours	17%
	9 to 16 hours	34%
	17 to 24 hours	51%
	25 to 32 hours	68%
	33 to 40 hours	85%
	41 to 48 hours	100%
Severity Level 3	0-1 days	20%
	2-3 days	50%
	4-5 days	75%
	6-7 days	85%
	8-9 days	95%
	9-10 days	100%

For the purposes of this Section, the term "Failure" means the partial or complete inability of the System to operate in accordance with the Acceptance Criteria, or Documentation and "Severity Level" means the level at which the City's business operations are adversely affected by the Failure of the System, as defined in the first table titled Severity Levels of Errors or Defects.

- 4.13 Access. (10/08) Contractor agrees that Contractor's physical or remote access to the City facilities shall be subject to the security interests and controls necessary to protect public property, and the City shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or systems.

SECTION 5 ACCEPTANCE TESTING

- 5.1 Right to Perform Acceptance Testing. (10/08) Prior to Accepting the System, the City shall have the right to perform Acceptance Testing. Contractor shall cooperate with the City in the development of Acceptance Criteria and the Acceptance Test that shall codify and set forth the location, date, and other specifications of the test. The Acceptance Criteria shall be attached as Exhibit C to this Contract. The Acceptance Test Plan shall be attached as Exhibit D.
- 5.2 Procedure and Timetable. (10/08) Unless otherwise specified,
- 5.2.1 The City shall commence the Acceptance Test no later than () days after Delivery of the System;
- 5.2.2 Contractor shall provide, at no additional cost, reasonable and appropriate support, assistance, and consultation regarding the System in order to facilitate Acceptance Testing;
- 5.2.3 Acceptance Testing shall not exceed thirty (30) days; and The City will make all reasonable efforts to complete the Acceptance Test within the time period specified. If the Acceptance Test is successful the City shall issue a Certificate of Acceptance, a sample of which is attached as Exhibit E.
- 5.3 Failure of Acceptance Test. (10/08) The City will notify Contractor if the System or a portion of the System, fails to pass an Acceptance Test and will specify in reasonable detail the identified failures and possible reasons for failure. After City's notification, Contractor shall correct the System, or the affected portion, within 10 days and notify the City that the Correction has been completed. After Contractor's Correction notification, the City shall perform a Second Acceptance Test. If the System, or portion of the System, fails to pass the Second Acceptance Test, the City shall notify Contractor in writing, and the City may, in its sole discretion: (a) terminate the Contract or Task/Change Order with no further liability; (b) request Contractor to replace the System or defective portion of the System at no additional cost to the City, c) request Contractor make further corrections to prepare for retesting again; (d) accept the System at a reduced cost to be negotiated between the Parties, or (e) issue an Acceptance Certificate entitled "Acceptance with Exception(s)."

SECTION 6 PUBLIC CONTRACTING

- 6.1 Public Contracts. (10/08) Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A, 279B and 279C require every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this Contract, as applicable:
- 6.1.1 (10/08) Pursuant to ORS 279B.220, on every public contract, the contractor shall make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the Contract; shall pay all contributions or amounts

due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

6.1.2 (10/08) Pursuant to ORS 279B.230(1), in every public contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

6.1.3 (10/08) Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

6.1.4 (10/08) Pursuant to ORS 279B.235(1), persons may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or b) for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

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

SECTION 7 TRAVEL - ☒ Required ☐ or Waived

7.1 Reimbursement. (10/08) Contractor may be reimbursed, upon advance written approval by authorized City personnel, for certain expenses incurred in connection with personnel assigned to provide services for the City on the City's Site. All invoices shall be accompanied by original receipts and any additional backup that may be appropriate, and required by any subsequent Task/Change Order. Reimbursement will be made based on the following guidelines:

7.2 Commercial Air Travel (10/08) Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. The City shall reimburse Contractor for one round trip to the subject work location, unless otherwise agreed to by the City in writing. When possible, air travel arrangements should be reserved at least seven (7) to fourteen (14) days in advance. Direct billing for commercial air travel is NOT permitted; however, City may elect to arrange travel reservations on behalf of Contractor personnel. Weekend travel is not reimbursable, unless otherwise agreed to by the City's Project Manager in writing. In the event weekend travel is

reimbursed, such reimbursement shall be made based on an amount up to and in lieu of any authorized per diem amounts and, if applicable, any other daily expense reimbursement.

