

Contract Number *KXXX*

For

**Automated Speed Enforcement in
Work Zones Pilot Project**

Between the

Washington State Department of Transportation

and

<Vendor>

Effective Date _____, 2011

TABLE OF CONTENTS

ARTICLE I. RECITALS 1

ARTICLE II. DEFINITIONS; PURPOSE; ALTERNATE PURCHASE METHODS NOT PRECLUDED; TERM..... 1

2.1 Definitions..... 1

2.2 Purpose..... 1

2.3 Alternate Purchases Methods Not Precluded..... 2

2.4 Term and Extensions 2

ARTICLE III. PURCHASED SERVICES 2

3.1 Scope of Services 2

3.2 Deliverables 2

3.3 Kickoff Meeting..... 3

3.4 Pre-Deployment Meetings 3

3.5 Washington County District Court Coordination Meeting 3

3.6 Weekly Status Meetings 3

3.7 Access to and Operations on Highway Right of Way 3

3.8 Equipment, Hardware, and Software 4

3.9 Automated Speed Enforcement Processing..... 4

3.10 Monthly Audit Records 5

3.11 Training 5

3.12 Website Server Maintenance 5

3.13 Vendor Support..... 5

3.14 Electronic Data Collection and Storage..... 6

ARTICLE IV. VENDOR RESPONSIBILITIES 6

4.1 Deliverables 6

4.2 Notice to Proceed..... 6

4.3 Prompt Work 6

4.4 Subcontracting 6

4.5 Vendor Personnel Requirements..... 6

4.6 Coordination and Cooperation..... 7

4.7 Compliance Requirements 8

4.7.1 Prevailing Wages..... 8

4.7.2 Laws and Regulations..... 8

4.7.3 Licensing Requirements 8

4.7.4 WSDOT Standards, Manuals, and Specifications 8

4.7.5 Washington State Information Technology Policies..... 9

4.7.6 Confidential Information 9

4.7.7 Workers Compensation/OSHA 9

4.7.8 Monitoring Specifications 9

4.7.9 Modifications to Compliance Requirements 10

ARTICLE V. PROJECT MANAGEMENT 10

5.1 Project Management..... 10

5.2 WSDOT Staff 10

ARTICLE VI. PRICING; INVOICE; PAYMENT 11

6.1 Price..... 11

6.2	Taxes.....	11
6.3	Invoices and Payment.....	12
ARTICLE VII. TREATMENT OF ASSETS		13
ARTICLE VIII. CONTRACT MANAGEMENT AND ADMINISTRATION.....		14
8.1	Notices.....	14
8.2	Vendor Project Manager.....	15
8.3	WSDOT Project Manager.....	15
8.4	WSDOT Contract Administrator.....	16
ARTICLE IX. INTELLECTUAL PROPERTY		16
9.1	Vendor’s Software Warranty and Representations	16
9.2	Intellectual Property Indemnification.....	16
ARTICLE X. OWNERSHIP/RIGHTS IN DATA.....		17
10.1	Ownership of Work Product	17
10.2	Rights to Data.....	17
10.3	Dissemination	17
10.4	Survival	17
ARTICLE XI. REPRESENTATIONS AND WARRANTIES.....		17
11.1	General.....	17
11.2	Litigation.....	18
11.3	Full Disclosure.....	18
11.4	Covenant Against Contingent Fees	18
ARTICLE XII. INDEMNITY; INSURANCE; CONTRACT BOND.....		18
12.1	Indemnification	18
12.2	Insurance	19
12.3	Contract Bond.....	21
ARTICLE XIII. TERMINATION		22
13.1	Termination for Default	22
13.2	Termination by WSDOT.....	24
13.3	Termination Procedure	25
ARTICLE XIV. DISPUTES AND REMEDIES.....		25
14.1	Dispute Resolution	25
14.2	Continuity of Service	27
14.3	Performance by WSDOT	27
14.4	Non-Exclusive Remedies	27
14.5	Late Payment Fees	27
14.6	Limitation of Liability	28
ARTICLE XV. RECORDS		28
15.1	Review of Vendor’s Records.....	28
15.2	Public Records.....	29
ARTICLE XVI. GENERAL		30
16.1	Recitals.....	30
16.2	Exhibits and Attachments.....	30
16.3	RFP and Proposal	30
16.4	Survivorship	31
16.5	Assignments.....	31
16.6	Publicity	31

16.7	Independent Status of Vendor	32
16.8	Entire Agreement.....	32
16.9	Modifications and Amendments.....	32
16.10	Waiver	32
16.11	Severability	32
16.12	Governing Law	33
16.13	Order of Precedence	33
16.14	Antitrust Violations	33
16.15	Attorneys' Fees and Costs	33
16.16	Contract Execution	34
16.17	Counterparts	34

EXHIBIT LIST

- Exhibit A: Definitions**
- Exhibit B: WSDOT ACQ-2011-0801-RFP dated August 29, 2011**
- Exhibit C: Vendor Response to ACQ-2011-0801-RFP dated September 22, 2011**
- Exhibit D: Statement of Work (*if applicable*)**
- Exhibit E: Washington State Automated Speed Infraction Form**
- Exhibit F: Declaration of Non-Responsibility Form**
- Exhibit G: Washington State Automated Enforcement Ticketing Process Conceptual Flowchart**
- Exhibit H: Automated Enforcement Statement of Non-Liability Form Flowchart**
- Exhibit I: Nondisclosure and Confidentiality Agreement**
- Exhibit J: Candidate Work Zones**
- Exhibit K: MWBE Certification (*Included only if Section 6.3.9 is used*)**
- Exhibit L: Sample Contract Bond**

AGREEMENT

This CONTRACT NUMBER **KXXX** FOR AUTOMATED SPEED ENFORCEMENT IN WORK ZONES PILOT PROJECT is made and entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington (**WSDOT**), and **<Vendor Name>** (**Vendor**), a _____ corporation, licensed to do business in the State of Washington (**Contract**).

ARTICLE I. RECITALS

1.1 WSDOT is authorized by ESSB 6381 to work in conjunction with WSP to enforce speeding in highway work zones with automated safety cameras as a pilot project (Project). The program's objective is to reduce the number of speeding vehicles in construction work zones to reduce the danger to workers and the traveling public.

1.2 WSDOT issued a Request for Proposal ACQ-2011-0801-RFP, dated August 29, 2011, (**RFP**) for the purpose of soliciting vendors interested in providing proposals for the administration of an automated speed enforcement pilot program in selected work zones on Washington State Highways.

1.3 Vendor submitted a timely proposal to the RFP. WSDOT evaluated all properly submitted Proposals to the RFP and selected the proposal of Vendor.

1.4 WSDOT has authority to enter into this Contract under ESSB 6381 and Ch. 43.105 RCW.

NOW, THEREFORE, in consideration of the covenants contained herein and for the other goods and valuable consideration, the receipt and adequacy of which are hereby acknowledged, WSDOT and Vendor agree as follows:

ARTICLE II. DEFINITIONS; PURPOSE; ALTERNATE PURCHASE METHODS NOT PRECLUDED; TERM

2.1 Definitions

All capitalized terms used in this Contract but not expressly defined herein, have the respective meanings set forth in **Exhibit A** to this Contract.

2.2 Purpose

The purpose of this Contract is to establish a relationship between WSDOT and Vendor for the implementation of an automated speed enforcement pilot program in selected Work Zones on Washington State Highways. This Contract sets forth the terms and conditions by which

WSDOT will purchase and Vendor will provide Products and Services for the implementation and administration of an automated speed enforcement pilot program in any Work Zone on Washington State Highways.

2.3 Alternate Purchases Methods Not Precluded

This Contract is a convenience use contract that neither financially binds the State nor otherwise obligates the State to purchase any Product and/or Services hereunder. Nothing in this Contract shall preclude WSDOT from purchasing Products and Services off-the-shelf or from Vendor pursuant to other contracts for which WSDOT is a qualified purchaser of off-the-shelf Products and Services. These other contracts include, but are not limited to other State or government contracts.

2.4 Term and Extensions

The term of this Contract shall commence upon the last signature date (Effective Date) and terminate June 30, 2013, unless terminated early as provided elsewhere herein; Provided, that WSDOT shall have the right, at its sole option, to extend said term in the event the Washington State Legislature authorizes the continuation of the Project for a period of time not to exceed the time limitations authorized by such legislation. Further, any extension shall be pursuant to written Amendment to the Contract and shall be subject to such additional terms and conditions as may be imposed by said legislation, if any.

