



Request for Proposals

for

Photo Radar Program Services

Issue Date: February 29, 2016

Proposal Due Date: March 25, 2016 at 5:00PM

City of Milwaukie
Police Department
3200 SE Harrison Street
Milwaukie, OR 97222
(503) 786-7400

Table of Contents

Photo Radar Program Services

Section 1 – Invitation	3
Section 2 – General Information	4
Section 3 – Scope of Work	9
Section 4 – Proposal and Proposer Requirements	10
Section 5 – Proposal Selection and Evaluation	11
Section 6 – Contract Requirements	13
Attachment A – Proposal Rate Form.....	14
Attachment B - Personal Services Agreement	15

Request for Proposals

City of Milwaukie—Photo Radar Program Services

The City of Milwaukie (City) is seeking proposals from qualified and experienced contractors to provide photo radar program services to the City. The City's objective is to enter into a Personal Services Agreement that will provide these comprehensive services.

The City's expectation of any contractor the City contracts with is that the contractor's values align with the City's values of highly ethical conduct, fiscal responsibility, respect for the City and others, and responsiveness to the City's customers.

The Request for Proposal documents may be obtained at <http://bids.milwaukieoregon.gov/>.

Successful proposers will be asked to sign a Personal Services Agreement with the City. A sample agreement is attached as part of the RFP documents. The City will require specific levels of insurance, a Milwaukie business registration, and a tax identification number. Proposers must evaluate this agreement and agree with the terms and conditions contained therein unless written objections are included as an addenda with their proposal. The City will review the addenda and content of any such objection in the proposal evaluation process. Objections after the awarding of the contract will not be considered and are ground for subsequent denial of the contract.

Proposals shall be submitted either in a sealed envelope or by email plainly identifying the RFP and contractor's name and address. Proposals shall be delivered to the City of Milwaukie, Mark Dye, Police Department, 3200 SE Harrison Street, Milwaukie, OR 97222 or emailed to dyem@milwaukieoregon.gov.

Proposals will be received until 5:00PM on Friday, March 25, 2016 for the purpose of selecting a contractor to provide photo radar program services. Proposals received after the 5:00PM deadline will not be considered and will be returned unopened to the proposer(s).

For additional information regarding this RFP, please contact Police Captain, Mark Dye, at (503) 786-7494 or by email at dyem@milwaukieoregon.gov. The City of Milwaukie reserves the right to reject any and all proposals or to negotiate individually with one or more contractors, and to select one or more contractors if determined to be in the best interest of the City.

Dated this 29th day of February 2016.

SECTION 2: GENERAL INFORMATION

2.1 Introduction and Background

The City of Milwaukie is seeking proposals from qualified contractors to provide photo radar program services for the City. The City's objective is to enter into a Personal Services Agreement that will provide these comprehensive services.

The City has contracted with Xerox State & Local Solutions (Xerox) for photo radar program services since 2008. In compliance with our Local Contract Review Board rule 10.010(A), the City is following a competitive proposal process to execute a new contract for photo radar program services.

Use of the photo radar program is considered a preventative program for safe driving; therefore, the City does not operate under a violation quota system. There shall be no required minimum number of violations to be generated through the use of the photo radar program. Currently, the City leases digital camera equipment from Xerox and uses the equipment to operate the program in a City-owned vehicle. The Police department operates the van up to 4 days per week, which results in approximately 4,000 citations issued to drivers of alleged traffic violations per year. Alleged violators are cited into Milwaukie Municipal Court, where court is held approximately twice per month.

Citations are currently provided to court in a PDF format, and also by an electronic text file which is downloaded into the City's court management system, Tyler Technologies' Incode (version 9).

2.2 Issuance of Request for Proposals Documents

The Request for Proposal (RFP) documents may be obtained at no cost from the City of Milwaukie website at <http://bids.milwaukieoregon.gov/>.

Police Captain, Mark Dye, is the sole point of contact for all questions, concerns, and protests related to this RFP. He may be reached at 503-786-74941 or by email at dyem@milwaukieoregon.gov.

2.3 Submission for Proposals

Sealed proposals shall be submitted by 5:00PM, Friday, March 25, 2016 in pdf format via email, in person, or by U.S. Postal Service to:

Mark Dye
City of Milwaukie
Police Department
3200 SE Harrison Street
Milwaukie, OR 97222
dyem@milwaukieoregon.gov

If proposals are submitted in-person or by U.S. Postal Service, each Proposer must provide four (4) complete copies of their proposal, including attachments, in type-written format sealed in an envelope plainly identifying requested services and proposer's name and address. If submitted via email, the proposal, including attachments, shall be in pdf format. Proposals shall be addressed and submitted to the above location by the deadline. Phone and facsimile proposals will not be accepted. There will be

no formal opening of bids.

2.4 Schedule of Events

The City anticipates the following general timeline for receiving and evaluating the proposals and selecting a contractor for photo radar program services. This schedule is subject to change if it is in the City's best interest to do so.

- | | |
|--|------------------------|
| • Request for Proposal Release | February 29, 2016 |
| • Deadline for Clarifications/Questions/Changes to RFP | March 14, 2016, 5:00PM |
| • Deadline for Protests of RFP | March 16, 2016, 5:00PM |
| • Proposals Due | March 25, 2016, 5:00PM |
| • Interviews/Demonstrations with Contractor | TBD |
| • Evaluations of Proposals Complete | April 11, 2016 |
| • Posting of Notice of Intent to Award | April 12, 2016 |
| • Deadline for Protests of Award | April 19, 2016, 5:00PM |
| • City Council hearing | May 3, 2016 |
| • Notice of Award | May 4, 2016 |
| • Commencement of Personal Services Agreement | May 18, 2016 |

2.5 Changes to the Solicitation by Addenda

The City reserves the right to make changes to the RFP by written addenda. Addenda shall be sent to all prospective proposers known to have obtained the solicitation documents at the time addenda is issued.

