CITY CLERK
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C-8642
09/30/2013

AGREEMENT FOR

Intelligent Vehicle System Automated Voice Annunciator (AVA)

City of Glendale Solicitation No. 13-16

This Agreement for Intelligent Vehicle System Automated Voice Annunciator (AVA) ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Digital Recorders, a division of Clever Devices LTD, a New York corporation, (the "Contractor"), as of the 30th day of September, 2013.

RECITALS

A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, pursuant to Solicitation No. 13-16 (the "Project");

B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project attached hereto;

C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows:

1. Key Personnel; Sub-contractors.

1.1 Services. Contractor will provide all services necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors or consultants, retained by City.

1.2 Project Team.

a. Project Manager.

(1) Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's option, complete the Project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement;

(2) The City must approve the designated Project Manager; and

(3) To assure the Project schedule is met, Project Manager may be required to devote no less than a specific amount of time as set out in Exhibit A.

b. Project Team.

(1) The Project manager and all other employees assigned to the project by Contractor will comprise the "Project Team."

(2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Contractor.

c. Discharge, Reassign, Replacement.

(1) Contractor acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in the response to the Project's solicitation.

(Revised 11/7/11)

(2) Contractor will not discharge, reassign or replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Contractor, in which event the substitute must first be approved in writing by City.

(3) Contractor will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties or if the acts or omissions of that person are detrimental to the development of the Project.

d. Sub-contractors

(1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.

(2) Contractor will remain fully responsible for Sub-contractor's services.

(3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.

(4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Contractor's Work.**

3.1 Standard. Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 Licensing. Contractor warrants that:

a. Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and

b. Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").

(1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.

(2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default under the Agreement.

3.3 Compliance. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

3.4 Coordination; Interaction.

a. For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").

b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating

Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

c. For projects not involving Coordinating Project Professionals, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

4. Compensation for the Project.

4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed $45,000, as specifically detailed in **Exhibit B** (the "Compensation").

4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified.

a. Adjustments to the Compensation require a written amendment to this Agreement and may require City Council approval.

b. Additional services which are outside the scope of the Project contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.

c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

5. Billings and Payment.

5.1 Applications.

a. Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.

b. The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 Payment.

a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.

b. Payment may be subject to or conditioned upon City's receipt of:

(1) Completed work generated by Contractor and its Sub-contractors; and

(2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. Termination.

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.

a. Contractor will be equitably compensated for Service and Repair furnished prior to receipt of the termination notice and for reasonable costs incurred.

b. Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within 14 days after receipt of written notice specifying the breach.

a. Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provision of § 5.

b. Pursuant to terms of RFP, if City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages of more than the amount of this Agreement.

7. **Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.**

8.1 Contractor. Contractor and each Sub-contractor performing work as an independent Contractor or providing materials related to this Agreement, must procure and maintain the insurance coverages described below (collectively referred to herein as the "Contractor's Policies"), until each Party's obligations under this Agreement are completed and the City shall have no responsibility of liability for such insurance coverage.

8.2 Sub-contractors.

a. Contractor must cause its Sub-contractors to obtain and maintain the insurance required in this Agreement.

b. City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.

c. Contractor and Sub-contractors must provide to the City proof of the Required Insurance whenever requested.

8.3 Other Contractors or Vendors.

a. Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.

b. This insurance coverage must comply with the requirements set forth herein for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).

8.4 Policies. The insurance company issuing the policy required above shall have an AM Best financial rating of "A-" or better and be authorized by the State of Arizona Department of Insurance to transact business within the State. **The certificate and policy shall name the City as an additional insured and shall be primary and non-contributory coverage. The City shall also be an additional insured to the full limits of the liability insurance purchased by the Consultant even if those limits are in excess of those required by this contract.**

8.5 Certificates of Insurance.

a. Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative a copy of the policy or certification by insurance carrier for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies providing coverage during the Term of this Agreement and in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section. The Contractor's General Liability policy shall be the primary coverage for Contractor activities under this contract and the coverage limits of insurance shall not be less than those listed below.

b. Certification must include: name and address of insurance company; policy number; liability coverage amounts; a statement the policy will not be canceled or failed to be renewed without thirty (30) days written notice to the City.

c. Certification to be submitted to: Materials Management, 5850 West Glendale Avenue, Suite 317, Glendale, Arizona 85301.

d. City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.

e. Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under the Agreement.