ARTICLE III. PURCHASED SERVICES

3.1 Scope of Services

Vendor shall provide purchased services for a complete turnkey digital photo speed enforcement pilot program in any Work Zone on highways in the State of Washington. The purchased services include but are not limited to, Equipment, Hardware, Software, and Services as further detailed in this Contract. The Work shall also include Vendor processing photos of vehicles exceeding the speed limit in Work Zones to verify validity of infractions. The process of violations and infractions will require coordination with WSDOT, WSP, and various Washington County District Courts. Vendor shall provide Services and staff, and otherwise do all things necessary for or incidental to the performance of the Work. All Services shall be performed pursuant to the terms of this Contract.

3.2 Deliverables

The Vendor shall supply an enforcement vehicle, radar and photography equipment, facilitate planning and coordination meetings, conduct training, perform back office activities, collect and store data, all as further described in this section and **Exhibit B**.

3.3 Kickoff Meeting

Vendor will facilitate a kickoff meeting with WSDOT and WSP one (1) week following the Effective Date that will include, but not be limited to, discussions of Project management, identification of Project Work Zones, coordination with WSP, and identification of coordination with WSDOT. The kickoff meeting shall be held in the Olympia, Washington area at a location arranged by WSDOT.

3.4 Pre-Deployment Meetings

Vendor shall meet with the WSDOT Project Manager, WSP, and the WSDOT construction contractor prior to the initial deployment at each Work Zone site. The purposes of the meetings are to: (1) plan Vendor deployment so that road construction is not impacted or delayed by Vendor's deployment and assure that Vendor is deployed in the best places to protect workers and the traveling public; and (2) to discuss deployment schedule including hours and locations, Vendor equipment operations, contact information for Vendor, WSP and WSDOT and other Vendor operating procedures. The outcomes of the Pre-Deployment Meetings shall be a mutually agreed on approach to Vendor performing any Work in each Work Zone. The meetings shall take place at mutually agreed upon locations. Vendor shall facilitate the meetings and provide a written agenda and report of the mutually agreed approaches.

3.5 Washington County District Court Coordination Meeting

Prior to the initial commencement of automated speed enforcement in each Work Zone, Vendor shall facilitate meeting with each Washington County District Court having jurisdiction over the that Work Zone. At each Washington County District Court coordination meeting, the Vendor, WSP, WSDOT and the County District Court representatives shall discuss the process for transmitting infractions to the Court and other relevant issues. The Vendor shall also provide an overview of the equipment specifications and procedures used to calibrate and operate the equipment to the Court and local County Prosecutors.

3.6 Weekly Status Meetings

Vendor will meet with the WSDOT Project Manager and the WSDOT construction contractor weekly during periods when Work is underway. The purpose of the meetings is to plan Vendor deployment times and placement in the Work Zone in order to best address Work Zone safety and avoid conflicts with the construction.

3.7 Access to and Operations on Highway Right of Way

3.7.1 Vendor shall access the highway right of way in accordance with the approaches agreed to in the Pre-Deployment Meetings and Weekly Status Meetings. At all times, Vendor shall access and operate on the highway right of way in a safe manner and avoid conflicts with the current highway construction projects.

3.7.2 Vendor's access to the highway right of way may be suspended because of weather or other emergency related causes. Vendor shall not access the highway right of way

during these times nor operate the automated speed enforcement equipment. Vendor payment will also be suspended for the days not worked because of the weather or emergency on a pro rata basis. In case of suspension, the fee will be calculated by dividing the monthly fee by thirty (30) to get a daily, then multiplying the daily fee times the number of days missed subtracted from the monthly fee.

3.8 Equipment, Hardware, and Software

Vendor shall supply, operate, maintain, repair, and replace the Equipment, Hardware, and Software necessary to perform the Work under this Contract and as further detailed in **Exhibit B**.

3.9 Automated Speed Enforcement Processing

For each Work Zone, Vendor shall perform the Work activities described below within the time periods and other requirements as detailed in **Exhibit B**:

3.9.1 Vendor operates camera and radar equipment to capture motor vehicles exceeding posted speeds in the Work Zone. The camera captures photos of the rear view of the vehicle and its license plate.

3.9.2 Vendor reviews photographs of license plates captured and selects clearest photograph to enter the license plate information into a secure computer system.

3.9.3 Vendor submits the license plate information to DOL/national database to identify the registered owner of the vehicle.

3.9.4 When registered vehicle owner information is received from DOL/national database, Vendor compares the photographs, vehicle information, and license plate a second time to verify all the information matches.

3.9.5 Vendor uses photographs of identified vehicle violations and corresponding vehicle ownership to create a Washington State Automated Speed Infraction. The form of the *Washington State Automated Speed Infraction* shall be as set forth in **Exhibit E**. Infractions shall be placed on the Vendor's secure server for WSP to review. WSP Troopers or Cadets review the photographs assuring that a violation took place and that the registration information matches the license plate and vehicle seen in the photograph. The WSDOT Trooper or Cadet electronically approve the infraction and returns it to the Vendor for issuance.

3.9.6 Vendor sends the approved *Washington State Automated Speed Infraction* to the registered vehicle owner and to the applicable Washington County District Court for processing.

3.9.7 Violators have the option of paying the citation by mail or other means used by the applicable Washington County District Court. Those who seek a court hearing may choose: (1) a Mitigation Hearing if they agree to having committed the infraction and want to explain the circumstances or (2) a Contested Hearing if they believe they did not commit the infraction and

want to challenge it. Registered vehicle owners may also submit to the court a sworn and signed *Declaration of Non-Responsibility* in the form of **Exhibit F** that states the vehicle was stolen, or was not in their care, custody, or control at the time of the violation.

3.10 Monthly Audit Records

Vendor shall maintain Monthly Audit Records of the *Washington State Automated Speeding Infraction* forms. The Monthly Audit Reports shall be in a form as agreed to by the parties and shall contain at least the following information: infraction number, vehicle description, vehicle owner, date, time and location of the infraction, traveling speed of the vehicle. Upon request by WSDOT and/or WSP, Vendor will provide the Monthly Audit Reports to the requesting party(ies) within thirty (30) Calendar days of receipt of such request.

3.11 Training

Vendor shall provide training and training materials as detailed in **Exhibit B**.

3.12 Website Server Maintenance

3.12.1 Vendors shall provide on call support and assistance available for violators, WSP, and WSDOT to access Vendor's web portal as follows: *<To be completed after contract award>*.

3.12.2 Vendor shall provide notification processes pertaining to future possible server upgrades. Vendor shall provide for minimal system disruption during upgrades.

3.13 Vendor Support

3.13.1 Vendor personnel shall be responsible for the operation of the enforcement vehicle, radar, camera and the data collection Equipment.

3.13.2 Vendor shall have the ability to provide the roadside operation of the enforcement vehicle and data collection Equipment Services 24 hours a day, seven (7) days a week.

3.13.3 Vendor shall provide on-call support and assistance 24 hours a day, seven (7) days a week.

3.13.4 Vendor shall provide any, and all Hardware and Software updates and specify its provisions for upgrades, repair, replacement, calibration, and maintenance of all electronic equipment, including a completion time frame.

3.13.5 Any defective cameras or other Equipment must be repaired or replaced within 24 hours of malfunction.

3.13.6 Radar/lidar Equipment must be certified to WSP requirements and specifications.

3.13.7 Vendor's key staff must be available to meet with representatives of the applicable County District Courts and prosecutors offices to demonstrate how the System works.

3.13.8 Vendor must provide, as necessary, experts qualified to provide scientifically reliable expert witness testimony for all court challenges arising from the issuance of infractions. Such expert witness must be available, on an as-needed basis, for trial preparation, depositions and court appearances by prosecuting attorneys.

3.14 Electronic Data Collection and Storage

Vendor shall provide electronic data collection and storage as detailed in **Exhibit B**.

ARTICLE IV. VENDOR RESPONSIBILITIES

4.1 Deliverables

Vendor shall deliver the Products and Services required under the terms of this Contract all deliverables shall be completed on time and as scheduled.