Proposers should consult the City's Bid Management System (<http://bids.milwaukieoregon.gov/>) regularly until the proposal due date and time to assure that they have not missed any addendum announcements. By submitting a proposal, each Proposer thereby agrees that it accepts all risks, and waives all claims, associated with or related to its failure to obtain addendum information.

A prospective Proposer may request a change in the RFP by submitting a written request to the address set forth in Subsection 2.3. The request must specify the provision of the RFP in question, and contain an explanation of the requested change. All requests for changes to the RFP must be submitted to the City no later than the date set forth in Subsection 2.4.

The City will evaluate any request submitted, but reserves the right to determine whether to accept the requested change. Changes that are accepted by the City shall be issued in the form of an addendum to the RFP. All addenda shall have the same bidding effect as though contained in the main body of the RFP. Written or oral instructions or information concerning the scope of work of the project given out by anyone other than Mark Dye or Chief Steve Bartol shall not bind the City.

No addenda will be issued later than the date set in Subsection 2.4, except an addendum, if necessary, postponing the date for receipt of proposals, withdrawing the invitation, modifying elements of the proposal resulting from delayed process, or requesting additional information, clarification, or revisions of proposals leading to obtaining best offers or best and final offers. Each Proposer is responsible for

obtaining all addenda prior to submitting a proposal. Receipt of each addendum shall be acknowledged in writing as part of the proposal.

2.6 Confidentiality

All information submitted by Proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the proposals for which Proposer requests exception from disclosure consistent with Oregon Law. All requests shall be in writing, noting specifically which portion of the proposal the Proposer requests exception from disclosure. Proposer shall not copyright, or cause to be copyrighted, any portion of any said document submitted to the City as a result of this RFP. Proposer should not mark the entire proposal document "Confidential."

2.7 Cancellation

The City reserves the right to cancel contract award for photo radar program services at any time before execution of the contract by both parties if cancellation is deemed to be in the City's best interest. In no event shall the City have any liability for the cancellation of contract award.

2.8 Late Proposals

All proposals that are not received by the proposal due date in Subsection 2.4 will not be considered and will be returned unopened to the Proposer(s). Phone and facsimile proposals will not be accepted. Delays due to mail and/or delivery handling, including, but not limited to delays within the City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the proposal to the correct location by the proposal due date.

2.9 Disputes

In case of any doubt or differences of opinion as to the items or service to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

2.10 Proposer's Representation

Proposers, by the act of submitting their proposals, represent that:

- A. They have read and understand the proposal documents and their proposal is made in accordance therewith;
- B. They have familiarized themselves with the local conditions under which the work will meet their satisfaction;
- C. Their proposal is based upon the requirements described in the proposal documents without exception, unless clearly stated in the response.

2.11 Conditions of Submittal

By the act of submitting a proposal in response to this RFP, the Proposer certifies that:

- A. The Proposer and each person signing on behalf of any Proposer certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no elected

official, officer, employee, or person, whose salary is payable in whole or part by the City, has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof other than as fully described in the Proposer's response to this solicitation.

- B. The Proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and, if its proposal is accepted, the Proposer shall accept the contract documents thereto unless substantive changes are made in same without the approval of the Proposer.
- C. The Proposers, if an individual, is of lawful age; is the only one interested in this proposal; and that no person, firm, or corporation, other than that named, has any interest in the proposal, or in the proposed contract.
- D. The Proposer has quality experience providing photo radar program services in a capacity similar to the duties outlined within the scope of services.

2.12 Proposer Requests Interpretation of Request for Proposal Documents

Proposers shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of the proposal documents. Proposers requiring clarification or interpretation of the proposal documents shall make a written request for the same to Police Captain, Mark Dye.

The City shall make interpretations, corrections, or changes to the proposal documents in writing by published addenda in accordance with Subsection 2.5. Interpretations, corrections, or changes to the proposal documents made in any other manner will not be binding, and Proposers shall not rely upon such interpretations, corrections, and changes.

2.13 Proposer Requests for Additional Information

Requests for information regarding City services, programs, or personnel, or any other information shall be submitted in writing to Police Captain, Mark Dye, prior to the deadline to request additional information stated in Subsection 2.4.

The City shall respond to requests for additional information in writing by published addenda in accordance with Subsection 2.5. Responses to requests for additional information made in any other manner will not be binding.

2.14 Competition

Proposers are encouraged to comment, either with their proposals or at any other time, in writing, on any specification or requirement with this RFP, which the Proposer believes, will inordinately limit competition.

2.15 Complaints and Inequities

All complaints or perceived inequities related to the RFP or award of work referenced herein shall be in writing and directed to Police Captain, Mark Dye. Such submittals will be reviewed upon receipt and will be answered in writing.

2.16 Cost of Request for Proposals and Associated Responses

The City is not liable for any costs incurred by a Proposer in the preparation and/or presentation of a proposal. The City is not liable for any cost incurred by a Proposer in protesting the City's selection decision.

2.17 City Requests for Clarification, Additional Research, & Revisions

The City reserves the right to obtain clarification of any point in a proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the proposal.

The City may obtain information from any legal source for clarification of any proposal or for information of any Proposer. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of the responsible Proposer. Information may include, but shall not necessarily be limited to current litigation and contracting references. All such documents, if requested by the City, become part of the public records and may be disclosed accordingly.

The City reserves the right to request revisions of proposals after the submission of proposals and before award for the purpose of obtaining best offers or best and final offers.

2.18 Rejection of Proposals

The City reserves the right to reject any or all Proposals received as a result of this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

- A. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
- B. Failure of the Proposer to submit a proposal in the format specified herein.
- C. Failure of the Proposer to submit a proposal within the time requirements established herein.
- D. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the proposal process.

The City may reject any proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all proposals upon a finding of the City that it is in the public interest to do so.

