



# **REQUEST FOR PROPOSALS**

## **GOODS AND SERVICES**

### **Mobile EV Charger**

**ADVERTISEMENT DATE: January 23, 2025**

**PROPOSALS DUE:**  
**Thursday, February 27, 2025 by 3:00 PM, Pacific Time**

**Address Proposals to:**

City of Wilsonville  
Attn: Scott Simonton, Fleet Services Manager  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

Electronic proposals are preferred, and must be submitted by email to: [simonton@ci.wilsonville.or.us](mailto:simonton@ci.wilsonville.or.us), with "Request for Proposals – Mobile EV Charger" in the subject line.

Any mailed Proposals must be sealed in an opaque envelope that shows the name and address of the Proposer and is plainly marked "Request for Proposals – Mobile EV Charger." Proposals shall be sent to the attention of Scott Simonton, Fleet Services Manager.

Faxed Proposals will not be accepted. The City of Wilsonville reserves the right to reject any or all Proposals.

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**ATTACHMENT A**

**SAMPLE GOODS AND SERVICES CONTRACT ..... 1**

# Request for Proposals

The City of Wilsonville, Oregon (“City”) is requesting Proposals in order to select a qualified vendor to provide one (1) mobile EV charger for the City of Wilsonville’s South Metro Regional Area Transportation (SMART) (“Project”). Interested vendors (“Proposers”) are invited to demonstrate their experience and qualifications in performing work directly related to the services required by responding to this **Request for Proposals (RFP)**. Proposals will be evaluated in accordance with the qualifications based selection procedures of OAR 137-047-0260. This Project  does  does not involve federal funds. If federal funds are involved, special federal requirements are contained within the attached draft Goods and Services Contract and must be carefully reviewed and complied with.

## I. PROJECT DESCRIPTION

The City is interested in purchasing one (1) mobile EV charger (the “Equipment”). For full specifications, see **Exhibit A- Scope of Work**, as referenced in Section II below.

## II. SCOPE OF WORK

The vendor is responsible for delivery of the Equipment as specified, including verification of compatibility with existing charging equipment (“Scope of Work”). For more detailed information on the Scope of Work, see **Attachment A – Goods and Services Contract** and **Exhibit A** attached thereto.

The City reserves the right to modify the Scope of Work based on the Proposer’s Proposal.

## III. TERM OF PROJECT

The contract awarded will be for a single purchase.

## IV. RFP DOCUMENTS

Request for Proposal (RFP) documents may be obtained at Wilsonville City Hall, located at 29799 SW Town Center Loop East, Wilsonville, Oregon 97070, or may be obtained electronically on the City website ([www.ci.wilsonville.or.us](http://www.ci.wilsonville.or.us)) under “Business” by clicking on “Bids and RFPs.” The City of Wilsonville shall not be held responsible for the delivery of the documents. Contact Scott Simonton by email at [simonton@ci.wilsonville.or.us](mailto:simonton@ci.wilsonville.or.us), or by phone at (503) 570-1541, to obtain RFP documents by mail.

## V. PROJECT MANAGER

The City’s Project Manager shall be the sole point of contact for all questions, concerns, and protests. The Project Manager for this Project is:

Scott Simonton  
Fleet Services Manager  
(503) 570-1541  
[simonton@ci.wilsonville.or.us](mailto:simonton@ci.wilsonville.or.us)

## VI. MINIMUM QUALIFICATIONS

To be considered for award of the contract for this Project, each Proposer shall demonstrate the following minimum criteria as part of the Proposal.

1. Proposer shall demonstrate a minimum of five (5) years' experience providing the types of services described within the Scope of Work of this Request for Proposals for public agencies.
2. Proposers with a record of substandard workmanship, as verified by the City by communication with licensing authorities, former clients and references, and other means as the City deems appropriate, will not be considered.

## VII. PROPOSAL REQUIREMENTS

Proposers shall prepare and submit Proposals in accordance with the requirements stated within this RFP. Adherence to these requirements will ensure a fair and objective analysis of submitted Proposals. Proposals should provide a clear, concise description of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on completeness, brevity, and clarity of content. Failure to comply with or complete any part of the RFP may result in rejection of the Proposal. The ability to follow these instructions demonstrates attention to detail.

### Proposal Format

Proposals shall be typewritten, with a standard body text font (e.g., Calibri, Times New Roman, Garamond) of at least 12-point. Any hard copy Proposals shall be preferably double-sided and stapled once or bound in the upper left-hand corner. The City requests that submittal materials contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled, such as PVC binders, spiral bindings, and plastic or glossy covers or dividers. One page is considered to be one side of a single 8½" x 11" sheet.

### Project Understanding

Proposals shall demonstrate the vendor's understanding of the Project by providing a clear and concise description of the Project, discussion of the anticipated primary issues and milestones, and identification of key stakeholders, based on the information provided in the RFP.