4.2 Notice to Proceed

Vendor shall not initially commence Work at any Work Zone until the WSDOT Project Manager has issued a written Notice to Proceed to Vendor for the applicable Work Zone.

4.3 Prompt Work

Vendor warrants that it is available to perform the Work within the time specified in this Contract. Vendor will begin Work promptly and will perform the Work in a continuous and diligent manner, and Vendor shall not interrupt the Work except as may be provided under this Contract.

4.4 Subcontracting

Vendor shall not enter into subcontracts with third parties to perform any part of the Work.

4.5 Vendor Personnel Requirements

4.5.1 For each Vendor personnel performing Work under the Contract, Vendor shall perform security and background checks to the satisfaction of WSDOT.

4.5.2 All Vendor personnel performing Work in highway right of way under the Contract shall submit to and pass a WSP background check prior to commencing any Work or activity related to the Project. Vendor shall be responsible for providing the WSP with the necessary information and payment of any associated fees.

4.5.3 All Vendor personnel who will be performing Work that may provide access to confidential, personal, or Proprietary Information or who has access to databases shall sign a *Nondisclosure and Confidentiality Agreement* in the form attached hereto as **Exhibit I**.

4.5.4 Prior to commencing any Work, Vendor shall provide a list to WSDOT of all Vendor personnel that will perform Work on the Project. Vendor shall update said list as personnel changes.

4.5.5 All Vendor personnel shall be approved by WSDOT and WSP prior to commencing any Work or activity related to the Project. WSDOT and WSP may at their own discretion, reject any Vendor personnel from performing Work on the Project. Further, WSDOT reserves the right to reject any of Vendor's employees after commencing Work with due cause. Any and all costs or expenses associated with replacement of any person or entity shall be borne by the Vendor.

4.5.6 Vendor shall be responsible to ensure that all Vendor personnel are properly trained, certified, or licensed as appropriate, and are properly qualified by education and experience to perform the Work. Vendor shall avoid understaffing the Work or shuffling personnel assigned.

4.5.7 Vendor shall maintain its own internal Personnel Management staff, so that such individuals have the authority to effect changes in personnel in the event of any failure to comply with the Contract terms and conditions.

4.5.8 The Vendor shall ensure that the Work is performed by personnel who have met the minimum requirements in this Section.

4.6 Coordination and Cooperation

4.6.1 Vendor shall be aware that other WSDOT contractors and WSDOT employees will be performing work in the vicinity of each automated speed enforcement Work Zone. The Vendor shall cooperate with WSDOT and other contractors in the performance of any concurrent activities occurring at or near the Work Zones. The Vendor shall coordinate Work schedules with WSDOT and other contractors to ensure the smooth implementation of Project activities.

4.6.2 Vendor shall cooperate with WSDOT, WSDOT contractors, and other vendors, if any, in an attempt to see that the Work is properly performed on schedule. Vendor shall collaborate with any other vendors and coordinate its Work with the work of such other vendor(s), if any, which could affect the Work and Vendor shall proceed in such manner as not to interfere or delay the progress of the work as a whole.

4.6.3 In cases of disagreement or disputes between Vendor and any other vendor that could delay or interfere with Vendor's Work due to the failure to collaborate and cooperate, or which cannot be resolved between Vendor and the others involved, Vendor shall give prompt written notice to WSDOT specifying in detail the disagreement or dispute.

4.6.4 Notwithstanding the existence of a dispute or disagreement between WSDOT and Vendor, Vendor shall diligently and without interruption, proceed with the Work at such rates of progress to complete the Work on time, to the extent able under the circumstances and without incurring additional costs or expenses.

4.7 Compliance Requirements

4.7.1 Prevailing Wages

Vendor shall comply with all applicable State laws, regulations, requirements, and procedures pertaining to prevailing wages, including but not limited to those established by the Washington State Department of Labor and Industries.

4.7.2 Laws and Regulations

Vendor shall comply with all applicable Laws and Regulations, including but not limited to all Environmental Requirements, and all applicable nondiscrimination laws and regulations, including but not limited to: Title VI, Non-Discrimination, Title 49 C.F.R., Part 21 and Title VII of the Civil Rights Act; 42 U.S.C. § 12101 et seq., the Americans with Disabilities Act; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, Vendor may be declared ineligible for further contracts with WSDOT.

4.7.3 Licensing Requirements

Vendor shall comply with all applicable local, State, and Federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract.

4.7.4 WSDOT Standards, Manuals, and Specifications

Vendor will comply with all then current applicable WSDOT and FHWA standards, manuals, and specifications in the performance of the Work under this Contract, including but not limited to:

- A. *WSDOT Standard Specifications for Road, Bridge, and Municipal Construction 2010 Edition (M 41-10)*
- B. *WSDOT Construction Manual (July, 2011) (M 41-01.11)*
- C. *FHWA Manual on Uniform Traffic Control Devices for Streets and Highways 2009 Edition (MUTCD)*

- D. *Manual on Uniform Traffic Control Devices for Streets and Highways Washington State Modifications to MUTCD* (Chapter 468-95 Washington Administrative Code)
- E. *WSDOT Traffic Manual June, 2011 (M 51-02-06)*
- F. *WSDOT Work Zone Traffic Control Guidelines (September 2009)* (M 54-44.03)

These and other manuals, standards, and specifications can be found online at: <http://www.wsdot.wa.gov/publications/manuals/>

4.7.5 Washington State Information Technology Policies

The System shall be consistent with Washington State information technology policies, procedures, practices, and any amendments thereto, which may be found on the Washington State Department of Information Services website, <http://isb.wa.gov/policies/default.aspx>.

4.7.6 Confidential Information

Vendor must comply with applicable laws pertaining to the confidentiality, privacy, handling, retention, reporting and disclosure of violator's confidential information including Washington State Executive Order 00-03 and WSDOT's Public Disclosure Policy.

4.7.7 Workers Compensation/OSHA

Vendor will, at all times, comply with all applicable Federal and State workers' compensation, occupational disease and occupational health and safety laws, statutes and regulations to the full extent applicable. Neither the State of Washington nor WSDOT will be held responsible in any way, for claims filed by the Vendor or their employees for service(s) performed under the terms of this Contract.

4.7.8 Monitoring Specifications

Vendor is responsible for the faithful performance of the Contract and shall have internal monitoring procedures and processes to ensure compliance.

A. WSDOT reserves the right to monitor and track Vendor's performance over the course of the Contract. The information gathered may be used in administration of the Contract including payment, and may be used when evaluating the Vendor for future projects.

B. Vendor will work with WSDOT to develop a performance scorecard with conditions, milestones, requirements. The scorecard may additionally record matters related to price, service, quality and other factors deemed important.

C. Vendor shall cooperate with WSDOT in the scorecard monitoring and tracking, which may require that Vendor report progress and problems (with proposed resolutions), provide records of its performance, allow random inspections of its facilities and

Equipment, participate in scheduled meetings, and provide management reports as requested by WSDOT.

D. WSDOT reserves the right to impose such conditions and requirements in the Permits as it deems necessary to protect the health, safety and welfare of the public traveling on WSDOT highways, to protect the facilities on WSDOT highways, and to administer the Permits. Vendor shall satisfy and comply with all such conditions and requirements.

4.7.9 Modifications to Compliance Requirements

Notwithstanding the foregoing, Vendor will have no obligation to comply with any changes to the above that occur after the Effective Date, before a mutually agreed Amendment has been executed that reflects any additional Work and applicable charges that result from such changes.

ARTICLE V. PROJECT MANAGEMENT

5.1 Project Management

5.1.1 Vendor will perform in a manner consistent with the goals and direction of WSDOT and the requirements of the Contract. The primary management goals are to reduce the number of vehicles driving faster than the posted speed limit in any Work Zone.

5.1.2 Vendor will maintain open and continuous communications with WSDOT during the Project and will work with WSDOT to continually look for opportunities to improve efficiency while at the same time meeting the goals and requirements of the Contract.

5.1.3 Vendor shall submit to WSDOT for written approval a Project Management Plan. The purpose of the Project Management Plan is to promote optimal communications between WSDOT and Vendor throughout the Project.

5.1.4 Vendor will coordinate all deployment with the WSDOT Project Manager, who will coordinate agency efforts with WSDOT Traffic Work Zone, Project, and Construction Offices, and the construction contractor in each Work Zone deployment.