8.6 Required Insurance.

Type of Insurance (Minimum)	Limits of Liability
Workers' Compensation	Statutory
Employer's Liability	
Each Accident	$100,000
Disease-Each Employee	$100,000
Disease-Policy Limit	$500,000

Commercial General - Liability shall cover liability arising from bodily injury, property damage, products-completed operations, personal and advertising injury, independent Contractors, and broad form contractual coverage.

Each Occurrence	$1,000,000
Personal and Advertising	$1,000,000
General Aggregate	$2,000,000
Products-Completed Operations	$1,000,000

Automobile Liability – Including bodily injury and property damage for any owned, hired and non-owned vehicles used in the performance of the services.

Combined Single Limit (CSL)	$1,000,000

Workers' Compensation - Contractor shall be in full compliance with the provisions of the Arizona Workers' Compensation Law (Title 23, Chapter 6, Arizona Revised Statutes) as amended, and all rules and regulations of the Industrial Commission of Arizona made in pursuance thereof. Contractor shall secure payment of compensation to employees by insuring the payment of such compensation with the State Compensation Fund or any insurance company authorized by the Insurance Department of Arizona to transact business in the State of Arizona.

Contractor further agrees that he shall require any and all subcontractors performing work under the agreement to comply with said Workers' Compensation Law. It is expressly understood and agreed that all persons employed directly or indirectly by the Contractor, or any of his subcontractors, shall be considered the employees of such Contractor, or his subcontractor(s), and not the employees of the City

8.7 Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:

(1) Cancellation or termination of Contractor or Sub-contractor's Policies;

(2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and

(3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.

9. **Indemnification.**

a. To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.

b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.

c. Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

d. Notwithstanding any other provision in this section, Contractor's obligations under this section will not be more than the amount of this Agreement.

10. **Immigration Law Compliance.**

9.1 Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

9.2 Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

9.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 9.1 above.

9.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 9.1 above. Contractor agrees to keep papers and records available for inspection by the

City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

9.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

9.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

9.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

11. Foreign Prohibitions. Contractor certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutes, in the countries of Sudan or Iran.

12. Notices.

11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

a. The Notice is in writing; and

b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and

c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:

(1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or

(2) As of the next business day after receipt, if received after 5:00 p.m.

d. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and

e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 Representatives.

a. Contractor. Contractor's representative (the "Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Clever Devices LTD
300 Crossways Park Drive
Woodbury, New York 11797

b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Transit Supervisor

Attn: Jeff Henry
6210 West Myrtle, Building S
Glendale, Arizona 85301
623-930-2940

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

c. Concurrent Notices.

(1) All notices to City's representative must be given concurrently to City Manager and City Attorney.

(2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.

(3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.

d. Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

13. Financing Assignment. City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project

14. Entire Agreement; Survival; Counterparts; Signatures.

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.

b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.

c. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.

b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.

c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every

other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.

13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.

13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

15. **Term.** The term of this Agreement commences upon the effective date and continues for a period of four years.

16. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.

17. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Compensation
Exhibit C	Dispute Resolution
Exhibit D	Federal Requirements

The parties enter into this Agreement as of the effective date shown above.

City of Glendale,
an Arizona municipal corporation

By: Brenda S. Fischer
Its: City Manager

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

Clever Devices, LTD,
a New York corporation

9/30/13

By: Andrew Stanton
Its: Chief Operating Officer

(Revised 11/7/11)

EXHIBIT A

Intelligent Vehicle System Automated Voice Annunciator (AVA)

City of Glendale Solicitation No. 13-16

PROJECT

[See attached]

PROJECT

Intelligent Vehicle System Automated Voice Annunciator (AVA)

City of Glendale Solicitation No. 13-16

The Contractor shall furnish, deliver, and install an integrated and tested on-board communication support system collectively called the IVS, consisting of the Vehicle Control Unit (VCU), Global Positioning System (GPS), Automated Voice Annunciation system (AVA), internal light-emitting diode (LED) stop location sign system and all required peripheral hardware, software, antennas, interconnecting harness', installation and support. The IVS shall be a complete system to be used in Transit vehicles. All equipment shall be provided with the appropriate license(s) hardware and copies of software required to operate the system throughout its service life at the City. Contractor shall perform all tasks necessary to configure it into a complete system, with each item thoroughly tested and ready for operation.