2.19 Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the proposer for 60 calendar days following the time and date designated for the receipt of proposals. Proposals submitted early may be modified or withdrawn only by notice to the City, at the Proposal submittal location, prior to the proposal due date. Such notice shall be in writing over the signature of the Proposer and submitted to Police Captain, Mark Dye. All such communication shall be so worded as not to reveal material contents of the original Proposal.

Withdrawn proposals may be resubmitted up to the proposal due date and time, provided that they are then fully in conformance with the RFP.

2.20 Proposal Ownership

All Proposals submitted become and remain the property of the City and, as such, are considered public information and subject to public disclosure within the context of the federal Freedom of Information Act and Oregon Revised Statutes (ORS) 192.501 and ORS 192.502. Unless certain pages or specific information are specifically marked “proprietary” and qualify as such within the context of the regulations stated in the preceding paragraph, the City shall make available to any person requesting information through the City processes for disclosure of public records, any and all information submitted as a result of this RFP without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

2.21 Duration of Proposal

Proposal prices, terms and conditions shall be firm for a period of at least 60 days from the proposal due date. The successful proposal shall not be subject to future price escalation or changes of terms if accepted during the 60-day period. Price decreases or changes in terms by others after the acceptance of a proposal will not be considered.

2.22 Affirmative Action/Nondiscrimination

By submitting a proposal, the Proposer agrees to comply with the Fair Labor Standard Act, Civil Rights Act of 1964, Executive order 11246, Fair Employment Practices, Equal Employment Opportunity Act, Americans with Disabilities Act, and Oregon Revised Statutes. By submitting a proposal, the Proposer specifically certifies, under penalty of perjury, that the Proposer has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

SECTION 3: SCOPE OF WORK

3.1 Term of Service

The Personal Services Agreement resulting from this RFP shall be for a period of two (2) years, commencing May 18, 2016. The City shall reserve the right to extend the term of the contract for two (2) additional two-year periods.

3.2 Scope of Work

The selected Contractor shall be responsible for the accurate, timely, and professional provision of photo radar program services for the City’s traffic violations. Specific Responsibilities of the City and Contractor are outline in Exhibit A (Scope of Work) of the Personal Services Agreement.

3.3 Optional Services

In addition to the required services described, City requests proposals and ideas for optional services. Proposers are encouraged to identify and describe other services, progressive improvements in existing services or techniques that would be in the best interest of the City and reduce costs and/or increase revenues.

3.4 Other Services

If the City develops need for additional services during the life of the agreement, those services shall be provided with the same conditions as apply to existing accounts at the time.

If regulatory bodies establish new regulations, contractor shall demonstrate full compliance with those regulations. If the contractor develops other services, the City is to be furnished with any information that City may use to consider these services.

SECTION 4: PROPOSAL AND PROPOSER REQUIREMENTS

4.1 Submittal of Proposals

If proposals are submitted in-person or by U.S. Postal Service, each Proposer must provide four (4) complete copies of their proposal, including attachments. All proposals must arrive at the issuing office on or before the proposal due date and time. A person who has been authorized to make such a commitment on behalf of the contractor must sign the proposals. Proposals shall be sealed in an envelope, plainly identifying requested services and proposer's name and address and addressed and delivered to the issuing office. If submitted via email, the document shall be addressed and delivered as identified in Subsection 2.3.

4.2 Proposer Requirements

Any contractor submitting a proposal must meet the following minimum requirements:

- A. All Proposers must be licensed to perform business in the State of Oregon;
- B. All Proposers must have been in business as a firm for at least five (5) years;
- C. All Proposers must be experienced in photo radar programs similar to those of the City;
- D. All Proposers must agree to execute the City's Personal Services Agreement, if awarded; and
- E. All Proposers must carry errors and omissions insurance, naming the City an additional insured.

4.3 Proposal Format

Proposals shall be type-written with body text consisting of a 11 or 12-point font. Proposals shall be printed double-sided. The City requests that submittal materials contain post-consumer recycle content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled, such as PVC binder, spiral bindings, and plastic or glossy covers or dividers. One page is considered to be one side of a single 8 ½" x 11" sheet.

Proposals being submitted electronically must be in pdf format.

4.4 Proposal Requirements

All proposals submitted in response to this Request for Proposal must include the following:

- A. **Attachment "A"** is a Proposal Rate form.
- B. **Attachment "B"** is the Personal Services Agreement. Each Proposer must evaluate this contract form and its Exhibit A (Scope of Work), and thereby agree with the terms and conditions

contained therein unless written objections are included as an addenda to the proposal. The City will review the addenda and content of any such objection in the proposal evaluation process.

- C. Proposal Content – each Proposer shall fully address Section 5.3(B-D) of this RFP and give complete information regarding experience, general understanding of the services requested, and service timeframe.
- D. Supplemental material—materials and data not specifically requested for consideration may be included as supplemental information.
- E. All Proposers shall submit all Addenda of this RFP as part of the proposal. Receipt of each Addendum, if any, shall be acknowledged by the Proposer by signing in the appropriate designated location. Each Proposer shall ascertain, prior to submitting a proposal, that the proposer has received all Addenda issued by the City.

4.5 Protest Procedures for Proposal Requirements

Any and all complaints regarding this solicitation must be presented in writing no less than seven (7) calendar days prior to the proposal due date, as identified in Section 2.4. The City will address all timely submitted protests within a reasonable time following the City’s receipt of the protest and will issue a written decision to the protesting Proposer. Protests shall be addressed as follows:

Mark Dye
City of Milwaukie
Police Department
3200 SE Harrison Street
Milwaukie, OR 97222
dyem@milwaukieoregon.gov

Protests must include:

- A. The identity of the Proposer;
- B. A clear reference to this RFP;
- C. Reason for the protest;
- D. Proposed changes to the RFP provisions and/or statement of work; and
- E. All required information as described in ORS 279B.405(4).