5.2 WSDOT Staff

WSDOT shall provide to Vendor timely and reasonable access to appropriate WSDOT personnel, contractors, and consultants as necessary for Vendor to perform the requirements of this Contract. The WSDOT Project Manager will be the principal contact for Vendor concerning the implementation of the Work under this Contract. The WSDOT Project Manager information is set forth in Section 8.3. WSDOT may substitute the WSDOT Project Manager by written notice to the Vendor Contracting Officer. WSDOT shall update **Section 8.3** with the replacement contact information and the effective date of the replacement.

ARTICLE VI. PRICING; INVOICE; PAYMENT

6.1 Price

6.1.1 Vendor agrees to provide all Work under this Contract for the period from the Prices stated below. No separate allowances or fees will be paid for travel or per diem for the Vendor.

A. Monthly Fixed fee in the amount of _____ (\$_____) for processing from zero to 1,000 Automated Speeding Notice of Infractions in the immediately preceding month.

B. Additional variable fee based on volume pricing for processing Automated Speeding Notice of Infractions in the immediately preceding month that exceed 1000:

(1) From 1001 up to and including 1500 Notices in the preceding month _____ (\$_____).

(2) From 1501 up to and including 2500 Notices in the preceding month _____ (\$_____).

6.1.2 If the Contract is extended for an additional term, as provided in **Section 2.4** herein, Vendor agrees to provide the Products and Services at the Prices set forth above for the extended term.

6.1.3 No advance payment shall be made for the Products, System, or Services furnished by Vendor pursuant to this Contract.

6.2 Taxes

6.2.1 WSDOT will pay sales and use taxes, if any, imposed on the Services acquired under this Contract. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. WSDOT, as an agency of Washington State government, is exempt from property tax.

6.2.2 Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

6.2.3 All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor's staff shall be Vendor's sole responsibility.

6.3 Invoices and Payment

6.3.1 Payments made by WSDOT to Vendor are full compensation for all labor, Products, and Services, including but not limited to shipping, travel, and lodging, associating with providing the Products and Services. No additional compensation will be available, except by executed Amendment(s) to this Contract.

6.3.2 Vendor shall submit properly itemized invoices to the WSDOT Project Manager on a monthly basis for Work performed the previous month in hard copy duplicate and email an electronic copy of each invoice (.pdf). Invoices shall provide and itemize, as applicable, the following items:

- A. WSDOT Contract number **KXXX**;
- B. Vendor name, address, phone number, and Federal Tax Identification Number;
- C. Description of Products and/or Services, including quantity delivered;
- D. Date(s) of delivery and/or date(s) of installation and set up;
- E. Maintenance charges;
- F. Net invoice Price for each item;
- G. Applicable taxes;
- H. Other applicable charges;
- I. Total invoice Price; and
- J. Payment terms.

6.3.3 WSDOT may withhold from Vendor's payment any amounts Vendor owes WSDOT under this Contract; Provided, that WSDOT has previously given Vendor notice of such owned amounts.

6.3.4 Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.

6.3.5 The WSDOT Contract number **KXXX** must appear on all bills of lading, packages, and correspondence relating to this Contract.

6.3.6 Purchaser shall not honor drafts, nor accept goods on a sight draft basis.

6.3.7 If WSDOT fails to make timely payment, Vendor may invoice WSDOT one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1.00). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) Calendar Days of receipt of Vendor's properly prepared invoice, whichever is later.

6.3.8 In the event an overpayment is made to Vendor under this Contract, Vendor shall refund to WSDOT the full amount of any such erroneous payment or overpayment within thirty (30) Calendar Days of the date of the written notice of such erroneous payment or overpayment, as issued by WSDOT. If Vendor fails to refund the erroneous payment or overpayment within that thirty (30) day period, WSDOT may charge late payment fees as set forth in **Section 14.5** herein. The provisions in this Section shall survive the expiration or termination of this Contract.

6.3.9 *[INCLUDE THIS SECTION ONLY WHEN VENDOR INDICATED MINORITY OR WOMEN'S BUSINESS ENTERPRISE PARTICIPATION IN ITS RESPONSE AND EXHIBIT J – MWBE CERTIFICATION IS ATTACHED. IF THIS SECTION IS NOT USED, DELETE SUBSECTION SECTION 6.3.9 AND EXHIBIT J.]*

With each invoice for payment and within thirty (30) Calendar Days of the WSDOT Contract Administrator's request, Vendor shall provide WSDOT an *Affidavit of Amounts Paid*. The *Affidavit of Amounts Paid* shall either state that Vendor still maintains its Minority and Women Business Enterprise (MWBE) certification. Vendor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with **Article XV** herein.

ARTICLE VII. TREATMENT OF ASSETS

7.1 Title to all property furnished by WSDOT under this Contract shall remain with WSDOT. Upon Acceptance and final payment, title to all Deliverables as required in the RFP, including but not limited to the System, Product, system design documents, Intellectual Property rights in the forgoing, and data collected by the System shall pass to, vest in, and belong to WSDOT. Upon such payment and Acceptance, Vendor shall convey to WSDOT good title to such System, Product, and Software System Documentation, and Intellectual Property free and clear of all liens, pledges, mortgages, encumbrances, or other security interests. As used in this Section, if the System, Product, or Software System Documentation is Vendor's or a third party's Intellectual Property, only the applicable license, not title, is passed to and vested in WSDOT.

7.2 Any WSDOT property furnished to Vendor shall, unless otherwise provided herein or approved in writing by WSDOT, be used only for the performance of this Contract.

7.3 Vendor shall be responsible for any loss of or damage to property of WSDOT that results from Vendor's acts or activities, or that results from Vendor's failure to maintain and administer that property in accordance with sound management and security practices.

7.4 Upon loss or destruction of, or damage to any WSDOT property, Vendor shall notify WSDOT and shall take all reasonable steps to protect that property from further damage.

7.5 Vendor shall surrender to WSDOT all WSDOT property prior to settlement upon completion, termination, or cancellation of this Contract.

7.6 The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE VIII. CONTRACT MANAGEMENT AND ADMINISTRATION

8.1 Notices

8.1.1 Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses as follows:

To Vendor at:

Attn:

Phone:

Fax:

E-mail:

To WSDOT at:

State of Washington
Department of Transportation
Attn: Carol Kirsch

If using UPS, FedEx, etc.:

719 Sleater Kinney Road SE, Suite 200
Lacey, WA 98503

If using US Postal Service:

P.O. Box 47408
Olympia, WA 98504-47408

Phone: (360) 705-7547

Fax: (360) 705-6842

E-mail: kirschc@wsdot.wa.gov

8.1.2 The notice address and/or addressee as provided herein may be changed by written notice given as provided above.

8.1.3 Vendor agrees to accept service of process at the address provided herein, or any modifications thereto; Provided, that such address is located in the State of Washington. Otherwise, the Vendor designates the Secretary of State of Washington as an agent for the purpose of service of process. Such service shall be deemed personal service.

8.1.4 For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

8.1.5 Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

8.1.6 In the event that a subpoena or other legal process commenced by a third party in any way concerning the Products or Services provided pursuant to this Contract is served upon Vendor or WSDOT, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and WSDOT further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party; Provided that, such cooperation does not require WSDOT to expend funds.

8.1.7 The provisions in this Article shall survive the expiration or termination of this Contract.

8.2 Vendor Project Manager

8.2.1 Vendor shall appoint a Vendor Project Manager for WSDOT's account under this Contract who will provide direct oversight of Vendor activities conducted hereunder. Vendor Project Manager will be the principal point of contact for WSDOT concerning Vendor's performance under this Contract. The Vendor Project Manager information is as identified in **Exhibit C**. Vendor may substitute the Vendor Project Manager as provided in herein.

8.2.2 Vendor may replace the Vendor Project Manager upon prior written approval to the WSDOT Project Manager as detailed in this section. At least thirty (30) Calendar Days in advance of a proposed replacement, Vendor shall provide to WSDOT written notification of its proposed replacement, including the name and qualifications of the proposed replacement. All proposed replacements must have equal or better qualifications than the staff being replaced. WSDOT shall be allowed to interview replacements, if WSDOT so desires. WSDOT may, in its sole discretion, accept or reject any proposed replacement.

8.2.3 Upon WSDOT's approval of a Vendor Project Manager replacement, WSDOT will update **Exhibit C** with the required contact information and the updated **Exhibit C** shall also state the effective date of such staff replacement.