### Project Approach

Proposals shall clearly define the tasks and activities necessary to meet the objectives outlined in the Scope of Work of the RFP. Each Proposer should demonstrate knowledge of the type of work requested, ability to solve the anticipated Project issues, and ability to offer innovative ideas. Proposer's ability to expeditiously complete the work should be made evident. The Proposal should include the following:

1. Describe overall approach to project management.
2. Describe Proposer's approach to complete the tasks and activities of this RFP in a timely manner and control costs.
3. Describe Proposer's approach to unanticipated issues that may arise during the Project.

4. Describe Proposer's quality assurance and quality control procedures to be implemented on this Project.
5. Identify and describe the deliverables that will result from each task and activity.
6. Identify key points of input and review with City staff.

### Contractor Experience

Proposals shall provide a brief work history of Proposer's and any subcontractor's projects entailing the same type of work being requested. Emphasis should be placed on local projects for public agencies where possible. The Proposal should include the following:

1. Describe the Proposer's and key subcontractor's firm size, office locations, and relevant capabilities and resources to be utilized on this Project.
2. Describe Proposer's and any key subcontractors' work experience that corresponds with the Project needs as identified in this RFP.
3. Provide at least three (3) examples of projects completed by Proposer for public agencies within the last five (5) years that best characterize Proposer's experience with the work being requested, work quality, and cost control, describing each by project name, type, location, and date.
  - Include the public agency name and the name, address, telephone number, and email of the current contact person for each project, where possible.

### Supporting Information

Supporting materials may include product brochures, photos, other references, charts, and sample documents. However, pertinent information should be covered in the body of the Proposal. Supporting Information will not count toward the page limit, but brevity is encouraged. If there is no additional information to present in the Supporting Information, then state: *"There is no additional information we wish to present."*

## VIII. PROPOSAL SUBMISSION

### Proposal Submission Requirements

Proposers must submit an electronic Proposal by email to: [simonton@ci.wilsonville.or.us](mailto:simonton@ci.wilsonville.or.us), with "Request for Proposals – Mobile EV Charger" in the subject line, by **3:00 p.m., Pacific Time, on Thursday, February 27, 2025.**

Alternatively, hard copy Proposals can be delivered, as described on the cover page of this RFP, to:

City of Wilsonville  
Attn: Scott Simonton, Fleet Services Manager  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

Proposals must arrive at the issuing office, or inbox if submitting electronically, on or before the listed time and date due. Late Proposals will be returned unopened and without review. Faxed Proposals will not be accepted.

#### RFP Change Requests/Exceptions

A prospective Proposer may request a change to any provision, specification, or contract term (“Exceptions”) contained in the RFP documents by submitting a written request to:

[simonton@ci.wilsonville.or.us](mailto:simonton@ci.wilsonville.or.us)

OR

City of Wilsonville  
Attn: Scott Simonton, Fleet Services Manager  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

All change requests shall include “RFP Change Request – Mobile EV Charger” in the subject line (or written on the front of the envelope) and be submitted, in writing, by no later than **3:00 p.m., Pacific Time, on Thursday, February 13, 2025**. Each request for change must specify the provisions, specifications, or contract terms of the RFP in question and contain reasons for the requested change and any proposed changes.

The City will evaluate and resolve all change requests submitted before the listed time and date due within a reasonable time following receipt of the change request. Changes that are accepted by the City will be issued in the form of an addendum to the RFP.

#### **IX. Proposal Evaluation and Selection**

All Proposals received by the deadline will be reviewed by a Selection Review Committee. The Selection Review Committee will be comprised of City staff. Each committee member will independently evaluate each Proposal in accordance with the criteria stated in the Proposal Requirements section of this RFP.

At any point during the evaluation process, the City is permitted to seek clarification of any Proposal. The City retains the right to accept any or no Proposal that is deemed to best fit the needs of the City.

#### Written Evaluation

Based on their evaluation, each member of the Selection Review Committee will score each Proposal according to the following scoring criteria. Each member will rank, in descending order, each Proposal by total score.



## WRITTEN PROPOSAL EVALUATION CRITERIA

Criteria	Maximum Score
Equipment Design Characteristics	50
Cost	25
Delivery Timeline	25
<hr/> Total	<hr/> 100 Points

In addition to the above weighted scoring criteria, feedback from provided references will also be considered and may be determinative in the selection process.

### Explanation of Evaluation Criteria

*Design Characteristics:* The evaluation team will look at design and capacity. More specifically: energy storage on board, charging input time, charging output time, size and weight of unit, and compatibility with current vehicles and chargers. Evaluators may also consider the Proposer's experience and technical ability.

*Cost:* The overall value of the proposed Equipment will be evaluated, including maintenance costs, warranty, and ongoing operational costs.

*Delivery Timeline:* The proposed delivery date will be evaluated, both for fit within needed delivery timeframe and feasibility of the proposed delivery date.

### Successful Proposer Determination

The Proposer with the highest overall ranking, as determined by the Selection Review Committee, will be identified as the Successful Proposer.

The Selection Review Committee will determine the final ranking of Proposers, and the Committee's decision is final. Upon determination of the Successful Proposer and performance of additional investigations, the City will issue a Notice of Intent to Award letter notifying all Proposers of the City's selection of a Successful Proposer and protest procedures.