This Agreement is subject to the concurrence of the U.S. Department of Transportation (DOT) and the Federal Transit Administration (FTA) and Contractor is required to comply with Federal requirements and execute required agreements and certifications, as set forth in Exhibit D and incorporated herein.

EXHIBIT B

Intelligent Vehicle System Automated Voice Annunciator (AVA)

City of Glendale Solicitation No. 13-16

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

N/A.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed $45,000.00.

DETAILED PROJECT COMPENSATION

The pricing set for on the Price Sheet submitted by Contractor for RFP 13-16 applies, except that support, maintenance and license fees (lines 5.1.5 and 5.1.6) are not applicable.

The one-time initial set-up/installation fee of $12,931 and the one-time training cost of $3,336, the per-bus cost of $4,595, and the cost to record up to 45 vehicle announcements in Spanish of $360 apply.

No buses were equipped in 2012. The City anticipates equipping at least two (2) buses in calendar year 2013, and a maximum of six (6) buses throughout the Term of this Agreement. The number and timing of equipping buses is in the City's sole discretion.

EXHIBIT C

Intelligent Vehicle System Automated Voice Annunciator (AVA)

City of Glendale Solicitation No. 13-16

DISPUTE RESOLUTION

1. Disputes.

1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.

1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.

1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.

1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.

a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;

b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and

c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.

a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.

b. The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.

2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.

4. **Exceptions.**

4.1 Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.

4.2 Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.

EXHIBIT D

Intelligent Vehicle System Automated Voice Annunciator (AVA)

City of Glendale Solicitation No. 13-16

FEDERAL REQUIREMENTS

Henry, Jeff

From: susan.sweeden@phoenix.gov
Sent: Tuesday, February 12, 2013 8:40 AM
To: Henry, Jeff
Cc: Link, Kevin; russ.stevens@phoenix.gov
Subject: Re: DBE Requirements for Digital Recorders
Attachments: DIGITAL RECORDERS DBE A Form.docx; DIGITAL RECORDERS DBE Letter for Glendale.doc; 13-16 Intelligent Vehicle System Auto Voice Annunicator_FINAL.doc; SKonicaBizH12110213240.pdf; Glendale DBE Form.docx; DBE Letter for Glendal.doc

Hi Jeff,
In reviewing the letter from Digital Recorders dated February 4, 2013, and from our recent conversation in reference to the DBE requirements, Digital Recorders letter addressing the search for DBE firms has met and satisfied the DBE requirement. Digital Recorders can proceed to move forward.

If you have any questions, I can be reached at 602-534-2667.

Thank you

Susan Sweeden
Management Assistant I
Phoenix Public Transit Department
(602) 534-2667

City of Phoenix
PUBLIC TRANSIT DEPARTMENT
susan.sweeden@phoenix.gov
www.phoenix.gov/publictransit
www.twitter.com/phoenixmetrobus

"Henry, Jeff" <JHenry@GLENDALEAZ.com>

02/06/2013 09:14 AM

To Russ Stevens/PTD/PHX@PHXENT, Susan Sweeden/PTD/PHX@PHXENT
cc "Link, Kevin" <KLink@GLENDALEAZ.com>
Subject FW: DBE Requirements for Digital Recorders

Sorry I don't believe I sent Digital Recorders e-mail with their attachments.
Please let me know if what Digital Recorders sent will suffice the requirements.

Thank you,
Jeff

From: Dan Trujillo [mailto:DTrujillo@digrec.com]
Sent: Monday, February 04, 2013 2:13 PM
To: Henry, Jeff
Subject: FW: Completed Forms, and letter of explanation that there was no qualified DBE vendor.
Importance: High

Dear Jeff,

I hope you are feeling better. Okay, this is it. I just gained approval to write an explanation letter from my firm to address the DBE matter. Yes, that was a long time but here it is.
I think the letter should suffice since Mr. Reginald Ragland told me to move forward after I researched that there was no firm within Arizona that could perform the work.