8.3 WSDOT Project Manager

WSDOT shall appoint *[name]* who will be the WSDOT Project Manager for this Contract and will provide oversight of the activities conducted hereunder. WSDOT Project Manager will be the principal contact for Vendor concerning business activities under this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Project Manager assigned to this Contract. The WSDOT Project Manager information is:

Vendor Account Manager:

Address:

Phone:

Fax:

E-mail:

8.4 WSDOT Contract Administrator

WSDOT shall appoint a WSDOT Contract Administrator for this Contract who is designated as the WSDOT employee to receive legal notices, and to administer, amend, or terminate this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Contract Administrator assigned to this Contract. In addition, WSDOT shall update **Exhibit C** with the replacement contact information and the effective date of the replacement. The WSDOT Contract Administrator information is:

Carol Kirsch, Contract Administrator
719 Sleater Kinney Road SE, Suite 200
Lacey, WA 98503
P.O. Box 47408
Olympia, WA 98504-7408
Phone: (360) 705-7547
Fax: (360) 705-6842
E-mail: kirschc@wsdot.wa.gov

ARTICLE IX. INTELLECTUAL PROPERTY

9.1 Vendor's Software Warranty and Representations

9.1.1 Vendor hereby warrants and represents to WSDOT that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to WSDOT the licensed right to the Software provided by Vendor through this Contract without violating any rights of any third party worldwide.

9.1.2 Vendor represents and warrants that: Vendor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party; and that Vendor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

9.2 Intellectual Property Indemnification

9.2.1 Vendor, at its expense, shall defend, indemnify, and save WSDOT harmless from and against any claims against WSDOT that any Product supplied hereunder, or WSDOT's use of the Products within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by WSDOT provided that WSDOT:

A. Promptly notifies Vendor in writing of the claim, but WSDOT's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense; and

B. Cooperates with Vendor in connection with the defense of the claim and all related settlement negotiations; Provided, that such assistance shall not require WSDOT to expend funds.

9.2.2 Vendor retains liability for any claim of infringement that arises against Vendor's Product.

ARTICLE X. OWNERSHIP/RIGHTS IN DATA

10.1 Ownership of Work Product

WSDOT and Vendor agree that all Work Product produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. § 101 *et seq.*, and shall be owned by WSDOT. Vendor is hereby commissioned to create the Work Product. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

10.2 Rights to Data

WSDOT owns and retains all rights to the data generated by the Project. It is not intended and nothing herein shall be construed as granting Vendor any rights to or use of such data.

10.3 Dissemination

Vendor shall not use or in any manner disseminate any Work Product, Proprietary Information, or Confidential Information to any third party, or represent in any way Vendor ownership in the same, without the prior written permission of WSDOT. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or shall not copy or disclose, transmit any Work Product, Proprietary Information, or Confidential Information or any portion thereof, in any form, to any third party.

10.4 Survival

The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XI. REPRESENTATIONS AND WARRANTIES

11.1 General

Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment shall constitute a breach of this Contract and shall render Vendor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by Vendor includes: (a) Prices, discounts, and options committed to remain in force over a specified period of time; and (b) any warranty or representation made by Vendor in this Contract, Proposal, or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations,

and any other communication medium accompanying or referred to in this Contract, or used to effect the sale to WSDOT.

11.2 Litigation

Vendor represents and warrants there is no pending, or to the best of Vendor's knowledge, there is no threatened lawsuit or material claim against or relating Vendor, which may impede or materially affect the Vendor's ability to perform the terms of the Contract.

11.3 Full Disclosure

Vendor represents and warrants there is no representation or warranty by Vendor in its Proposal or in any instrument, certificate, or statement furnished to WSDOT pursuant to the RFP, or in connection with the transactions contemplated hereby, shall contain or will contain any untrue statement of a material fact or fails to state a material fact that is necessary to make the statements set forth therein not false or misleading.

11.4 Covenant Against Contingent Fees

Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or a bona fide established commercial or selling agency of Vendor. In the event Vendor breaches this Section, WSDOT shall have the right to either immediately terminate or annul this Contract without liability to WSDOT, or, in WSDOT's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

11.5 The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XII. INDEMNITY; INSURANCE; CONTRACT BOND

12.1 Indemnification

12.1.1 To the extent allowed by law, each party, its successors and assigns (**Indemnitor**), will protect, save, hold harmless, and defend the other party, its authorized agents, and employees (**Indemnitee**), from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the Indemnitor, its agents, contractors, Subcontractors, or employees, arising out of, or in connection with, its acts or activities or the acts or activities of the Indemnitor and its agents, contractors, Subcontractors, or employees, including but not limited to any costs or attorneys' fees. The obligations in this paragraph shall not include such claims, costs, damages, or expenses to the extent caused by the acts of the Indemnitee or its authorized agents, contractors, Subcontractors, or employees; PROVIDED, that if the claims or damages are caused by or result from the concurrent acts of: (a) the Indemnitor, its agents, contractors, Subcontractor, or employees, and (b) the Indemnitee, its agents, contractors, Subcontractors, or employees, or involves those actions covered by

Ch. 4.24.115 RCW, this indemnity provision shall be valid and enforceable only to the extent of the acts of Indemnitor's agents, contractors, Subcontractors, and employees.

12.1.2 Vendor specifically assumes potential liability for actions brought by Vendor's own employees against WSDOT and, solely for the purpose of this indemnification and defense, Vendor specifically waives any immunity under the State industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the parties.

12.1.3 WSDOT specifically assumes potential liability for actions brought by WSDOT's own employees against Vendor and, solely for the purpose of this indemnification and defense, WSDOT specifically waives any immunity under the State industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the parties.

12.1.4 The indemnification provisions in this Section shall survive the expiration or termination of this Contract.

12.2 Insurance

12.2.1 Vendor shall, during the term of this Contract, and at its expense acquire and maintain in full force and effect, the insurance described in this Section. Vendor shall acquire and maintain in effect such insurance from an insurance carrier or carriers licensed to conduct business in the State having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to WSDOT within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at WSDOT's sole option, result in this Contract's termination.

12.2.2 The minimum acceptable limits shall be as indicated below, with no deductible unless otherwise specified or approved by WSDOT in advance, for each of the following categories:

A. Commercial General Liability (CG 00 01 12 04, ISO or substitute liability form providing equivalent coverage) covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

B. Business Automobile Liability (CA 00 01 10 01, ISO or substitute liability form providing equivalent coverage) covering owned, hired, or non-owned vehicles, the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;

C. Employers Liability (Stop Gap) insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;

D. Professional Liability Errors and Omissions, with a deductible not to exceed \$50,000, conditioned upon **Section 12.2.8** below, and coverage of not less than \$2 million per claim/\$4 million in the aggregate;

E. Crime Coverage with a deductible not to exceed \$25,000, conditioned upon **Section 12.2.8** below, and coverage of not less than \$2 million single limit per occurrence and \$4 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty; and

F. Excess liability policy which will follow the form of the above referenced commercial general liability and automobile liability policy, in an amount not less than \$3,000,000 per occurrence and in the aggregate.

12.2.3 Such insurance policies or related certificates of insurance shall name WSDOT as an additional insured on all general liability, automobile liability, employers' liability, and excess policies. Such policies or related certificates of insurance shall also reference this WSDOT Contract number **KXXX** and shall have a condition that they not be revoked by the insurer until forty-five (45) Calendar Days after written notice of intended revocation thereof shall have been given to WSDOT by Vendor's insurance broker. Under no circumstances will WSDOT be liable for any policy premiums or deductibles.

12.2.4 All insurance provided by Vendor shall be primary and non-contributory as to any other insurance or self-insurance programs afforded to or maintained by the State on behalf of WSDOT and shall include a severability of interests (cross-liability) provision. All insurance coverage afforded to or maintained by the State on behalf of WSDOT shall be excess over, and shall not contribute with, any insurance provided by the Vendor pursuant to this **Section 12.2**.

12.2.5 All Policies required under this **Section 12.2** shall contain a waiver of subrogation against WSDOT, the State of Washington, its departments, agencies, boards and commissions and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Vendor.

12.2.6 Vendor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements evidencing that the Subcontractor has complied with all the requirements set forth under this **Section 12.2**. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.