Protests that do not include the required information will not be considered by the City.

SECTION 5: PROPOSAL SELECTION AND EVALUATION

5.1 General Information

Each proposal will be judged on its completeness and quality of its content. The City reserves the right to reject any and all proposals and is not liable for any cost the Proposer incurs while preparing or presenting the proposal. All proposals will become part of the public file, without obligation to the City. Upon the completion of the evaluations, the City intends to negotiate a Personal Services Agreement with the Proposer whose proposal is deemed to be most advantageous to the City.

5.2 Selection Review Committee

The Selection Review Committee will be comprised of at least four (4) members. The role of the Selection Review Committee is to evaluate the proposals submitted and make a recommendation of award to City Council.

Scoring will be completed covering all areas listed in Section 5.3. If additional information is deemed necessary as part of the evaluations, such information will be solicited in order to allow the committee to complete the evaluation process.

5.3 Scoring and Evaluation Criteria

The criteria listed below will be used to determine the apparent successful Proposer. Proposals will be evaluated in accordance with the following criteria:

- | | |
|---|-------------|
| A. Proposal submitted on time | Pass / Fail |
| B. Firm and service team qualifications
<i>Experience and competence with governmental and municipal entities will be evaluated.</i> | 10 points |
| C. Service understanding and approach
<i>Evaluation of Proposer's work plan, general understanding of the services as detailed, and customer service features.</i> | 10 points |
| D. Service timeframe
<i>Evaluation of Proposer's practical approach to meeting the City's deadlines as detailed.</i> | 5 points |
| E. Fee evaluation
<i>Evaluation of the proposed rates and methodology as it applies to the City's financial practices.</i> | 5 points |
| F. Interview and Presentation
<i>Proposers will be interviewed in person by the Selection Review Committee and asked to present and demonstrate their knowledge and ability to perform the requested services (as noted in 5.3.(B-D) of this RFP).</i> | 10 points |

5.4 Ranking of Proposals

Proposals will be ranked by the Selection Review Committee based on evaluation of responses with the first-ranked Proposal being that Proposer which is deemed to be the most appropriate and fully able to perform the services, and the second ranked Proposal being the Proposer next most appropriate, all in the sole judgment of the Selection Review Committee.

Proposal scores will be totaled and ranked. Any Proposal in response to this RFP shall be considered de facto permission to the City to disclose the results, when completed, to selected reviewers at the sole discretion of the City.

5.5 Proposal Rejection

The City reserves the right to:

- A. Reject any and all proposals not in compliance with all public procedures and requirements;
- B. Reject any proposal not meeting the specifications set forth herein;
- C. Waive any or all irregularities in proposals submitted;
- D. Award any or all parts of any proposal; and
- E. Request references and other data to determine responsiveness.

5.6 Intent of Award

Upon evaluation and interviews of the proposers, the City will provide written notice of its intent to award the contract to the contractor who best meets the overall needs of the City.

5.7 Protest of Award

In accordance with the City's Public Contracting Rule 30.135, any adversely affected or aggrieved proposer has seven (7) calendar days from the date of the written notice of award to file a written protest, as identified in Section 2.4.

SECTION 6: CONTRACT REQUIREMENTS

6.1 Contract Negotiation

The City reserves the right to negotiate final terms of a Personal Services Agreement as the City determines to be in its best interest.

The City will negotiate the agreement once the Selection Review Committee has chosen the top-ranked Proposer. If the City cannot come to terms with the top-ranked Proposer, the City will enter into negotiations with the second-ranked Proposer. This process will continue until the City reaches an agreement which the City deems appropriate for the services.

6.2 Contract Award

The award of a contract is accomplished by executing a written Personal Services Agreement that incorporates the Proposer's proposal, clarifications, addenda, additions, and insurance. All such materials constitute the contract documents.

ATTACHMENT A

Proposal Rate Form

City of Milwaukie
Mark Dye, Police Captain
3200 SE Harrison Street
Milwaukie, Oregon 97222

Dear Mark:

We have read the Request for Proposal (RFP) and fully understand its intent. We certify that we have adequate personnel, equipment, and facilities to fulfill the requirements. We understand that our ability to meet the criteria and provide the required services shall be judged solely by designated staff of the City of Milwaukie.

We have reviewed the Personal Services Agreement, included as Attachment B with the RFP, and agree to execute such upon award of the contract by City, unless written objections are included as an addenda to our proposal. The City shall review the addenda and content of any such objection as part of the proposal evaluation process.

It is further understood that all information included in, attached to, or required by this RFP shall be public record upon its delivery to the City.

We propose to provide Photo Radar Program Services in accordance with the specifications contained in the proposal submitted in response to the RFP for an initial two-year period with possible contract extensions at the option of the City.

Proposed Rates

Table with 2 columns: SERVICES, RATE. Rows include Per Paid Citation, Monthly Lease Amount for Equipment, Interfacing to Court Management System, Installation of Equipment, and Other Applicable Services.

This rate price schedule is proposed by:

Firm

Print Name and Title

Date

Signature



**PERSONAL SERVICES AGREEMENT
WITH THE CITY OF MILWAUKIE, OREGON
FOR PHOTO RADAR PROGRAM SERVICES**

THIS AGREEMENT made and entered into this (Day) day of (Month), (Year) by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and (Contractor's Name) hereinafter called Contractor.

RECITALS

WHEREAS City has need for the services of a person or an entity with particular training, ability, knowledge, and experience as possessed by Contractor, and

WHEREAS City has determined that Contractor is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

THEREFORE the Parties agree as follows:

1. SERVICES TO BE PROVIDED

Contractor shall provide services as specified in the Scope of Work, a copy of which is attached hereto, labeled Exhibit A and hereby incorporated by reference. Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by June 30, 2018. The City shall also retain the rights to two (2) two-year extensions to the Contract. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION

City agrees to pay Contractor not to exceed (Amount in written form) (\$Amount in numerical form) for performance of those services described in the Scope of Work, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor

must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
- G. 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 Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which 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.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by Contractor or upon completion of the work pursuant to this Agreement.