- 7.3 Rental Cars - Surface Transportation. (10/08) Vehicle rental will be reimbursed based on a minimum ratio of one (1) compact auto per two (2) Contractor personnel. Reimbursement for vehicle rental will not be approved for Contractor personnel falling below that ratio. Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. City does not assume any liability of any type in connection with rental vehicles reserved or operated by contractor personnel. Direct billing for rental vehicles is not permitted. If the City's Project Manager elects to provide a per diem for auto rental, such per diem shall be the same per diem as allowed for City employees.
- 7.4 Lodging. (10/08) Contractor shall arrange for their own lodging if required, and approved in writing by the City. The City will reimburse Contractor per individual for a daily lodging expenses based on GSA per diem rates; such per diem shall be the same per diem as allowed for City employees. GSA per diem rates can be found at the U.S. General Services Administration website: <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>
- 7.5 Per Diem. (10/08) The City will provide Per Diem for each full day (eight hours) worked for Contractor personnel assigned to deliver services. The per diem rate will be the same as the one published on the U.S. General Services Administration website, identified as the Meal and Incidental Expenses (M&IE) for the Portland, Oregon area. Per Diem includes the following expenses:
- meals
 - laundry
 - tips and gratuities
 - communications for personal reasons
- 7.6 Personal Entertainment. (10/08) Expenses incurred for personal entertainment while traveling on the City business is not reimbursable. Personal entertainment includes items such as in-room movie charges, sightseeing, attendance at sporting events, reading materials, birthday gifts, haircuts, etc.

SIGNATURE PAGE

(10/08)

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

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

CITY OF PORTLAND (CITY)

CONTRACTOR NAME (CONTRACTOR)

APPROVED AS TO FORM:

By: _____
City Attorney Date

By: _____
Printed Name

By: _____
Purchasing Agent Date

By: _____
Signature Date

Exhibit A
Statement of Work No.

Schedule A-1

Statement of Work No. _____

Roles and Responsibilities

[Roles and Responsibilities as mutually agreed to shall be attached hereto and incorporated herein.]

Schedule A- 2
To
Statement of Work No. _____

Change Order Request Form

Date Requested:	Date Needed:
Requested By:	Priority:

Change Type

☐	Add
☐	Remove
☐	Modify

Describe the change(s):

Additional Documentation: (file path and name)

Analysis

Not-To-Exceed Cost:	Schedule Impact:
---------------------	------------------

Other than the changes specifically noted above, all other portions of the Contract are in full force and effect.

Approval

Date:	Date:
City of Portland	Contractor, Inc.
Signed:	Signed:
Title:	Title:

Schedule A- 3
To
Statement of Work No. _____

Status Report for Services Provided by Contractor

Week Ending _____

1. Key Status Indicators:

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

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

<i>Activity</i>	<i>Comment(s)</i>

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

<i>Activity</i>	<i>Comment(s)</i>

4. Major Activities Planned For Next Week:

<i>Activity</i>	<i>Comment(s)</i>

5. Status of Key Team Deliverables:

<i>Activity</i>	<i>Comment(s)</i>

6. Major Issues Requiring Immediate Attention:

<i>Issue</i>	<i>Resolution</i>
--------------	-------------------

7. Weekly Summary of Performance

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Exhibit B
Agreement for Escrow of Source Code

[Attach Escrow of Source Code Agreement which shall be attached hereto and incorporated herein, following review by The City of Portland Bureau of Technology Services and execution by the City, the Contractor, and the Escrow Agent.]

Exhibit C
Acceptance Criteria

[Acceptance Criteria shall be reviewed jointly by the City's Project Manager, technical experts and Contracts. Upon Acceptance by the City's Project Manager, technical experts and Contracts, Acceptance Criteria shall be attached hereto and incorporated herein.]