The City reserves the right to negotiate a final contract that is in the best interest of the City. The City will only negotiate those provisions of the contract that were noted as Exceptions in the Proposal. The City will attempt to reach a final agreement with the Successful Proposer. The City may, in its sole discretion, terminate negotiations and reject the Proposal in the event agreement cannot be reached. The City may then attempt to reach final agreement with the next highest ranked Proposer, and so on with the remaining Proposers, until an agreement is reached. In the alternative, the City may at any time elect to reject all Proposals and begin the RFP process over.

After the City has reached final agreement with the Successful Proposer, the Selection Review Committee will make a recommendation to the Wilsonville City Council. The Wilsonville City Council will then make the final contract award decision.

## X. SCHEDULE

The following is the anticipated timeline for receiving and evaluating Proposals and awarding a contract to the most qualified firm or individual. This schedule is subject to change as additional time is needed.

Advertise Request for Proposals	January 23, 2025
RFP Change Request Deadline	February 13, 2025, 3:00 p.m.
RFP Question Submission Deadline	February 13, 2025, 3:00 p.m.
Addenda Issuance Deadline	February 20, 2025
Proposals Due	February 27, 2025, 3:00 p.m.
Evaluation of Proposals Complete	March 14, 2025
Notice of Intent to Award	March 17, 2025
Award Protest Deadline	March 24, 2025, 3:00 p.m.
City Council Award	April 7, 2025, 7:00 p.m.
Notice of Award	April 8, 2025

## XI. RFP QUESTIONS

Proposers shall direct all questions regarding RFP documents in writing or by email to:

City of Wilsonville  
Attn: Scott Simonton, Fleet Services Manager  
29799 SW Town Center Loop East  
Wilsonville, OR 97070  
OR  
[simonton@ci.wilsonville.or.us](mailto:simonton@ci.wilsonville.or.us)

All questions shall include “RFP Questions – Mobile EV Charger” in the subject line or written on the front of the envelope and be submitted in writing by **3:00 p.m., Pacific Time, on Thursday, February 13, 2025**. Questions and answers will be provided by email to all firms on the RFP holders list. Additionally, responses will be posted on the City’s website by February 20, 2025 to share clarifying information with all potential Proposers.

Access to the City’s Project Manager for telephone calls, emails, or other communication will be unrestricted during the RFP preparation period up until 3:00 p.m., Pacific Time, on February 13, 2025. During this time, Proposers are encouraged to ask as many questions as needed to prepare a viable Proposal. Questions submitted after 3:00 p.m., Pacific Time, on February 13, 2025, will not be addressed.

For the sake of fairness, Proposers are not allowed to contact any City staff or official, other than the Project Manager, concerning this RFP. Contact with any other City staff or official concerning this RFP will be grounds for disqualification.

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning this RFP. Only answers to those questions responded to by the Project Manager via email or by written addendum may be relied upon.

## XII. GENERAL RFP INFORMATION

### Contract Award

The City may elect to award the contract to the highest ranked Proposer based on successful negotiation of scope, price, and terms. However, the City may, in its sole discretion, terminate negotiations and reject the Proposal if it appears agreement cannot be reached. The City may then attempt to reach a final agreement with the next highest scoring Proposer and may continue on, in the same manner, with remaining Proposers until an agreement is reached.

The City will only negotiate those provisions of the contract that were noted as Exceptions in the Proposal.

### Cancellation

The City reserves the right to cancel this RFP or the contract award or reject any or all Proposals at any time before execution of the contract by both parties if such cancellation or rejection is deemed to be in the best interest of the City. In no event shall the City have any liability for the cancellation of a contract award.

### Changes to the RFP Solicitation by Addenda

The City reserves the right to make changes to the RFP by written addendum, which will be issued by email format only to all those who have obtained the RFP documents by pick-up or standard mail, and will also be made available for download at <http://www.ci.wilsonville.or.us/rfps>.

All addenda shall have the same binding effect as though contained in the main body of the RFP and Scope of Work.

No addenda will be issued later than **Thursday, February 20, 2025**, except by an addendum, if necessary, postponing the date for receipt of Proposals or withdrawing the RFP altogether.

Each Proposer is responsible for obtaining all addenda prior to submitting a Proposal and shall acknowledge in the Proposal receipt of each addendum as part of the Proposal. Failure to acknowledge receipt of all addenda as part of the Proposal may result in rejection of the Proposal.

### Confidentiality

All information submitted by Proposers shall become and remain the property of the City and, as such, is considered public information and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposals for which the Proposer requests exception from disclosure as being proprietary information exempt from disclosure, consistent with Oregon law. If a Proposal contains any information that is considered a trade secret under ORS 192.501(2), each sheet of such information must be marked with the following legend:

*“This data constitutes a trade secret and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”*

Identifying the Proposal in whole as a trade secret is not acceptable. Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret. Nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Oregon Public Records Law.

The City will 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 not exempted from disclosure without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted. If a public record request is made for material marked as proprietary, the City will attempt to notify the impacted Proposer prior to the deadline for release of the material but will not defend against any legal challenge for release. Therefore, claims arising out of any public record request for such information shall be at the Proposer's sole expense, if the Proposer wishes to deny or withhold the information.