5. ASSIGNMENT/DELEGATION

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of City,

shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.

- B.** The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- C.** Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D.** Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. INDEMNIFICATION

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

8. INSURANCE

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier. Such insurance shall be primary and non-contributory.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverage:

- A. Commercial General Liability Insurance
 Contractor shall obtain, at contractor’s expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an “occurrence” form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	3,000,000
Personal & Advertising Injury	3,000,000
Each Occurrence	2,000,000
Fire Damage (Any one fire)	500,000
Medical Expense (Any one person)	5,000

- B. Commercial Automobile Insurance
 Contractor shall also obtain, at contractor’s expense, and keep in effect during the term of this contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.
- C. Professional Liability Insurance
 Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000.
- D. Workers’ Compensation Insurance
 The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers’ Compensation Law and shall comply with ORS 656.017, which requires them to provide workers’ compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers’ compensation coverage for their workers that complies with ORS 656.126. Employer’s Liability Insurance with coverage limits of not less than \$500,000 each accident shall be included.
- E. Additional Insured Provision
 The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.
- F. Notice of Cancellation
 There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days’ notice of cancellation to the City.

G. Insurance Carrier Rating

Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

H. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for Photo Radar Program Services. The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. A notation stating that "Insured coverage is primary" shall appear in the description portion of certificate.

I. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

J. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in the general liability policy.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

City of Milwaukie
Attn: Finance
10722 SE Main Street
Milwaukie, Oregon 97222

Business Phone: 503-786-7555
Business Fax: 503-786-7528
Email Address: finance@milwaukieoregon.gov

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, email or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

City	Contractor
City of Milwaukie	Company: (insert name of firm)
Attn: Accounts Payable	Attn: (insert contract manager's name)
10722 SE Main Street Milwaukie, Oregon 97222	Address: (insert contract manager's address)
Phone: 503-786-7523	Phone: (insert #)
Fax: 503-786-7523	Fax: (insert #)
Email Address: ap@milwaukieoregon.gov	Email Address: (insert address)

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

10. MERGER

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

11. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

12. TERMINATION WITH CAUSE

- A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:
 - 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
 - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
 - 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
 - 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

13. ACCESS TO RECORDS

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

14. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. NON-WAIVER

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

16. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

17. ERRORS

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

18. EXTRA (CHANGES) WORK

Only the Steve Bartol, Police Chief, or Carla Bantz, Court Operations Supervisor, may authorize extra (and/or change) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. WARRANTIES

All work shall be guaranteed by Contractor for a period of one year after the date of final acceptance of the work by the owner. Contractor warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this Agreement.

20. ATTORNEY'S FEES

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

21. GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

22. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapters 279A and 279B, the provisions of which are hereby made a part of this agreement

23. CONFLICT BETWEEN TERMS

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

24. AUDIT

Contractor shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Contractor

agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

25. SEVERABILITY

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

26. COMPLETE AGREEMENT

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Contractor has executed this Agreement on the date hereinabove first written.

CITY OF MILWAUKIE

CONTRACTOR

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date

EXHIBIT A
SCOPE OF WORK (SERVICES TO BE PROVIDED)

1. TECHNICAL SERVICES AND SCHEDULE**A. EQUIPMENT**

- i. Contractor shall provide digital camera system ("Equipment") for use in a van owned by the City. Equipment shall be installed in van and ready for use no later than 60 days from effective date of contract, unless a later date is agreed to by both parties.
- ii. City shall not guarantee nor be under any minimum required usage of the Equipment.
- iii. Contractor shall provide field service technicians, spare parts and equipment to repair any malfunctions with the equipment within 48 hours, excluding weekends and holidays. Substitute or replacement parts and/or Equipment shall be provided by the Contractor when repair times or parts supply exceeds this time limit.
- iv. Contractor shall supply Equipment that, to the best knowledge of the Contractor, is new, not obsolete or nearly obsolete (i.e. expected to become obsolete through the introduction of a new product line within the next six months following Contract execution), used, or remanufactured. Contractor shall provide model numbers for camera systems that it provides.
- v. Contractor shall offer City the opportunity to upgrade the Equipment should new equipment or a technological upgrade become available during the contract term. Installation of any new technology may be at an additional cost and the exact cost will be based on the scope of the technology upgrade and negotiations at the time of the upgrade.
- vi. City shall only be obligated to use Equipment or production models that have been satisfactorily demonstrated to the City, or that have demonstrated a record of successful deployment by other law enforcement agencies.
- vii. Any additional photo radar system implemented shall be of new manufacture and best quality and installed in accordance with approved recommendations of the manufacturer thereof, and shall conform to the Equipment specifications listed below (Section B).
- viii. Equipment shall meet all applicable Federal standards and specifications and be of a type approved for licensing and use in the City of Milwaukee.
- ix. Equipment shall be capable of executing its functions so that it performs according to, and fulfills the requirements of, the City.
- x. Title to all photo radar cameras, Equipment, and other materials provided to the City by Contractor will remain property of Contractor. Upon expiration or termination of this contract, all photo radar cameras, Equipment, and other material provided to the City by Contractor will be returned to Contractor.

B. SPECIFIC EQUIPMENT REQUIREMENTS

Contractor shall provide the following in regard to the Equipment:

- i. Equipment shall be able to consistently identify a vehicle and driver traveling through a radar beam and take a photograph of the vehicle traveling in excess of a predetermined speed threshold.