12.2.7 Prior to performing Work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. WSDOT will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

12.2.8 For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall: (a) continue such coverage for six (6) years beyond the expiration or termination of this Contract, naming WSDOT as an additional insured and providing WSDOT with certificates of insurance on an annual basis; (b) within thirty (30) Calendar Days of execution of this Contract provide for WSDOT's benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to WSDOT, in the amount of \$250,000, during the initial and any subsequent terms of this Contract and for six (6) years beyond the expiration or termination of this Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at WSDOT's sole option, in the event Vendor fails to do so. In addition, such irrevocable stand-by letter of credit shall provide for payment of any deductible or self insured retention on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible. "Irrevocable stand-by letter of credit" as used in this Contract means a written commitment by a Federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by WSDOT (the beneficiary) of a written demand therefore.

12.2.9 Vendor shall furnish to WSDOT copies of certificates of all required insurance within fifteen (15) Calendar Days of the Effective Date and copies of renewal certificates of all required insurance within fifteen (15) Calendar Days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Article. The insurance certificate shall require notification to WSDOT prior to termination for any reason.

12.2.10 A forty-five (45) Calendar Day written notice shall be given to WSDOT prior to termination of or any material change to the policy(ies) as it relates to this contract.

12.2.11 By requiring insurance herein, WSDOT does not represent that coverage and limits will be adequate to protect Vendor, nor limit WSDOT's right to seek additional recovery from Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to WSDOT in this Contract.

12.3 Contract Bond

12.3.1 For the initial term of this Contract (Effective Date through June 30, 2011) Vendor shall provide to WSDOT an executed Contract Bond in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) within ten (10) Business Days of execution of the Contract. Vendor shall maintain the Contract Bond in full force and effect during said initial term of the Contract.

12.3.2 In the event the Contract is extended as provided in **Section 2.4** herein, Vendor shall provide to WSDOT an executed Contract Bond in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) within ten (10) Business Days of execution of the amendment to this Contract granting the extension. Vendor shall maintain the Contract Bond in full force and effect during said extended term of the Contract.

12.3.3 The Contract Bonds, also covering state sales tax, shall:

- A.** be in substantially the same form as attached hereto as **Exhibit L**.
- B.** be signed by an approved surety (or sureties) that (1) is registered with the Washington State Insurance Commissioner, and (2) appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner;
- C.** be conditioned upon the faithful performance of the Contract by Vendor;
- D.** guarantee that the surety shall indemnify, defend, and protect WSDOT against any claim of direct or indirect loss resulting from the failure: (1) of Vendor to faithfully perform the Work in accordance with the Contract; and (2) of Vendor to pay all laborers, mechanics, subcontractors, material persons, or any other person who provides supplies or provisions for carrying out the Work.

12.3.4 WSDOT may require sureties or surety companies on the Contract Bond to appear and qualify themselves. Whenever WSDOT deems the surety or sureties to be inadequate, it may, upon written demand, require Vendor to furnish additional surety to cover any remaining Work. Until the added surety is furnished, Vendor will stop all Work.

12.3.5 Upon the request of any person or entity appearing to be a potential beneficiary of Contract Bond covering payment of obligations arising under this Contract, Vendor shall promptly furnish a copy of the Contract Bond or shall permit a copy to be made.

12.3.6 No payment shall be due Vendor until the Contract Bond(s) are in place and approved by WSDOT in writing.

ARTICLE XIII. TERMINATION

13.1 Termination for Default

13.1.1 The violation of any term or condition of this Contract, or the failure to fulfill in a timely and proper manner any requirement in this Contract by either party shall constitute a default of this Contract.

13.1.2 Except as otherwise provided herein, in the event of a default by either party, the aggrieved party may terminate this Contract without penalty or further liability, except as expressly provided herein, upon not less than thirty (30) Calendar Days prior written notice to the defaulting party; Provided, that the defaulting party has failed to cure such default within that thirty (30) day period, or such longer period, as may be reasonably determined by the aggrieved party, if the defaulting party is diligently working to cure the default. If the parties cannot agree on the appropriate cure or cure period, then the parties shall follow the disputes and remedies process in **Article XIV** of this Contract. If there is no dispute as to the appropriate cure or cure period and the default is not cured within the cure period, the aggrieved party may immediately

terminate this Contract by giving written notice to the defaulting party. The option to terminate shall be at the sole discretion of the aggrieved party.

13.1.3 In the event of a Vendor default involving repair, replacement, maintenance, or training, or technical support services, WSDOT may terminate this Contract without penalty or further liability except as expressly provided herein, upon not less than the length of time specified in the notice of default; Provided, that Vendor has failed to cure such default within the period specified in the notice of default, or such longer period, as may be reasonably determined by WSDOT, if Vendor is diligently working to cure the default. If the default is not cured within the cure period, WSDOT may immediately terminate this Contract by giving written notice to Vendor. The option to terminate shall be at the sole discretion of WSDOT.

13.1.4 In the event of a Vendor default, WSDOT reserves the right to suspend all or part of this Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds: (a) during the investigation of the alleged Vendor default; (b) pending corrective action by Vendor of a default; or (c) pending a decision by WSDOT to terminate this Contract.

13.1.5 In the event of termination of this Contract by WSDOT for a Vendor default, WSDOT shall have the right to procure the Products and Services on the open market and Vendor shall be liable for all costs, expenses, and damages incurred by WSDOT for such default and termination, including but not limited to: (i) the cost difference between the original Contract Price for the Products and Services and the replacement costs of such Products and Services acquired from another vendor; (ii) all administrative costs directly related to the replacement of this Contract, including but not limited to costs of competitive bidding, mailing, advertising, applicable fees, charges, or penalties, and WSDOT staff and consultant time costs; and (iii) any other costs to WSDOT resulting from Vendor's default and the termination of this Contract for such default. WSDOT shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe WSDOT for Vendor's default.

13.1.6 In the event of termination of this Contract by Vendor for a WSDOT default, WSDOT shall be liable only for payments required by the terms of this Contract for Products received and accepted and for Services received by WSDOT prior to the effective date of termination.

13.1.7 Waiver or acceptance of any default of the terms of this Contract by WSDOT shall not operate as a release of Vendor's responsibility for any prior or subsequent default.

13.1.8 If Vendor defaults on any provision in this Contract three (3) times within a six (6) month period, the third default shall be deemed "non-curable" and this Contract may be terminated by WSDOT on not less than thirty (30) Calendar Days written notice.

13.2 Termination by WSDOT

13.2.1 WSDOT may terminate this Contract, without penalty or further liability as follows:

A. In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSDOT may terminate this Contract, in whole or in part, by seven (7) Calendar Days written notice to Vendor. This Section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Products or Services from a third party;

B. In the event funding to WSDOT from State, Federal, or other sources is withdrawn, reduced or limited in any way after the Effective Date and prior to normal completion, WSDOT may terminate this Contract by seven (7) Calendar Days written notice to Vendor;

C. If funds are not allocated to WSDOT to continue this Contract in any future period, WSDOT may at its option terminate this Contract by seven (7) Calendar Days written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. WSDOT agrees to notify Vendor in writing of such non-allocation at the earliest possible time. This Section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Products or Services from a third party;

D. WSDOT may terminate this Contract by written notice to Vendor if WSDOT determines, after due notice and examination, that Vendor has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, WSDOT shall be entitled to pursue the same remedies against Vendor as it could pursue under the Termination for Default Section;

E. Immediately, upon written notice, if a receiver is appointed to take possession of Vendor's assets, Vendor makes a general assignment for the benefit of creditors, or Vendor becomes insolvent or takes or suffers action under the Bankruptcy Act; and

F. Upon not less than thirty (30) Calendar Days prior written notice, unless an emergency exists, as determined by WSDOT, then immediately, if WSDOT determines that it is in the best interest of WSDOT to terminate this Contract.

13.2.2 If this Contract is terminated pursuant to this **Section 13.2**, WSDOT is liable only for payments required by the terms of this Contract for Products received and for which Acceptance has been given, and for Services received by WSDOT prior to the effective date of termination.

13.3 Termination Procedure

13.3.1 In addition to the procedures set forth below, if WSDOT terminates this Contract, Vendor shall follow any procedures WSDOT specifies in WSDOT's Notice of Termination.