### Late Proposals

All Proposals that are not received by the Proposal Due Date and Time will not be considered and will be returned unopened to the Proposer. Faxed 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.

### Disputes

In case of any doubt or differences of opinion as to the items or services 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.

### Proposer Certifications

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

1. The Proposer has carefully examined all RFP documents, including the draft Goods and Services Contract (**attached as Attachment A**), all addenda, and all other attachments, fully understands the RFP intent, is able to perform all tasks as described in the Scope of Work of this RFP, and the Proposal is made in accordance therewith. Except as otherwise noted as part of the Proposal, the Proposer certifies that Proposer is ready, willing, and able to comply with all terms of the attached contract.
2. The Proposer is familiar with the local conditions under which the work will be performed.
3. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
4. The Proposer accepts all of the terms of the City's Goods and Services Contract and warrants that Proposer will fully meet all of the insurance requirements contained therein. If the Proposer wishes to amend or modify any terms of the Goods and Services Contract, such amendment or modification must be stated in particularity in the Proposal. Proposed

changes to the draft Goods and Services Contract not stated at the time of Proposal submission will not be considered. Changes stated will be considered but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, the Proposer may withdraw the proposed change or the entire Proposal and the City may elect to award the contract to the next highest ranked Proposer.

5. The Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of Proposer's knowledge and belief, no elected official, employee, or person whose salary is payable, in whole or in 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.
6. 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.
7. The Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
8. The Proposer has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.

The Proposer shall also certify Proposer's state of residence.

#### Nondiscrimination

By the act of submitting a Proposal in response to this RFP, the Proposer certifies, under penalty of perjury, that ***the Proposer has not discriminated, and will not discriminate, against minorities, women, emerging small business enterprises, or business enterprises that are owned or controlled by or that employ a disabled veteran, in obtaining any required subcontracts.***

#### Competition

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

#### Award Protest

A Proposer believing to have been adversely affected or aggrieved by the selection of the Successful Proposer may submit a protest to the City in accordance with OAR 137-047-0740. The protest must be in writing and submitted to:

City of Wilsonville  
Attn: Scott Simonton  
29799 SW Town Center Loop East  
Wilsonville, OR 97070  
OR  
[simonton@ci.wilsonville.or.us](mailto:simonton@ci.wilsonville.or.us)

Award protests shall include “Award Protest – Mobile EV Charger” in the subject line or written on the front of the envelope. The written protest must be received by the City no later than **3:00 p.m., Pacific Time, on Monday, March 24, 2025**. The protest should demonstrate that all higher ranked Proposers failed to meet the requirements of the RFP or are not qualified to perform the services described in the RFP. Protests received after the submittal deadline will not be considered.

No contract associated with the RFP will be awarded until any protests have been resolved. The City will evaluate and resolve all award protests submitted before the deadline within a reasonable time following receipt of the protest. The City will promptly issue a written decision on the protest to the Proposer who submitted the protest. If the City’s written decision on the protest results in a change to the RFP, the City will cancel the Notice of Intent to Award, revise the RFP documents accordingly, and solicit for new Proposals. The City’s decision regarding the protest is final and concludes the administrative appeals process.

### Proposal Liability

Proposers responding to this RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP. By proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto. The City is not liable for any cost incurred by a Proposer in protesting any portion of the RFP documents or the City’s selection decision.

### City Requests for Clarification, Additional Research, and Revisions

The City reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to timely 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. 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 any 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 record and may be disclosed accordingly.

The City reserves the right to request revisions of any Proposal after the date and time due and before award for the purpose of obtaining best and final offers.

### Rejection of Proposals

The City reserves the right to reject any or all irregularities or omissions in Proposals submitted in response to this RFP to the extent it is determined to be in the best interest of the City to do so. Furthermore, the City reserves the right to reject any or all Proposals or portions thereof submitted in response to this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
2. Failure of the Proposer to submit a Proposal in the format specified herein.
3. Failure of the Proposer to submit a Proposal within the time requirements established herein.
4. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.
5. Failure to provide information that is specifically requested in this RFP.

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 by the City that it is in the public interest to do so.

### City's Reservation of Rights

The City reserves the right to waive minor irregularities or omissions in compliance with the requirements of this RFP to the extent the Selection Review Committee and Project Manager determine it is in the best interest of the City to do so. The City also reserves the right to cancel this RFP at any time if it determines it is in the best interest of the City to do so. Therefore, by proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto.

### Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer following the time and date the Proposals are due. Proposals submitted early may be modified or withdrawn only by notice to the City at the Proposal submittal location prior to the time and date the Proposals are due. Such notice shall be submitted to the Project Manager, in writing, executed and signed by a duly authorized representative of the firm/individual submitting the Proposal. All such communication shall be worded so as not to reveal the contents of the original Proposal.

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

### Duration of Proposal

Proposal prices, terms, and conditions shall be firm for the duration of the contract period.

