

**WESTERN STATES CONTRACTING ALLIANCE  
PARTICIPATING ADDENDUM  
FOR Police Radar, Lidar, Parts & Accessories  
Between  
The State of Utah and Kustom Signal Inc.  
(Name of Contractor)**

This Participating Addendum will add the State of Utah as a Participating State to purchase from the WSCA Master Price Agreement, Number 01611, with Kustom Signal Inc. For future reference and for all invoices issued under this contract for the State of Utah this contract will be known as MA1772.

**1. Scope:**

This contract is intended to support the needs of state and local law enforcement for Police Radar, Lidar, Parts and Accessories. This contract will provide new equipment as well as replacement parts and accessories for existing embedded devices, already owned and in operation by various departments throughout the State of Utah.

**2. Participation:** Use of specific **WSCA** cooperative contracts by agencies, political subdivisions, cities, counties, towns and school districts and other entities (including cooperatives) authorized by the State of Utah statutes to use **state** contracts

**INDIVIDUAL CUSTOMER:** Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by this Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually

**3. Changes:**

The following terms and conditions will be added to the Participating Addendum for the State of Utah:

**1) AUTHORITY:** Provisions of this Addendum are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

**2) LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.

**3) RECORDS ADMINISTRATION:** The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**4) CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation to Bids nor to the Multi-Step Process.

**4.1 Status Verification System**

A. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.

- B. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
- C. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
- D. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.

#### **4.2 Indemnity Clause for Status Verification System**

- A. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
- B. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

**5) INDEMNITY CLAUSE:** The Contractor will release, protect, indemnify and hold the STATE and the respective political subdivisions and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, his employees or subcontractors or volunteers. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.

**6) EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

**7) DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

**8) TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon thirty (30) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

**9) NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

**10) TAXES:** Bid/proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K.

**11) PARTICIPANTS:** This is a contract to provide the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) with the goods and/or services described in the bid/proposal.

**12) POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

**13) REPORTS AND FEES:** The Contractor agrees to provide a quarterly administrative fee to the State of Utah in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" for an amount equal to 1% of the net sales (net of any returns, credits, or adjustments) under this Addendum for the period. The Contractors WSCA pricing to the Participating Entity may be adjusted to offset for the equivalent fee amount. Payment(s) shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The Contractor agrees to provide a quarterly utilization report, reflecting net sales to the Participating Entity during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The report will be provided in secure electronic format and/or submitted electronically to the Purchasing Agent in the Division of Purchasing over in this Addendum and a copy to the Utah reports email address [salesreports@utah.gov](mailto:salesreports@utah.gov).

**14) PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Annotated Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue. Payments may be made via a State of Utah (or political subdivision) "Purchasing Card" (major credit card). All payments to the Contractor will be remitted by mail, electronic funds transfer, or Purchasing Card.

**15) HAZARDOUS CHEMICAL INFORMATION:** The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

**16) PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, as far as distribution of copies. Contractor gives the STATE express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

**17) PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).

**18) ENERGY CONSERVATION AND RECYCLED PRODUCTS:** The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in the solicitation.

**19) INDIVIDUAL CUSTOMERS:** Each State agency and each political subdivision, as a State Entity, that uses this contract will be treated as if they were individual Customers. Each agency and each political subdivision will be responsible for their own charges, fees, and liabilities. The Contractor will apply the charges to each State Entity individually.

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3. **Lease Agreements:** NONE

4. **Primary Contact:** Participating Entity's primary contact for this Participating Addendum is:

Name: Heather Stevens  
Address: 3150 State Office Building, Capitol Hill Salt Lake, Utah 84114-1061  
Telephone: 801-538-3157  
Fax: - 801-538-3882  
E-mail: [hstevens@utah.gov](mailto:hstevens@utah.gov)

5. **Subcontractors:** The following subcontractor(s) are authorized to perform services: NONE.

6. **Price Agreement Number:** All Purchase Orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include the State Contract number MA1772.

7. **Purchase Orders:** All Purchasing Entities issuing valid Purchase Orders will be bound by the terms and conditions of the WSCA Master Agreement including, without limitation, the obligation to pay Contractor for Service and Equipment provided. The parties acknowledge and agree that orders submitted to Contractor from a Purchasing Entity through the Purchasing Entity's Business Procurement Card are authorized Purchase Orders under the WSCA Master Agreement.

8. Order of Precedence: The parties acknowledge and agree that:

(a) In the event of a conflict between the terms contained in the WSCA Master Agreement and this Participating Addendum, the terms and conditions of this Participating Addendum will control as between Contractor and the Participating Entity; and

(b) This §8 specifically supercedes §5 of the WSCA Master Agreement

This Participating Addendum and the WSCA Master Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the WSCA Master Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the WSCA Master Agreement and its exhibits, by any subsequent Purchase Order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the WSCA Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

Participating Entity: State of Utah

By: Kent Beers

Signature: Kent D Beers

Title: Director of Purchasing

Date: 4/20/12

Contractor: Rustrom Signals, Inc.

By: Mary Beirig

Name: MARY BEIRIG

Title: Contracts Administrator

Date: 4/16/12