13.3.2 Upon termination of this Contract, WSDOT, in addition to any other rights provided in this Contract, may require Vendor to deliver to WSDOT any property or Products specifically produced or acquired for the performance of such part of this Contract as has been terminated.

13.3.3 Unless otherwise provided herein, WSDOT shall pay to Vendor the agreed-upon Price, if separately stated, for the Products or Services received and for which Acceptance has been given by WSDOT; Provided that, in no event shall WSDOT pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of **Article XIV. Disputes and Remedies** of this Contract. WSDOT may withhold from any amounts due Vendor such sum as WSDOT determines to be necessary to protect WSDOT from potential loss or liability.

13.3.4 Vendor shall pay amounts due WSDOT as the result of termination within thirty (30) Calendar Days of notice of amounts due. If Vendor fails to pay such amounts within that thirty (30) day period, WSDOT may charge late payment fees as set forth in **Section 14.5** herein.

ARTICLE XIV. DISPUTES AND REMEDIES

14.1 Dispute Resolution

14.1.1 The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Contract.

FOR WSDOT:

Carol Kirsch, Contracts Administrator
State of Washington
Department of Transportation
719 Sleater Kinney Road SE, Suite 200
Lacey, WA 98503
Phone: (360) 705-7547
Fax: (360) 705-6842
E-mail: kirschc@wsdot.wa.gov

And

STATE TRANSPORTATION ENGINEER
State of Washington

Department of Transportation
State Traffic Design & Operations
310 Maple Park Ave SE, Room 1C
Olympia, WA 98501
Phone: 360-705-XXXX
Fax: 360-705-6826
Email: xxxxx@wsdot.wa.gov

FOR VENDOR:

Name *<Vendor Legal Counsel or Corporate Authority>*

Address

Phone:

Fax:

E-mail:

14.1.2 The WSDOT Designated Representative and Vendor Designated Representative shall confer to resolve disputes that arise under this Contract as requested by either party. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

14.1.3 In the event the Designated Representatives are unable to resolve the dispute, the WSDOT State Transportation Engineer or his designee, and Managing Director for Vendor or her/his designee shall confer and exercise good faith to resolve the dispute.

14.1.4 In the event the WSDOT State Transportation Engineer, and the Managing Director for Vendor are unable to resolve the dispute, the parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the timeframe the parties are willing to discuss the disputed issue(s).

14.1.5 Each party shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each party shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conference from later discovery or use in evidence; Provided, that any settlement executed by the parties shall not be considered confidential and may be disclosed. Each party shall pay its own costs for mediation and share equally in the cost of the mediator. The venue for the mediation shall be in Olympia, Washington, unless the parties mutually agree in writing to a different location.

14.1.6 If the parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either party may institute a legal action in the County of Thurston, State of Washington, unless other venue is mutually agreed to in writing. The parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

14.2 Continuity of Service

14.2.1 WSDOT and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

14.2.2 If the subject of the dispute is the amount due and payable by WSDOT for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute.

14.3 Performance by WSDOT

If Vendor defaults in the performance or observation of any covenant or agreement contained in this Contract, WSDOT, without notice if deemed by WSDOT that an emergency exists, or if no emergency exists, with thirty (30) Calendar Days prior written notice, may direct Vendor to stop Work and may itself perform or cause to be performed such covenant or agreement. Such emergency shall include, but not be limited to, endangerment of life or the highway facility. Vendor shall reimburse WSDOT the entire cost and expense of such performance by Vendor within thirty (30) Calendar Days of the date of WSDOT's invoice. Any act or thing done by WSDOT under the provisions of this Section shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof. The provisions in this Section shall survive the expiration or termination of this Contract.

14.4 Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law; Provided, that Vendor shall have no right to seek non-monetary relief in court with the exception of seeking injunctive relief to enjoin WSDOT from violating the terms of any license to Intellectual Property granted to WSDOT under this Contract. The provisions in this Section shall survive the expiration or termination of this Contract.

14.5 Late Payment Fees

If Vendor fails to make timely payment of any amounts due WSDOT under this Contract, at WSDOT's option, the delinquent sum shall bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by State law, whichever is greater; Provided that if the highest rate allowable by State law is less than twelve percent (12%), interest charged hereunder shall not exceed that amount. Interest on all delinquent amounts shall be calculated from the original due date to the date of payment. Also there shall be a charge for any check returned uncollectable in accordance with WAC 468-20-900. WSDOT and Vendor agree that such charges represent a fair and reasonable estimate of the costs incurred by WSDOT by reason of late payments and uncollectable checks. Further, WSDOT's acceptance of late payment charges and/or any portion of the overdue payment shall in no event constitute an accord and satisfaction, compromise of such payment, or a waiver of Vendor's default with respect to such overdue payment, nor prevent WSDOT from exercising any other rights and remedies granted in this Contract. When a delinquency exists, any payments received will be applied first to the late

payment charge and late payment fees, and next to the delinquent payment. The provisions in this Section shall survive the expiration or termination of this Contract.

14.6 Limitation of Liability

14.6.1 The parties agree that neither Vendor nor WSDOT shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages, except a claim related to bodily injury or death, or a claim or demand based on a patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This Section does not modify any other conditions as are elsewhere agreed to herein between the parties. The damages specified in this Contract shall not be construed to be consequential, incidental, indirect, or special damages as that term is used in this Section.

14.6.2 Neither Vendor nor WSDOT shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the responsible party, or its agent, employee, contractor, or Subcontractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSDOT acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

14.6.3 Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's or its agent, employee, contractor, or subcontractor's respective fault or negligence.

14.6.4 WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept, or maintained on or about the Right of Way or WSDOT occupied buildings, except for such claims or losses that may be caused by WSDOT or its authorized agents or employees pursuant to the terms of this Contract. Upon termination of this Contract, WSDOT or its agent may remove all personal property of Vendor remaining on said WSDOT property at Vendor's expense and dispose of it in any manner WSDOT deems appropriate. Vendor agrees to reimburse WSDOT for the costs of such removal and disposal within thirty (30) Calendar Days of the date of the WSDOT's invoice.

14.6.5 The provisions in this Section shall survive the expiration or termination of this Contract.

ARTICLE XV. RECORDS

15.1 Review of Vendor's Records

15.1.1 Vendor shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after final payment. If any audit, litigation, or claim is started before the expiration of the six (6) year

period, the records shall be retained until all audits, litigation, or claims involving the records have been resolved. The six (6) year retention period begins when the Vendor received final payment. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of final payment on this Contract.

15.1.2 All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the WSDOT Contract Administrator, WSDOT Director of Internal Audit, the Washington State Office of the State Auditor, as well as, federal officials so authorized by law, rule, regulation or contract, at no additional cost to the WSDOT. During the term of this Contract, Vendor shall provide access to original records for examination, inspection, copying, or audit, at a location in Thurston County, Washington. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor.

15.1.3 It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from WSDOT's review unless the Price, cost, or any other material issue under this Contract is calculated or derived from these factors.

15.2 Public Records

15.2.1 Any documents and records that are prepared by Vendor, its agents, contractors, or consultants and delivered to WSDOT may be determined to be public records under the Washington Public Records Act, Chapter 42.56 RCW, and as such may be subject to public disclosure. WSDOT recognizes that certain documents and records may contain Proprietary Information exempt from disclosure under Public Records Act, may constitute trade secrets as defined in RCW 19.108.010(4) and may include confidential information which is otherwise subject to protection from misappropriation or disclosure. Should such records become the subject of a request for public disclosure, the following provisions shall apply.

15.2.2 WSDOT shall immediately notify Vendor of such request and the date by which it anticipates producing the requested records.

15.2.3 Vendor must then assert in writing to WSDOT any claim that such records contain proprietary or confidential information that it believes is exempt from disclosure under the Public Records Act or is subject to protection pursuant to Chapter 19.108 RCW or other State law so that WSDOT may consider such assertion in responding to the requestor.

15.2.4 If Vendor fails to make such assertion within eight (8) Calendar Days after the date WSDOT notifies Vendor of its intended response, WSDOT shall have the right to make such disclosure.

15.2.5 If Vendor makes a timely assertion that the requested records contain proprietary or confidential information or trade secrets, WSDOT will allow Vendor an additional

ten (10) days for Vendor to seek judicial protection of the records pursuant to RCW 42.56.540. Such an action shall be at Vendor's expense. Should WSDOT elect to participate in any such action its own attorney's fees will be WSDOT's expense. If Vendor does not seek judicial protection of the records within ten (10) Calendar Days after notifying WSDOT of its belief that the records contain proprietary or confidential information or trade secrets, then WSDOT shall release the records to the requestor.