- ii. Equipment shall be capable of detecting the speed of targeted vehicle when operated from a stationary vehicle and subsequently displaying that information digitally.
- iii. A mobile reader board shall be provided that displays the speed of passing vehicles while the Equipment is in use. Reader board shall display the speed in digits that are a minimum of 9-1/2 inches in height and capable of being seen. Display on the City van must be readable from a distance of 150 feet.
- iv. Equipment shall be capable of recording the speed of a vehicle with an accuracy of plus or minus one (1) mile per hour and shall display that information in a mile per hour format.
- v. Equipment shall measure speed of traffic that is approaching or going away from it and gather data for statistical analysis.
- vi. Equipment shall be capable of deployment at a wide range of sites, locations and operating conditions, including but not limited to, heavy traffic volumes, multiple lanes of traffic, adverse weather and temperature conditions, and different road surface configurations.
- vii. Equipment must be able to operate while vehicles are moving at speeds of 15-150 miles per hour.
- viii. The camera shall be able to photograph up to three actual lanes of traffic concurrently and be able to produce high-resolution images of those vehicles. Photographs shall show the driver of the vehicle if a violation occurs and the photograph shall show at least one license plate.
- ix. Cameras shall be able to operate at night and come equipped with flash attachments. Photographs taken at night shall produce high-resolution images and identify the driver (if a photograph of the front of the vehicle is taken) and shall show at least one license plate.
- x. Equipment shall be capable of operating in an automated mode, with easy set-up, little maintenance and minimal human intervention required after set-up.
- xi. Equipment shall be capable of performing electronic internal calibration tests for speed measurement, accuracy, and functionality. Internal tests shall produce a visual and/or auditory signal that permits an operator to determine if the Equipment is functioning properly. If the internal calibration test shows that the Equipment is failing or the calibration has been lost, the Equipment shall display a failure code that is visible to the operator and shutdown.
- xii. The Equipment shall have sufficient shielding and suppression of radio frequency ("RF") current in the 800 Megahertz ("MHz") to 900 MHz band to prevent interference from a typical 30 watt Police radio transmitter operating in the same vehicle as the photo radar unit.
- xiii. Contractor shall provide a streamlined log-in procedure as well as an audible tone when a violation is captured.

C. DOCUMENTS AND MANUALS

Contractor shall provide the City with five (5) copies of all relevant Equipment specifications, manuals and materials relating to the capabilities and operation of all Equipment. Within 90 days from the contract effective date, Contractor shall obtain from the manufacturer of the Equipment any rights required for the City to make and provide copies of non-proprietary manuals and materials in response to any discovery requests required as a result of the use of the radar equipment. Training manuals for the Equipment will be provided to the City for viewing by citizens at the City's Police department. City agrees to treat such training manuals with the same care of confidentiality as it does its own confidential material.

D. WARRANTY AND MAINTENANCE

Contractor shall maintain Contractor-furnished photo radar enforcement system and its associated Equipment in good working order for the duration of the Contract.

- i. Excluding weekends and City holidays, any malfunctioning camera or other Contractor-furnished Equipment shall be returned to good working order within forty-eight (48) hours of notification that the Equipment is not in proper working order. If it cannot be made operational, the camera or other equipment will be replaced at no charge to the City.
- ii. Reports of Equipment malfunctions will be communicated by the City to the Contractor (Project Manager, field service technician, or the lead traffic service agent). Contractor shall acknowledge receipt of such calls as soon as possible.
- iii. An electronic log of all camera component problems reported and all repair activity will be maintained by the Contractor for each incident reported. A copy of repair log will be provided either electronically or paper copy to the City within ten (10) days following the City's request.
- iv. In order to assure all system components are working as intended, Contractor shall provide maintenance on the photo radar and related Equipment, such as but not limited to, the camera, video, radar, and computer, during the term of this contract.
- v. Contractor shall provide a preventive maintenance program in order to achieve reasonable reliability and availability of the Equipment. Maintenance shall occur at regularly scheduled intervals and at times when the Equipment is not being used. Maintenance shall include the running of diagnostics to ensure the early identification of any component failure.
- vi. Contractor shall work with the City to provide a mechanism and procedure for backing up all data files.
- vii. Contractor shall provide security precautions against unauthorized use and accidental destruction or modification of data as a result of human intervention or other disasters such as power failure.

E. BILLING

Contractor shall coordinate with City's Finance department to set up billing and accounting procedures acceptable to the City. The City agrees to provide Contractor payment within 30 days of invoice date.

F. DELIVERY

Contractor shall deliver all equipment to the Milwaukie Police Department, 3200 SE Harrison St, Milwaukie, OR 97222.

G. PHOTOGRAPH REQUIREMENTS

- i. Image Technology: Contractor shall use most current technology and most up-to-date digital camera apparatus in accordance with section 1(A)(6) above.
- ii. The photographic primary camera control unit shall produce a clear photograph that contains the following data: **(a)** Display of front license plate of vehicle; **(b)** Display of driver's face; **(c)** Scene of location where alleged violation occurred; **(d)** Motor vehicle during the alleged violation; **(e)** Day, month and year of the alleged violation; **(f)** Time of alleged violation displayed in hours, minutes and seconds; **(g)** Speed of vehicle displayed in miles per hour; **(h)** Officer's identification code; and **(i)** Location code information.

- iii. The photographic secondary camera control unit shall automatically take a photograph without manual intervention from the police officer in attendance and shall contain at least the following data: **(a)** Display of rear license plate of vehicle; **(b)** Scene of location where alleged violation occurred; **(c)** Motor vehicle during time of alleged violation; **(d)** Day, month and year of alleged violation; **(e)** Time of alleged violation displayed in hours, minutes and seconds; **(f)** Speed of vehicle photographed displayed in miles per hour; **(g)** Officer's identification code; and **(h)** Location code information.

H. IMAGE AND CITATION PROCESSING SERVICES

Contractor shall provide all staffing required for the development and presentation of the photographic images and supplies.