### Local and Federal Requirements

The City of Wilsonville intends to select a vendor in accordance with OAR 137-047-0260 and the City's municipal code. Selection of a vendor under this process is not a guarantee of a contract award, nor is the award of a contract for any portion of the Work a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of Wilsonville.

The selected vendor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under the contract for this Project, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all

other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

The selected vendor will be subject to the Oregon Workers Compensation Law and must comply with ORS 656.017, which requires the provision of Workers Compensation coverage for all employees working under the contract. The City of Wilsonville's programs, services, employment opportunities, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age, marital status, disability, or political affiliation.

If federal funds are utilized in conjunction with this Project, special federal contracting requirements apply and are set forth in the draft Goods and Services Contract.



# ATTACHMENT A

## SAMPLE GOODS AND SERVICES CONTRACT

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**CITY OF WILSONVILLE  
GOODS AND SERVICES CONTRACT**

This Goods and Services Contract (“Contract”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 2025 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and \_\_\_\_\_, a(n) \_\_\_\_\_ *[corporation/LLC]* (hereinafter referred to as “Supplier”).

**RECITALS**

WHEREAS, the City wishes to purchase equipment that Supplier is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Supplier represents that Supplier is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Supplier is prepared to provide such services, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

**AGREEMENT**

**Section 1. Contract Documents**

This Contract includes and incorporates by reference all of the foregoing recitals and all of the following additional documents: Request for Proposals dated January 23, 2025, and Supplier’s Proposal in response thereto (together with this Contract collectively referred to herein as “Contract Documents”). Supplier must be familiar with all of the foregoing and comply with them. All Contract Documents should be read in concert and Supplier is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

**Section 2. Goods Purchased**

Supplier will supply the new equipment described on the quotation, attached hereto as **Exhibit A** and incorporated by reference herein (“Equipment”).

**Section 3. Equipment Price and Delivery Date**

The price of the Equipment is \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), as shown on **Exhibit A**, and includes delivery to 28879 SW Boberg Road, Wilsonville, Oregon 97070 (“Delivery Location”). Sale shall occur upon inspection of the Equipment by the City and acceptance

of delivery at the Delivery Location. The City will pay Supplier in full within 30 days of receipt and acceptance of delivery of the Equipment. Supplier will schedule a date and time for delivery. Delivery must occur on or before June 15, 2026.

The Equipment price is all-inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the Oregon Corporate Activity Tax (CAT).

#### **Section 4. Term.**

Unless earlier terminated in accordance herewith, the term of this Contract shall be from the Effective Date until June 15, 2026. Any extension option must be exercised by the City, in writing, prior to expiration of the Initial Term of this Contract or any subsequent Extension Term.

#### **Section 5. Subcontractors and Assignments**

Supplier shall not subcontract with others for any of the Work prescribed herein. Supplier shall not assign any of Supplier's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion.

#### **Section 6. Required Federal Provisions**

This Contract is funded, in whole or in part, with federal funds. Supplier must comply with all the required federal provisions of the Federal Transit Administration (FTA), as set forth below:

6.1. **Clean Air and Clean Water.** Supplier agrees to comply with the inspection and other requirements of the Clean Air Act, as amended (42 USC § 7401 *et seq.*), and the Federal Water Pollution Control Act, as amended (33 USC § 1251 *et seq.*). Supplier agrees it will not use any violating facilities, it will report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (EPA) "List of Violating Facilities," and it will report any violation of use of prohibited facilities to the City. Supplier understands and agrees that the City will, in turn, report each violation, as required, to assure notification to the FTA and the appropriate EPA Regional Office.

6.2. **Energy Conservation.** Supplier agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

6.3. **Recovered Materials.** Supplier agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended (42 USC § 6962), and U.S. Environmental Protection Agency, "Comprehensive Procurement Guideline for Products Containing Recovered Materials" (40 CFR Part 247).

6.4. **Lobbying Restrictions.** Supplier certifies, to the best of its knowledge and belief, that:

6.4.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Supplier, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

6.4.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Supplier will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

6.4.3. Supplier will require that the language of this certification be included in the award documents for all sub-awards, at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6.5. **Access to Records and Reports.** The following federal access to records requirements apply to this Contract:

6.5.1. Record Retention. Supplier agrees to retain complete and readily accessible records related in whole or in part to this Contract, including but not limited to documents, reports, data, statistics, subcontracts, sub-agreements, leases, arrangements, other third party agreements of any type, and supporting materials related to those records.

6.5.2. Retention Period. Supplier agrees to comply with the record retention requirements in accordance 2 CFR § 200.333. Supplier will maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records will be maintained until the City, SMART, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

6.5.3. Access to Records. Supplier agrees to provide the City, SMART, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, sufficient access to any books, documents, papers, and records of Supplier which are related to performance of this Contract for the purposes of making audits, examinations, excerpts, and transcriptions, as reasonably may be required. Supplier also agrees to permit any of the foregoing parties (at their costs) to reproduce by any means whatsoever any excerpts and transcriptions as reasonably needed.

6.5.4. Access to the Sites of Performance. Supplier agrees to permit the FTA and its contractors access to the sites of performance under this Contract as reasonably may be required.