Exhibit D

Acceptance Test Plan and Acceptance Test

[The Acceptance Test shall be reviewed jointly by the City's Project Manager, technical experts and Contracts. Upon Acceptance by the City's Project Manager, technical experts and the Bureau of Technology Services, the Acceptance Test shall be attached hereto and incorporated herein.]

Exhibit E

**Certificate of Acceptance
[Sample]**

**CERTIFICATE OF ACCEPTANCE
(10/08)**

On this day of , 200 , the City certifies Acceptance of (name of System: state combination of Products therefore, if applicable), in accordance with that certain Contract for Procurement of a System dated as of _____ (“the Contract”). This Certificate of Acceptance is issued subject to and in accordance with the Contract, all defined terms having the meanings as set forth in the Agreement, and without prejudice to any claims which subsequently may arise in connection with defects in the System (*or combination of Products therefore*) described herein.

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

Signature: _____

Name
(printed): _____

Title: _____

Date: _____

Exhibit F

PAYMENT SCHEDULE

[Attach Payment Schedule which shall be attached hereto and incorporated herein, following review by City of Portland Bureau of Technology Services.]

Exhibit G

Software, Equipment, Parts and Labor Price Sheet

Item	Category	%Discount from list	Net Price
------	----------	------------------------	-----------

APPENDIX A

Contractor shall observe all applicable state and local laws pertaining to public contracts including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules, ORS Chapters 279A, 279B and 279C require every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this contract, as applicable.

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

- Pursuant to ORS 279C.505, on public improvement contracts, the contractor shall make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract. The contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract. The contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall demonstrate that an employee drug-testing program is in place.
- Pursuant to ORS 279C.510 (1), in every public contract for demolition the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. Pursuant to ORS 279B.225 and 279C.510 (3) in every public contract and every public improvement contract for lawn and landscape maintenance, the contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- Pursuant to ORS 279B.230(1), in every public contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- Pursuant to ORS 279B.235(1), persons may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or b) for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.
- Pursuant to ORS 279C.515(1), on public improvement contracts, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- Pursuant to ORS 279C.515(2), on public improvement contracts, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contract agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- Pursuant to ORS 279C.515 (3), in every public improvement contract and every contract related to the public improvement contractor, if the contractor or subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The contractor shall give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work

PROPOSAL NO. 110001

performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

- Pursuant to ORS 279C.530(1), in every public improvement contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. In every public contract, subject to ORS 279C, all employers working under the contract are subject employers that shall comply with ORS 656.017.
- Pursuant to ORS 279C.580(3)(a), the contractor shall include in each public improvement subcontract for property or services entered into by the contractor and a subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract, and an interest penalty clause that obligates the contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580 (3), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515 (2).
- Pursuant to ORS 279C.580(4), the contractor shall include in each of its subcontracts for a public improvement, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- Pursuant to ORS 279C.830(1)(a) workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

July 25, 2008

EXHIBIT B – SUMMARY OF RATES AND SERVICES**Summary Pricing Worksheet – Traditional one time purchase and annual maintenance**

Purchase Cost of SAN Hardware and Software	
Annual cost of 3 years maintenance and support for new and reused SAN Hardware and Software Components.	
Cost of maintenance and support for hardware and software components required only to bridge the migration from the current to the new infrastructure.	
Cost of Professional Services for initial implementation and migration.	
Estimated cost of annual maintenance for year 4.	
Estimated cost of annual maintenance for year 5.	

Summary Pricing Worksheet – Lease

Monthly Payment for a 36 month lease covering the hardware, software, 3 year maintenance and support, and initial implementation of the proposed SAN Solution.	
Effective lease rate.	
Anticipated residual value of the SAN Solution at the termination of the 36-month lease.	

Discount rate from list price for expansion hardware and software for storage array.	
Discount rate from list price for Cisco Fiber Channel switch components.	

Training

Pre-installation training for 5 City BTS staff.	
Post-installation training for 5 City BTS staff.	