- i. Contractor shall provide the City with digital images of alleged violators, and photographs for court packets and citizens requesting to view their alleged violations. These photographs shall be provided to the City in hard copy and digital format.
- ii. Contractor will be responsible for processing all images.
- iii. Contractor shall provide one Field Service Technician (FST) responsible for retrieval of photo radar images based upon a schedule established by the City. The FST will respond to any report of a photo radar camera problem. All repair activity will be tracked by the FST on an electronic maintenance log.
- iv. Contractor shall collect memory cards, Photo Radar Officer Visual Observation Log and Photo Radar Equipment Set-up Checklists (as applicable) for the Contractor's system. Contractor shall establish a chain of custody, consistent with Oregon Law, for the alleged violation date and submit images for processing.
- v. Contractor shall convert images into a digital format, compare to Photo Radar Officer Visual Observation Log (as applicable), determine and enter license plate information, view driver and ensure view of driver is identifiable and is not obstructed or out of focus.
- vi. Contractor shall maintain access to current motor vehicle database that is maintained by the Oregon State Department of Motor Vehicles (DMV). In addition, Contractor shall have access to current motor vehicle databases in the states of Washington, California and Idaho. Access to these databases shall be maintained for the duration of the contract.
- vii. Contractor shall use the DMV database to verify information collected during the viewing process, re-check license plate information, registered owner information, determine whether the gender of the driver matches the gender of the registered owner of the vehicle (if the owner is an individual), compare vehicle type and owner type, and prepare images for storage.
- viii. After the verification process, Contractor shall print citations and transmit them to the police for approval and signature. Upon return of the approved signed citations, Contractor shall include printed corresponding cover letter with violation photo and appropriate printed affidavit of non-liability or certificate of innocence forms, and deposit into mail within guidelines established by Oregon law.
- ix. If Contractor's operation center closes for more than five (5) business days, for any reason, Contractor shall provide a business plan that will identify the same access and services as the present local operation center that is acceptable to the City. The relocated operation center shall

have adequate staff to operate, manage, maintain and keep the same service level as required in this contract.

- x. Contractor shall pick-up and deliver data on a daily basis (to and from the respective police department and court).
- xi. Contractor shall prepare warning letters, citations and/or notice letters for all persons who appear to have violated the speed limit.
- xii. Contractor shall obtain the police officer's signature for each citation and shall mail letters and citations to the identified vehicle owners within six business days following the alleged violation.
- xiii. Where investigation or legal necessity requires that an officer re-issue a citation that has already been authorized, Contractor shall provide a re-issued citation that bears the re-issue date, as well as the date of the original citation.

I. RECORDS AND ARCHIVING

Contractor shall maintain and provide supporting records of violations to the City and shall maintain all photographs in a manner that preserves their chain of custody to ensure their admissibility in court.

- i. Contractor shall maintain a list of all voided and destroyed images.
- ii. City shall direct Contractor to store all images for which citations have been issued for a period of two years from the date of the citation or 30 days after disposition of the case, whichever is later. Contractor shall keep all images for which citations are not issued for at least 30 days. When citations are dismissed by a person with official authority, or when citations are not issued, the City shall direct the Contractor to destroy all images after 30 days. City shall direct Contractor to delete all images for which citations have been issued for a period of two years from the date of the citation or 30 days after disposition of the case.
- iii. City shall require online storage of images for the time periods referenced in subsection above and shall provide an authenticated listing of all archived records.
- iv. Retrieval of archived information shall be available by Contractor within five (5) business days of City's request.

J. STATISTICAL ANALYSIS AND REPORTS

- i. Contractor shall provide reports that show and analyze time, date, speed, number of vehicles, and other data required for automated citation generation and traffic analysis. The reports shall be submitted to the City within 30 days of the end of each calendar month and shall include such information as is mutually agreed to by both parties in this contract, including the following mandatory items: **(a)** Client Monthly Summary Report; **(b)** Issuance Analysis Report; **(c)** Officer Summary Report; **(d)** Officer Activity Report; **(e)** Deployment Summary Report; **(f)** Location Activity Report; and **(g)** Current list of all valid location codes with information, including the court location, speed zone, applicable ORS statute and description of the geographic location.
- ii. Contractor shall provide any additional reports at City's request. Such reports shall be mutually agreed upon by both parties as they may be subject to additional fees charged by Contractor.
- iii. Contractor shall provide City with a monthly Activity Report within fifteen (15) days following the end of each month. The monthly report shall, at a minimum, include the following information: **(a)** Total number of citations issued; **(b)** Total number of photographs taken and percentage of total

vehicles whose photograph was taken that a violation notice was sent; **(c)** Total number and percentage of violations, delineated by speed and location, with time deployed at locations; and **(d)** Hours of use at any one site.

K. TRAINING REQUIREMENTS

Contractor shall provide a minimum of four (4) 2-day photo radar operator training classes per year, at no cost to the City. Classes shall be for City personnel who will operate the Equipment, and shall include both classroom and hands-on training. The maximum class size shall be 12 persons. Such training will occur in City-provided facilities, unless otherwise agreed upon by the parties. Contractor shall provide the following additional training:

- i. Contractor shall provide technical instruction on Equipment use and operation. Course content shall include the theory of the device, technical knowledge required for court purposes, radar and photography principles, and actual deployment techniques. Contractor shall supply all technical training materials and handouts in sufficient quantities to cover the training.
- ii. Contractor shall provide up to two (2) additional training sessions and materials to the Milwaukie Municipal Court Judge and court staff, if requested by the City.