6.6. **Contract Work Hours and Safety Standards**. Supplier will comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 USC § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act; 40 USC § 3701 *et seq.*; and U.S. Department of Labor regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 CFR Part 5).

6.6.1. Records Retention. Supplier will maintain payrolls and basic payroll records during the course of performance of the Services under this Contract and will preserve them for a period of three (3) years from the completion of the Services for all laborers and mechanics, including guards and watchmen, working on the Services. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

6.6.2. Access to Records. The records maintained pursuant to **Subsection 6.6.1** will be made available by Supplier for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Supplier will permit such representatives to interview employees during working hours on the job.

6.6.3. Subcontracts. Supplier will require the inclusion of the language of this **Section 6.6** within subcontracts of all tiers.

## 6.7. **Civil Rights Requirements**.

Under this Contract, Supplier will, at all times, comply with the following requirements:

6.7.1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d), Section 303 of the Age Discrimination Act of 1975, as amended (42 USC § 6102), Section 202 of the Americans with Disabilities Act of 1990, as amended (42 USC § 12132), and federal transit laws at 49 USC § 5332, Supplier agrees that it will not discriminate against any employee or applicant for employment on the basis of race,

color, religion, sex, age, disability, or national origin. In addition, Supplier agrees to comply with applicable federal implementing regulations and other implementing requirements the FTA may issue.

6.7.2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended (42 USC § 2000e *et seq.*), and federal transit laws at 49 USC § 5332, Supplier agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" (41 CFR Chapter 60), and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965; 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC § 2000e note. Supplier agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Supplier agrees to comply with any implementing requirements the FTA may issue.

6.7.3. Age. In accordance with the Age Discrimination in Employment Act of 1967, as amended (29 USC §§ 621-634); U.S. Equal Employment Opportunity Commission regulations, "Age Discrimination in Employment Act" (29 CFR Part 1625); the Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*); U.S. Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance" (45 CFR Part 90); and federal transit law at 49 USC § 5332, Supplier agrees to refrain from discrimination against present and prospective employees on the basis of age. In addition, Supplier agrees to comply with any implementing requirements the FTA may issue.

6.7.4. Disabilities. In accordance with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794); the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 *et seq.*); the Architectural Barriers Act of 1968, as amended (42 USC § 4151 *et seq.*); and federal transit law at 49 USC § 5332, Supplier agrees that it will not discriminate against individuals on the basis of disability. In addition, Supplier agrees to comply with any implementing requirements the FTA may issue.

6.8. **National Intelligent Transportation Systems Architecture and Standards.** To the extent applicable, Supplier agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and any other implementing directives the FTA may issue at a later date, except to the extent the FTA determines otherwise in writing.

## **6.9. Disadvantaged Business Enterprises.**

If the City must adopt a Disadvantaged Business Enterprise (DBE) program, the parties will execute a written amendment so that this Contract becomes subject to the City's DBE program.

6.9.1. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The percentage of SMART's overall goal for DBE participation will be determined when and if the City adopts a DBE program. Supplier will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

6.9.2. Supplier shall not discriminate on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin in the performance of this Contract. Supplier shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Supplier to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate.

## **6.10. Program Fraud and False or Fraudulent Statements and Related Acts.**

6.10.1. Supplier acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended (31 USC § 3801 *et seq.*), and U.S. Department of Transportation regulations, "Program Fraud Civil Remedies" (49 CFR Part 31), apply to its actions pertaining to this Project. Upon execution of this Contract, Supplier certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted Project for which the Services are being performed. In addition to other penalties that may be applicable, Supplier further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Supplier to the extent the Federal Government deems appropriate.

6.10.2. Supplier also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 USC Chapter 53, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5323(l) on Supplier, to the extent the Federal Government deems appropriate.

## **6.11. Suspension and Debarment.**

6.11.1. Supplier must comply with and facilitate compliance with U.S. Department of Transportation regulations, "Nonprocurement Suspension and Debarment" (2 CFR Part 1200), which adopts and supplements the U.S. Office of Management and Budget (U.S.



OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 CFR Part 180). Supplier is required to verify that its principals and affiliates are eligible to participate in this federally funded Contract and are not presently declared by any federal department or agency to be debarred, suspended, proposed for debarment, voluntarily excluded, disqualified, or declared ineligible from participation in any federally assisted award.

6.11.2. Supplier is required to comply with Subpart C of 2 CFR Part 180, as supplemented by 2 CFR Part 1200, and must include the requirement to comply with Subpart C of 2 CFR Part 180 in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, Supplier has certified as follows:

***The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that Supplier knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Supplier agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Supplier further agrees to include a provision requiring such compliance in its lower tier covered transactions.***

**6.12. Trafficking in Persons.**

6.12.1. Supplier agrees that it and its employees that participate in the Project covered under this Contract may not:

6.12.1.1. Withhold monthly progress payments;

6.12.1.2. Engage in forms of trafficking in persons during the period of time that this Contract is in effect;

6.12.1.3. Procure a commercial sex act during the period of time that this Contract is in effect; or

6.12.1.4. Use forced labor in the performance of the Agreement or any subcontracts thereunder.

6.12.2. Supplier agrees to comply, and assures the compliance of each subrecipient, with federal requirements and guidance, including:

6.12.2.1. Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 USC § 7104(g); and

6.12.2.2. The terms of this Section, which have been derived from U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, per U.S. OMB’s direction.