15.2.6 If prior to judicial consideration of a challenge by a requester, WSDOT in its sole discretion believes Vendor does not have a valid claim, it shall so notify Vendor no less than five (5) Calendar Days prior to the date WSDOT intends to make the disclosure to allow Vendor to take such action as it deems appropriate prior to disclosure. WSDOT will not make such a disclosure while an action to enjoin disclosure is pending under RCW 42.56.540.

15.2.7 If WSDOT denies a request for public records solely for reasons other than Vendor's assertion of proprietary or confidential information contained in records, Vendor has no responsibility for payment of any attorneys' fees or fines that may be imposed on WSDOT, nor for payment of WSDOT's attorneys' fees.

15.2.8 In the event Vendor believes that any documents or records subject to transmittal to or review by WSDOT under the terms of this Agreement contains proprietary, trade secret or other materials that are exempt or protected from disclosure pursuant to applicable Laws and Regulations, Vendor shall identify and clearly mark such information prior to such transmittal or review. The provisions of this **Article XV** shall apply even though Vendor may fail to identify and clearly mark such information prior to transmittal or review.

15.3 The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XVI. GENERAL

16.1 Recitals

The Recitals set forth in **Article I** herein are hereby incorporated into this Contract.

16.2 Exhibits and Attachments

All exhibits, attachments, and documents referenced in this Contract are hereby incorporated into this Contract.

16.3 RFP and Proposal

The RFP and Proposal and all exhibits, attachments, appendices, and documents referenced in therein are hereby incorporated into this Contract.

16.4 Survivorship

All license and purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that, by their sense and context, are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

16.5 Assignments

16.5.1 Vendor may not assign this Contract.

16.5.2 WSDOT may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington.

16.5.3 All subcontracts and vendor agreements of Vendor shall be assignable to WSDOT, and Vendor shall provide copies of all such subcontracts and vendor agreements to WSDOT within ten (10) Calendar Days of assignment.

16.6 Publicity

16.6.1 The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's products by WSDOT and shall not be so construed by Vendor in any advertising or other publicity materials.

16.6.2 Vendor agrees to submit to WSDOT, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein WSDOT's name is mentioned, language is used, or Internet links are provided from which the connection of WSDOT's name therewith may, in WSDOT's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of WSDOT prior to such use. Nothing herein shall preclude Vendor from citing the Work performed under this Contract in resumes or proposals for future work with WSDOT or other entities.

16.6.3 Either party may use the other party's name and logo (except for the state Seal) in advertising, sales promotion, and other publicity materials relating to this Contract, without royalty, provided that this Contract and the relationship between the parties is not misrepresented.

16.6.4 The provisions in this Article shall survive the expiration or termination of this Contract.

16.7 Independent Status of Vendor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit, which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

16.8 Entire Agreement

This Contract, the RFP, the Proposal, the Software License, and any exhibits, appendices or attachments thereto are hereby incorporated by reference herein as if fully set forth. Said documents set forth the entire agreement between the parties with respect to the subject matter hereof, and any understandings, agreements, representations, or warranties not contained in this Contract or in a properly executed Amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or specifications of this Contract will be effective without the written consent of both parties.

16.9 Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any Section or condition of this Contract shall be effective or binding unless it is in writing and signed by the WSDOT Contracting Officer and the Vendor Contracting Officer. Only the WSDOT Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any provision, benefit or obligation of this Contract on behalf of WSDOT.

16.10 Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the WSDOT Contract Administrator and the Vendor representative authorized to waive, modify, or delete such term or condition.

16.11 Severability

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

16.12 Governing Law

This Contract shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act or any substantially similar law is enacted as part of the law of the State of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment would govern. Unless otherwise required by law, the jurisdiction for any action hereunder shall be exclusively in the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

16.13 Order of Precedence

In the event of any conflicts, resolution shall be resolved in the following order of precedence:

16.13.1 This Contract **KXXX** and any Amendment thereto.

16.13.2 WSDOT ACQ-2011-0801-RFP dated August 29, 2011

16.13.3 Vendor's Proposal dated September 22, 2011

16.13.4 Statement of Work (*if applicable*)

Notwithstanding the order of precedence listed above, additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document. On plans and working drawings calculated dimensions shall take precedence over scaled dimensions.

16.14 Antitrust Violations

Vendor and WSDOT recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the purchaser. Therefore, Vendor hereby assigns to WSDOT any and all claims for such overcharges as to goods, Products, and Services purchased in connection with this Contract, except as to overcharges not passed on to WSDOT resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract. The provisions in this Section shall survive the expiration or termination of this Contract.

16.15 Attorneys' Fees and Costs

In the event of any controversy, claim, or dispute arising out of this Contract, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

16.16 Contract Execution

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

16.17 Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

The remainder of this page intentionally left blank.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

State of Washington

Vendor Name

Department of Transportation

Signature

Signature

Stephen T. Reinmuth

Date

Print or Type Name

Date

Chief of Staff

Title

APPROVAL AS TO FORM:

Patricia K. Nightingale
Assistant Attorney General

**EXHIBIT A
DEFINITIONS**

SEPARATELY POSTED TO RFP

EXHIBIT B
WSDOT ACQ-2011-0801-RFP

SEPARATELY POSTED TO RFP

EXHIBIT C
VENDOR RESPONSE TO ACQ-2011-0801-RFP

TO BE ADDED PRIOR TO EXECUTION

EXHIBIT D
STATEMENT OF WORK (IF APPLICABLE)

SEE APPENDIX A TO RFP

EXHIBIT E
WASHINGTON STATE AUTOMATED SPEED INFRACTION FORM

SEE APPENDIX E TO RFP

**EXHIBIT F
DECLARATION OF NON-RESPONSIBILITY FORM**

SEE APPENDIX H TO RFP

EXHIBIT G
WASHINGTON STATE AUTOMATED ENFORCEMENT TICKETING PROCESS
CONCEPTUAL FLOWCHART

SEE APPENDIX F TO RFP

**EXHIBIT H
AUTOMATED ENFORCEMENT STATEMENT OF NON-LIABILITY FORM
FLOWCHART**

SEE APPENDIX G TO RFP

EXHIBIT I
NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

SEE APPENDIX I TO RFP

(Included only if Section 6.3.9 is used)

**EXHIBIT J
MWBE CERTIFICATION**

**EXHIBIT K
SAMPLE CONTRACT BOND**

[COMPANY LOGO]	[NAME OF BOND]	NAME OF INSURANCE COMPANY NAME OF HOME OFFICE AND LOCATION
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KNOW ALL BY THESE PRESENTS, That we, _____ (called Principal), as Principal, and [NAME OF INSURANCE COMPANY] a [TYPE OF BUSINESS] corporation of Washington (called Surety), as Surety, are held and firmly bound unto the State of Washington (called Obligee) in the sum of Two Hundred Fifty Thousand Dollars (\$250,000) for the payment whereof Principal and Surety bind themselves, their legal representatives, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a written contract dated _____, 2010, with Obligee for Contract Number K_____, dated _____, 2010, for Automated Speed Enforcement in Work Zones Pilot Project between the Washington State Department of Transportation (WSDOT) and _____, a copy of which Contract is hereto annexed and made a part of hereof as fully as if set forth herein:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That, if Principal shall faithfully perform such Contract and pay all persons who have furnished labor or material for use in or about the improvement and shall indemnify and save harmless Obligee from all costs and damage by reason of Principal's default or failure so to do, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Surety hereby waives notice of any alteration, extension or forbearance as to any of the terms of the Contract other than the terms of payment thereunder, made or extended by Obligee or Principal.

NO RIGHT OF ACTION shall accrue upon or by reason hereof to, or for the use or benefit of, anyone other than the Obligee herein named.

NO SUIT, ACTION OR PROCEEDING by the Obligee to recover on this bond shall be sustained unless the same be commenced within two (2) years following the date on which Principal ceased work on said Contract.

Signed and sealed this _____ day of _____, 2010.

[NAME OF PURCHASER]

By: _____
Principal

[NAME OF INSURANCE COMPANY]

By: _____
Attorney-in-Fact