EXHIBIT C – PROJECT DATA

PROPOSAL NO. 110001

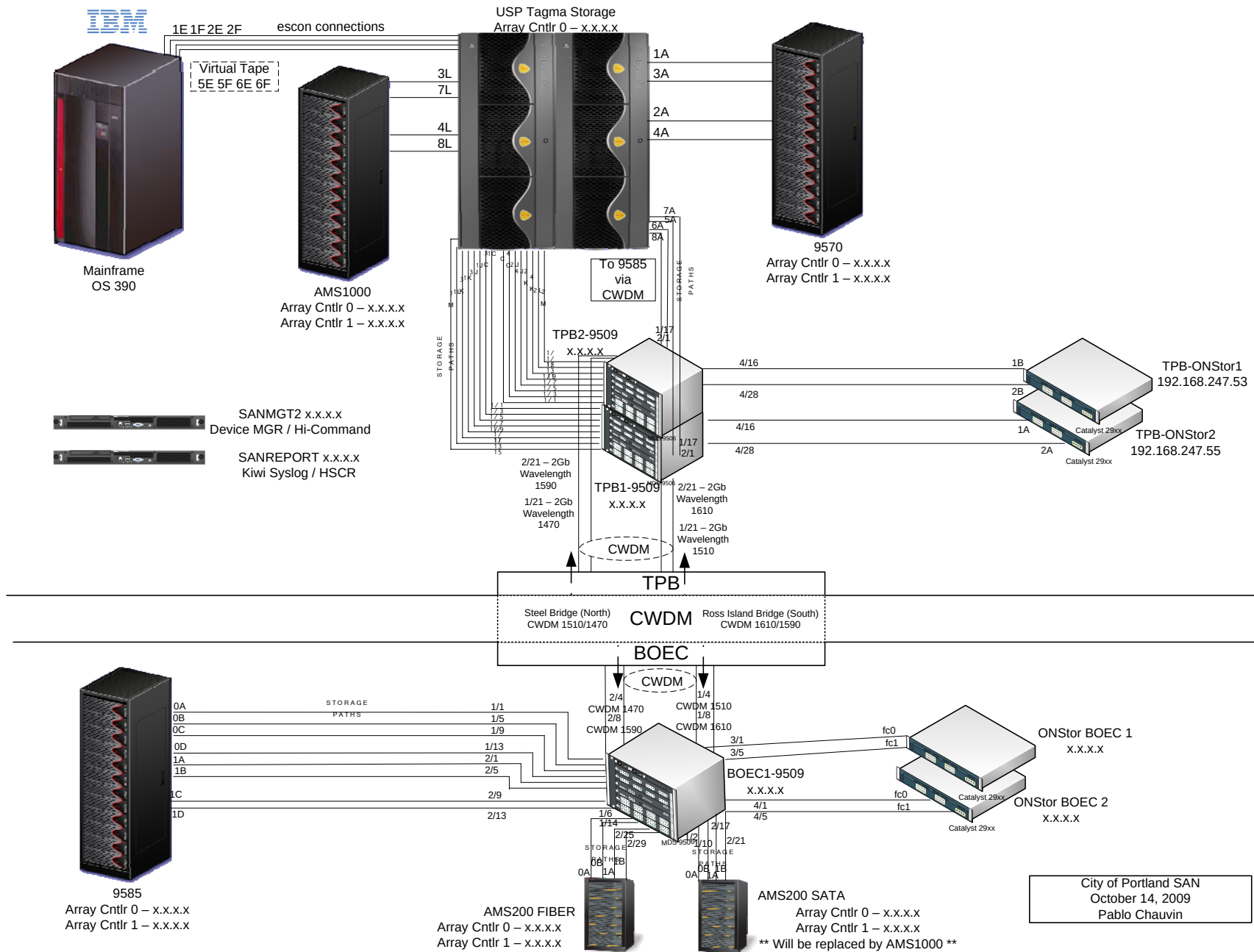


EXHIBIT D – TRAINING PLAN

POSITION	COURSE NAME	TRAINING LOCATION	HOURS OF TRAINING	COST
SAN Administrator				
Operator				
Other (identify position)				