Please forward my letter to the appropriate folks. I also was contacted by Arizona Bus Sales to quote the other systems on the new bus build.

I do hope this helps speed things up. As soon as you can please forward me a PO or contact number we can use to order the equipment and set up the installation date.

Dan Trujillo
Western Region Sales Manager
Digital Recorders Inc.
A Division of Clever Devices
(818) 744-3440 Direct Line
(800) 222-9583 Corporate Office
(661) 297-8244 Fax Line

dtrujillo@digrec.com
www.digitalrecorders.com
www.cleverdevices.com

From: Henry, Jeff
Sent: Monday, February 04, 2013 3:26 PM
To: russ.stevens@phoenix.gov; susan.sweeden@phoenix.gov
Cc: Link, Kevin
Subject: DBE Requirements for Digital Recorders

Please let me know the attached is sufficient for Digital Recorders meeting the DBE requirements.

Thank you,
Jeff Henry
City of Glendale, Arizona
Transportation Services
Transit Supervisor
6210 W. Myrtle Ave. Bldg. S
Glendale Az. 85301
jhenry@glendaleaz.com
Ph. (623) 930-3516
Fax (623) 931-9066

----- Feb 2013 14:13:04 -0700 on Mon, 4 <DTrujillo@digrec.com> Message from Dan Trujillo -----
· <JHenry@GLENDALEAZ.com> "Henry, Jeff" **:To**

.explanation that there was no qualified DBE vendor FW: Completed Forms, and letter of **:Subject**

,Dear Jeff

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Dan Trujillo
Western Region Sales Manager
.Inc Digital Recorders
A Division of Clever Devices
Direct Line 3440-744 (818)
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Fax Line 8244-297 (661)

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[Henry, Jeff [mailto:JHenry@GLENDALEAZ.com **:From**
Wednesday, January 16, 2013 1:34 PM **:Sent**
Dan Trujillo **:To**
FW: *Completed Form* **:Subject**

!!!Happy New Year
?Dan how's it going

.We can 't go any further without having them completed .I never received these forms
Thanks
Jeff

and intended only for the person or persons originally in its entirety, including any attachments is confidential and proprietary This e-mail message stream legal privilege, legal precedent or law It must not be read ,intended to be addressed Further it may be protected by certain agreements *addressed, or originally* of the sender Any confidential or proprietary interests are not to any person other than the intended recipient without the express permission by or disclosed all by anyone other than the designated recipient, please delete it, including or lost by reason of delivery to you If this e-mail message is received waived attachments, and notify the sender immediately by return e-mail

Clever Devices

DIGITAL RECORDERS®
A ORI Company

February 4, 2013

City of Glendale
Procurement and Contracts Division
RE: Talking Bus Award, DBE Forms and Explanation:

To Whom It May Concern:

In regards to the DBE paperwork required by both the City of Glendale and the City of Phoenix Arizona, Digital Recorders is submitting this letter as an explanation of our efforts to move forward and satisfy our efforts to use preferred DBE vendors.

I made contact with Mr. Reginald Ragland, Equal Opportunity Specialist for the City of Phoenix Public Transit Division. Per our conversation Mr. Ragland directed me to research all approved DBE vendors for installation of our "Talking Bus System." Digital Recorders won the contact for the two bus system for the City of Glendale and efforts to secure a DBE installer began.

After going through the list of approved vendors in the Phoenix data base there were none qualified to perform the installation duties for the "Talking Bus Systems." There were no DBE vendors who have previously installed the systems nor have been trained by our company. Mr. Ragland told me that if there is no approved DBE vendor I can write a letter addressing this and seek to move forward with securing a PO or contract number.

Please reference this letter and the forms attached as our effort to secure DBE vendors. I thank you very much,

Best regards,

Dan Trujillo

Dan Trujillo
Western Region Business Manger, Digital Recorders