6.12.3. Supplier agrees to, and assures that each subrecipient will:

6.12.3.1. Inform the FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this clause; and

6.12.3.2. Include the substance of this clause in all agreements or subcontracts with recipients, subrecipients, and suppliers at every tier, including this requirement to flow down the clause.

6.13. **Safe Operation of Motor Vehicles.** Supplier is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. Supplier agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver owns or rents, a vehicle Supplier owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

6.14. **Federal Changes.** Supplier shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in any Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Supplier's failure to so comply shall constitute a material breach of this Contract.

6.15. **Violation and Breach of Contract; Termination.** The clauses concerning violation and breach of this Contract and termination of this Contract can be found in **Section 10**, below.

6.16. **No Obligation by the Federal Government.** The City and Supplier acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Supplier, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this contract.

6.17. **Federal Transit Administration (FTA) Terms Controlling.** Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Supplier shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

6.18. **Disputes, Breaches, Defaults, or Other Litigation.** Supplier agrees that the FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

6.18.1. **Notification to FTA.** Supplier agrees to notify the FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of federal laws or regulations. If Supplier seeks to name the Federal Government as a party to litigation for any reason, in any forum, Supplier agrees to inform the FTA in writing before doing so. At a minimum, each notice to the FTA under this **Section 6.18** shall be provided to the FTA Regional Counsel within whose Region Supplier operates its public transportation system or implements the Project.

6.18.2. **Federal Interest in Recovery.** The Federal Government retains the right to a proportionate share of any proceeds derived from any third party recovery, based on the percentage of the federal share awarded for the Project, except that Supplier may return liquidated damages recovered to its Project Account in lieu of returning the federal share to the Federal Government.

6.18.3. **Enforcement.** Supplier agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

6.18.4. **FTA Concurrence.** The FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and Supplier.

## **Section 7. Indemnity**

7.1. **Indemnification.** Supplier acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City and the State of Oregon, and each of their officers, employees, and agents, harmless from any and all liability, settlements, loss, costs, and expenses (including attorneys fees) in connection with any action, suit, or claim resulting or allegedly resulting from a tort, as defined in ORS 30.260, caused, or alleged to be caused, in whole or part, by the negligent or willful acts or omissions of Supplier. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Supplier shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City or the State of Oregon, and none of the foregoing shall relieve Supplier of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City and the State of Oregon as provided above and to reimburse the City and State of Oregon for any and all costs and damages suffered by the City or the State of Oregon as a result of Supplier's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 7.3**. Supplier shall defend the City (using legal counsel reasonably acceptable to the City) and the State of Oregon (using legal counsel reasonably acceptable to the State of Oregon) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Supplier. As used herein, the term "Supplier" applies to Supplier and its own officers, agents, employees, and suppliers.

7.2. **Rights Reserved by the State of Oregon.** Neither Supplier nor any attorney engaged by Supplier may defend any claim in the name of the State of Oregon or any agency of the State of

Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election, assume its own defense and settlement in the event that it determines that Supplier is prohibited from defending State of Oregon or that Supplier is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Supplier if the State of Oregon elects to assume its own defense.

7.3. **Standard of Care.** In the performance of the Work, Supplier agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Supplier's profession practicing in the Portland metropolitan area. Supplier will re-perform any Work not meeting this standard without additional compensation. Supplier's re-performance of any Work, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Supplier's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

## **Section 8. Insurance**

8.1. **Insurance Requirements.** Supplier must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Supplier's activities or work hereunder. The amount of insurance carried is in no way a limitation on Supplier's liability hereunder. The policy or policies maintained by Supplier shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

8.1.1. Commercial General Liability Insurance. Supplier shall obtain, at Supplier's expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance, including personal and advertising injury liability, products and completed operations, and contractual liability coverage, for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** annual general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

8.1.2. Business Automobile Liability Insurance. If Supplier will be using a motor vehicle in the performance of the Work herein, Supplier shall provide the City a certificate indicating that Supplier has business automobile liability coverage for all owned, hired, and non-owned vehicles for bodily injury and property damage. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**. The coverage may be written in combination with the Commercial General Liability Insurance, with separate limits for Commercial General Liability and Automobile Liability.

8.1.3. Workers Compensation Insurance. Supplier and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Suppliers who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than **\$500,000** each accident.

8.1.4. Excess/Umbrella Liability Insurance. A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

8.1.5. Insurance Carrier Rating. Coverages provided by Supplier must be underwritten by an insurance company deemed acceptable by the City and the State, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

8.1.6. Additional Insured and Termination Endorsements. The City and the State must be named as endorsed additional insureds with respect to Supplier’s liabilities hereunder in insurance coverages. Additional Insured coverage under Supplier’s Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 20 10 07 04, or its equivalent, and products and completed operations via ISO Form CG 20 37 07 04, or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 24 04 or its equivalent shall be provided. The following are included as additional insureds: “The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers; and the State of Oregon, the Oregon Transportation Commission, and the Department of Transportation, and their respective officers, members, agents, and employees.” An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days’ advance written notification of any cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the insurance policies required hereunder.

8.1.7. “Tail” Coverage. If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance or pollution liability insurance, Supplier shall maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the Effective Date of this Contract, for a minimum of twenty-four (24) months following the later of: (i) Supplier’s completion and the City’s acceptance of the Equipment provided for under this Contract, or (ii) the expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing twenty-four (24) month requirement, if Supplier elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then Supplier may request, and the City may grant, approval of the maximum “tail” coverage period reasonably available in

the marketplace. If City approval is granted, Supplier shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available for in the marketplace.

8.1.8. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Supplier shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Supplier agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days’ prior advance notice and Supplier will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

8.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Supplier shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are “Claims Made” policies, Supplier will be required to maintain such policies in full force and effect throughout any warranty period.

## **Section 9. Warranties.**

Supplier hereby agrees that Supplier will timely and thoroughly perform all warranty work. Work will be performed at the City’s location unless the work cannot reasonably be performed on site. In that case, Supplier will be responsible for transporting the Equipment in need of warranty work from Wilsonville and back to Wilsonville. Supplier agrees to provide full warranty for labor and materials for all Equipment delivered to the City for a length of time not less than the manufacturer warranty for the specific Equipment. The full warranties are as follows: \_\_\_\_\_ . All warranties are from the date of delivery and acceptance by the City, and are in addition to, and not in lieu of, any other warranties provided by various manufacturers.

## **Section 10. Early Termination; Default**

10.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

10.1.1. By mutual written consent of the parties;

10.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Supplier by mail or in person; or

10.1.3. By Supplier, effective upon seven (7) days’ prior written notice, in the event of substantial failure by the City to perform in accordance with the terms through no fault of Supplier, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

10.2. If the City terminates this Contract in whole or in part, due to default or failure of Supplier to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Supplier shall be liable

for all costs and damages incurred by the City as a result of the default by Supplier, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Supplier. In the event of a default, the City will provide Supplier with written notice of the default and a period of three (3) days to cure the default. If Supplier notifies the City that it cannot, in good faith, do so within the three (3) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, which agreed upon extension must be in writing and signed by the parties prior to the expiration of the cure period. Unless a written, signed extension has been fully executed by the parties, if Supplier fails to cure prior to expiration of the cure period, the Contract is automatically terminated.

10.3. If the City terminates this Contract for its own convenience not due to any default by Supplier, payment of Supplier shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Supplier against the City under this Contract.

10.4. Termination under any provision of this **Section 10** shall not affect any right, obligation, or liability of Supplier or the City that accrued prior to such termination. Supplier shall surrender to the City items of work or portions thereof, for which Supplier has received payment or the City has made payment.

### **Section 11. Contract Modification; Change Orders**

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Supplier.

### **Section 12. Notices**

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville  
Attn: Scott Simonton, Fleet Services Manager  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

To Supplier: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **Section 13. Miscellaneous Provisions**

13.1. **Integration.** This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions,

representations, or agreements. In case of conflict among these or any other documents, the provisions of this Contract shall control, and the terms most favorable to the City, within the City's sole discretion, will apply.

13.2. **Legal Effect and Assignment.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

13.3. **Equal Opportunity.** No person shall be discriminated against by Supplier in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City.

13.4. **No Assignment.** Supplier may not delegate the performance of any obligation to a third party unless mutually agreed, in writing.

13.5. **Adherence to Law.** This Contract shall be subject to, and Supplier shall adhere to, all applicable federal, state, and local laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Supplier is required by law to obtain or maintain in order to perform the work described in this Contract shall be obtained and maintained throughout the term of the Contract.

13.6. **Third Party Beneficiary.** The State of Oregon is a third party beneficiary of this Contract.

13.7. **Governing Law.** This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

13.8. **Jurisdiction.** Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

13.9. **Legal Action/Attorney Fees.** If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.



13.10. **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

13.11. **Severability.** If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

13.12. **Modification.** This Contract may not be modified except by written instrument executed by Supplier and the City.

13.13. **Time of the Essence.** Time is expressly made of the essence in the performance of this Contract.

13.14. **Calculation of Time.** Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

13.15. **Headings.** Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

13.16. **Number, Gender and Captions.** In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

13.17. **Interpretation.** As a further condition of this Contract, the City and Supplier acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

13.18. **Entire Agreement.** This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

13.19. **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

13.20. **Authority.** Each party signing on behalf of Supplier and the City hereby warrants actual authority to bind their respective party.

The Supplier and the City hereby agree to all provisions of this Contract.

**SUPPLIER:**

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

EIN/Tax I.D. No. \_\_\_\_\_

**CITY:**

CITY OF WILSONVILLE

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephanie Davidson, Assistant City Attorney  
City of Wilsonville, Oregon