L. COURT ASSISTANCE

Contractor shall provide, as reasonably necessary, a person who is qualified as an expert witness under current court requirements to testify in court in regard to photo radar technology along with any documentation that may be required. Services may include, but are not be limited to:

- i. Contractor shall provide to the court a PDF of issued citations, along with an electronic text file that shall download compatibly to the City's court management system, Tyler Technologies' Incode. The citation and electronic file shall contain the officer name, DPSST number, citation number, name of the alleged violator, alleged violation, fine amount, any enhanced penalty indication, court hearing date and time, court location, courtroom number, and any other necessary information that the court may require and that has been discussed and mutually agreed upon.
- ii. Within five (5) business days of notification from the Court of scheduled cases (but before court date), Contractor shall prepare and provide documentation to the officer who will testify about the alleged violation. Such documentation shall include information about operation of the camera, checklist regarding camera operation and repair, two photographs, maintenance logs (if necessary or requested), contact log showing any contacts with the alleged violator, and any other information that may be required. Exceptions shall be considered those cases added by the court system outside of normal channels.
- iii. Contractor shall provide City with a minimum of three photographs for each citation issued (one front and two rear photographs) when requested. The photograph shall be a minimum 3 by 5 inches, unless a larger photograph is necessary to view the driver/violation or to prosecute the case.
- iv. Contractor shall work with City to develop acceptable warning, explanatory, and other letters or correspondence for the court case.
- v. Contractor shall handle all returned mail and work with City staff to develop a report and procedure for handling returned mail.

- vi. Contractor shall work with City personnel to develop and update the forms library as it relates to legal forms and court documentation, which includes: **(a)** Develop an acceptable citation form; **(b)** Implement and utilize electronic signatures and court filing of citations; **(c)** Receive and process certificate of innocence and non-liability forms (a listing of citations to be dismissed shall be provided to the City's Police department as they are processed); **(d)** City shall audit, review and check certificate of innocence forms with photographic images taken of alleged violators to determine whether owners are accurately responding to the citations; **(e)** Contractor shall provide secure, online access for the public to view images on which citations were based.
- vii. Contractor and City acknowledge that ORS 153.076, and ORS 135.805 - 135.873, along with state and federal law of due process, impose a duty on the City to allow a defendant to inspect discovery favorable to him or her in connection with violation proceedings. City and Contractor understand that pursuant to these laws, judges throughout Oregon have granted defense discovery requests for materials on, among other things, photo radar training, maintenance, and system testing, as well as system operating instructions and time and dates of deployment. Contractor understands the City has discovery obligations and agrees to confer with City during pretrial discovery and provide documents to the City that respond to discovery requests. Contractor shall provide documents in a format that satisfies defense requests for production.
- viii. City understands that Contractor has a business interest in protecting its proprietary business information and, thus, the City will not object to Contractor's requests to protect this information during the discovery process. City further acknowledges that Contractor expressly states that its proprietary information that is part of a public record, if any, is submitted to the City in confidence and that the City will agree to Contractor's requests to claim an exemption from public records disclosure on this issue.

M. COMMUNICATIONS/PUBLIC EDUCATION

- i. Contractor shall be available to act as a resource during certain events planned as part of the photo radar communications and public education strategy. This includes but is not limited to, Equipment demonstration, as part of community presentations, if it is determined to be in the interest of the City and Contractor.
- ii. Contractor shall provide City with public information materials. These materials may include brochures and other printed information describing what photo radar is, how photo radar works, and what benefits the use of photo radar provides.

N. TELEPHONE HOT LINE

Contractor shall provide a telephone hotline that will permit callers to obtain basic information during the normal work week.

- i. Contractor shall staff telephone hotline from 8:00 AM to 5:00 PM PST, Monday through Friday, each week (excluding holidays). During other times, Contractor's hotline will permit callers to obtain information and to leave a voice message. Letters that accompany citations issued will have the toll-free number written on them.
- ii. City shall provide Contractor with answers to questions that are frequently asked by the public when it calls the hotline. Contractor shall provide those answers to the public in response to their questions.

2. WORK PERFORMED BY THE CITY

Police Department shall make available sufficient hours of personnel as required to meet with the Contractor and provide such information as required. Contractor shall assign a project manager who will oversee the work and provide support as needed. City shall be responsible for implementing and maintaining usual, customary and appropriate internal accounting procedures and controls, internal controls and other appropriate procedures and controls for the City. These controls will include information technology, proprietary information, and trade secret safeguards if appropriate to City work.

3. DELIVERY

All goods, materials, and services shall be delivered FOB to the City Police department at 3200 SE Harrison St, Milwaukie, OR 97222, or as designated by the work conducted within this Contract. All prices offered shall be inclusive of all shipping and delivery costs. Contractor must be prepared to furnish the items as agreed upon by the parties after receipt of an order.

With assembly, installation, calibration and other services required under this Contract, offered prices shall include all costs associated with delivery, assembly, setup, and proper disposal of packaging material. The offer price shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to Contractor, upon request. Delivery of the item(s) shall not be completed until all discrepancies have been corrected. Items not meeting Contract specifications shall be returned at Contractor's expense. Contractor shall replace rejected items as agreed upon by the parties after receipt of re-order request. Acceptance occurs when the City authorizes payment of the invoice.

4. PRICES AND PRICE CHANGES

Initial contract prices shall be as established herein. Unit prices shall remain firm through the initial period of the contract. At the end of initial period, following the date of acceptance, price changes may be allowed. Contractor agrees to provide pricing for all products for which Contractor is an authorized distributor for the duration of this Contract. Following the end of initial period, City and Contractor acknowledge that prices for goods and services furnished by Contractor under this Contract may be adjusted during the term of the Contract due to changes in Contractor's prices, rate plans, or product offerings. Such price changes shall be documented and agreed to in writing by Contractor and City as contract amendments. Contractor shall submit any proposed pricing revisions in writing to the City for consideration at least thirty (30) days before the proposed effective date. Price adjustments shall become effective thirty (30) days from the date of last signature on the contract amendment. No increase in price adjustments shall become effective prior to a date one year following the date of acceptance. Price adjustments will only become effective by fully executed amendments, following receipt by the City of the requested price adjustment.

5. CONTACT INFORMATION

City of Milwaukie:

Milwaukie Police Department
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Milwaukie Municipal Court
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Contractor: