

Staff Summary Report



Council Meeting Date: 06-05-2008

Agenda Item Number: _____

SUBJECT: Request to award a three-year sole source contract to Quality Attributes Software for the purchase and maintenance of an interactive information system. Once operational, the system will provide current and historical energy and water consumption, energy savings, and "Green" features of the East Valley Bus Operations and Maintenance Facility and the Tempe Transportation Center buildings. Current bus schedules and upcoming transportation events shall also be displayed.

DOCUMENT NAME: 20080605fsts25 PURCHASES (1004-01)

SUPPORTING DOCS: Yes

COMMENTS: (Sole Source #08-181) Total cost for this contract shall not exceed \$119,000 during the contract period.

PREPARED BY: Ted Stallings, CPPB, Procurement Officer, 480-350-8617

REVIEWED BY: Michael Greene, CPM, Central Services Administrator, 480-350-8516
Gene Obis, IT Manager, 480-350-8353
Brigitte LeSurf, Sr. Management Assistant, 480-350-2920

**LEGAL REVIEW AS
TO CONTRACT FORM**

ONLY: Jenae Naumann, Assistant City Attorney, 480-350-8402

FISCAL NOTE: Sufficient funds have been appropriated in various cost centers.

RECOMMENDATION: Award the contract.

ADDITIONAL INFO: The Green Touchscreen system will provide interactive information regarding current and historical energy consumption, energy savings, and "green" features of the East Valley Bus Operations and Maintenance Facility and the Tempe Transportation Center buildings. Green Touchscreen is a web-based interactive kiosk application that highlights "Green" features that have been implemented in both transportation buildings. It is a component of the LEED certification for both buildings, as it serves to educate citizens, students, Tempe businesses and visitors about the sustainable strategies incorporated in the projects. It will also be linked to the City website, reaching a larger audience. In addition, the Green Touchscreen system will provide information regarding current bus schedules, as well as display information about upcoming transportation events that can be interactively queried by visitors to both facilities.



Quality Attributes Software

Empowering Intelligent Buildings

Phone: 515.956.1590 Fax: 515.233.3380

Website: www.qualityattributes.com www.greentouchscreen.com

Address: 416 Billy Sunday Rd., Suite 150 Ames IA 50010



CITEMPE-EVBTC-C08-05

May 8, 2008

Quality Attributes Software Kiosk Agreement

This Software Kiosk Agreement (hereinafter "Agreement") is made between Quality Attributes Software, Inc., an Iowa corporation having an office at 416 Billy Sunday Road, Suite 150, Ames, IA 50010 (hereinafter "QAS") and, The City of Tempe with its principal place of business in Arizona (hereinafter "Customer").

1. General

QAS agrees to develop the software and provide the Service according to the requirements as per the attached and referenced proposals dated 05/08/08 & 12/19/2007 with proposal numbers CITEMPE-TC-P08-05 & CITEMPE-EVB-P07-12 ("Proposal") and subject to the terms in the Proposal and listed below. If the end user is different from Customer then the end user accepts the same terms and conditions as outlined in this agreement.

2. Billing

Customer agrees to pay QAS a total fee of ~~\$101,221~~ ^{\$99,021.00} for the Service (see attached Quote) with an initial fee of 75% of the total fee due upon the signing of this Agreement. When the kiosk software is approximately one third complete (page shells have been developed in Flash and posted to the test site for review and approval by Customer), 15% of the total fee will be billed by QAS. The remaining 10% of the total fee will be retained until the kiosk software has been completely finished, delivered, and accepted by Customer, assuming there are no changes requested by Customer to the end product (scope), at which time it will be paid to Quality Attributes Software within thirty (30) days of invoice. QAS' fees are exclusive of all taxes, shipping, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, shipping, levies, or duties.

Customer agrees to provide QAS with complete and accurate billing and contact information. This information includes Customer legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. Customer agrees to update this information within 30 days of any change to it. If the contact information Customer has provided is intentionally false or fraudulent, QAS reserves the right to terminate Customer's access to the Service in addition to any other legal remedies. All entities will be billed in U.S. dollars and be subject to U.S. payment. If Customer believes their bill is incorrect, they must contact QAS in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit. If the Customer issues a Purchase Order without signing this contract, the Customer accepts all of the terms that are contained in this agreement.

3. Charges and Payment of Fees

Customer shall pay all fees or charges to their account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. All payment obligations are non-cancelable and all amounts paid are nonrefundable. Customer must provide QAS with valid credit card or approved purchase order information as a condition to signing up for the Service. QAS reserves the right to modify its fees and charges and to introduce new charges at any time for additional services beyond those in the 11/16/2007 quote, upon at least 30 days prior written notice to Customer, which notice may be provided by e-mail. All pricing terms are confidential, and customer agrees not to disclose them to any third party.

4. Live Data Accessibility Requirements

If you are not the intended recipient, please contact the originator and delete and destroy all copies of the original document.

In order for the GreenTouchscreen[®] Live Data Module to utilize real time data, the following must be provided by Customer: any real time data must be made available from the data source(s) as either an OPC, BACnet/IP, LonWorks, an RSS feed or an XML web services feed.

If the GreenTouchscreen[®] Live Data Module is located remotely, access through certain ports in the customer's firewall must be provided in order for us to make requests to devices within the customer's network to collect the data. If the GreenTouchscreen[®] Local Live Data Service is located within customer's network, coordination must be made with customer's IT department to facilitate installation and maintenance. QAS agrees to comply with all [mutually agreed upon, reasonable] security requirements specified by Customer.

5. Maintenance Agreement

Please refer to QAS' separate Maintenance Agreement. Maintenance fees will not be required to be paid until ninety (90) days following final acceptance of deliverables by Customer.

6. LEED[®] Credit

GreenTouchscreen[®] is eligible to qualify as one of two required items needed for Customer to obtain a LEED[®] Educational Outreach Program Innovation and Design credit for their facility. If Customer is attempting to obtain a LEED[®] certification for their facility, QAS will provide Customer with a copy of this document, the requirements document and other project notes relating to the planning and development of the GreenTouchscreen[®] upon request. These documents can be provided in order to assist Customer with developing a manual, guideline or case study as the second requirement for a LEED[®] Educational Outreach Program Innovation and Design credit. Due to the subjective nature of the LEED[®] credits, QAS does not guarantee that Customer will obtain a LEED[®] Educational Outreach Program Innovation and Design credit for their facility.

7. Software or Hardware Changes

Any changes to the software or hardware requirements, timeline or project scope, based on known assumptions, must be approved in writing by both QAS and Customer, and may require additional charges, if Customer requests additional services beyond those outlined in the Proposal.

8. Project Deadline

QAS agrees to provide the kiosk software and Service according to the items described within the attached and referenced Proposal within the specified Project Schedule section. Work will be authorized to begin once QAS is in receipt of both the down payment for the project and a signed copy of this agreement has been received by QAS. QAS agrees to meet the above time frame, provided Customer and any other entities involved with the development of the kiosk software provide the following required items to QAS according to the specified schedule. Failure to do so may cause the overall project deadline to slip.

- All text, images and other required information listed on the content needed document that is available must be delivered to QAS within four weeks from the date Customer receives the content needed document. QAS agrees to provide the content needed document within one week after the initial design meeting.
- The proof must be commented on and returned to QAS within one week of receipt from QAS.
- All data points that will be monitored by the GreenTouchscreen[®] Live Data Module must be developed and made available to QAS in an acceptable format within eight weeks after this agreement is signed. QAS retains all rights associated with the proprietary acquisition, ordering, storage, manipulation or representation of the data points subsequent to the provision by Customer in an acceptable format. QAS' GreenTouchscreen[®], IBDirectory or iBDonor logo and trademark will be displayed on all software pages and solutions developed.
- Sign off documents must be returned to QAS within two business days of receipt from

QAS. Sign off documents will be delivered after proof approval (completion of design phase), after the kiosk shell is delivered on the test site and after work has been complete.

- QAS reserves the right to send the final invoice to Customer at substantial completion if the delay in completion of the kiosk software is not the fault of QAS.

9. Hardware Requirements

For each physical touchscreen kiosk, Customer agrees to provide a high speed internet connection with access to any necessary internet site(s) as determined by QAS, a standard duplex power outlet within ten feet of the location of each physical touchscreen kiosk and a surge protector for each physical touchscreen kiosk. An uninterruptible power supply (UPS) device is recommended for use with each physical touchscreen kiosk.

The touchscreen kiosk will include the hardware outlined in the attached and referenced Proposal.

10. Software Service

At no additional cost beyond the total fee, and the annual fee under the Maintenance Agreement, QAS will provide Customer with use of the Service, including a browser interface and data encryption, transmission, access and storage. Customer's registration for, or use of, the Service shall be deemed to be their agreement to abide by this Agreement including any materials available on the QAS website incorporated by reference herein.

Because the Service is a hosted, online application, QAS occasionally may need to notify all users of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service. Customer agrees that QAS can disclose the fact that they are a current paying customer and the edition of the Service that they are using.

11. License Grant & Restrictions

QAS hereby grants Customer a non-exclusive, non-transferable, worldwide right to use the Service, solely for Customer's own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to Customer are reserved by QAS and its licensors.

Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

Customer may use the Service only for internal business purposes and shall not knowingly: (i) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (ii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (iv) attempt to gain unauthorized access to the Service or its related systems or networks.

Certain editions of the Service offer integration capabilities via web services. The number of web service calls Customer can make per account may be limited, as described in the Maintenance Agreement.

12. Customer Responsibilities

Customer is responsible for all activity occurring under their accounts and shall abide by all applicable

local, state, and federal laws, treaties and regulations in connection with their use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. Customer shall: (i) notify QAS immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to QAS immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Customer or Customer's users; and (iii) not impersonate another QAS user or provide false identity information to gain access to or use the Service.

13. Data

Customer retains ownership of and QAS does not own any data, information or material that Customer submits to QAS in the course of using the Service. QAS retains all rights associated with the proprietary acquisition, ordering, storage, manipulation or representation of the data points subsequent to the provision by Customer in an acceptable format, as well the rights to use the Data in a generic format that does not identify the Customer.

14. Intellectual Property Ownership

QAS alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the QAS Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Service. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, the QAS Technology or the Intellectual Property Rights owned by QAS. The QAS name, the QAS logo, and the product names and logos associated with the Service are trademarks of QAS or third parties, and no right or license is granted to use them.

15. Third Party Interactions

During use of the Service, Customer may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between Customer and the applicable third-party. QAS and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between Customer and any such third-party. QAS does not endorse any sites on the Internet that are linked through the Service. QAS provides these links to Customer only as a matter of convenience, and in no event shall QAS or its licensors be responsible for any content, products, or other materials on or available from such sites. QAS provides the Service to Customer pursuant to the terms and conditions of this Agreement. Customer recognizes, however, that certain third-party providers of ancillary software, hardware or services may require Customer agreement to additional or different license or other terms prior to Customer use of or access to such software, hardware or services.

16. Excess Data Storage

QAS reserves the right to establish or modify its general practices and limits relating to storage of Customer Data, with reasonable notice to customer.

17. Non-Payment and Suspension

In addition to any other rights granted to QAS herein, QAS reserves the right to suspend or terminate this Agreement and Customer's access to the Service if Customer account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.5% per month on any outstanding balances over 60 (sixty) days delinquent, or the maximum permitted by law, whichever is less, plus all reasonable expenses of collection. If Customer initiates termination of this Agreement or QAS initiates termination due to Customer's default, Customer will be obligated to pay the balance due on Customer account computed in accordance with the Charges and Payment of Fees section above.

Customer agrees that QAS may bill Customer for such unpaid fees.

QAS reserves the right to impose a reasonable reconnection fee in the event Customer is suspended and thereafter request access to the Service. Customer agrees and acknowledges that QAS has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if their account is 30 days or more delinquent.

18. Termination for Cause

- a. By QAS. Any breach of Customer payment obligations or unauthorized use of the QAS Technology or Service will be deemed a material breach of this Agreement. QAS, in its sole discretion, may terminate Customer's password, account or use of the Service if Customer breaches or otherwise fails to comply with this Agreement, and such breach has not been cured within 30 days of notice of such breach. Customer agrees and acknowledges that QAS has no obligation to retain the Customer Data, and may delete such Customer Data, if Customer has materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.
- b. By Customer. In the event that QAS breaches any of the terms, conditions, warranties or representations contained in this Agreement, and such breach is not remedied within thirty (30) days after QAS has received written notice from Customer of such breach, Customer shall be entitled to exercise, without further notice to QAS, any and all legal and equitable rights and remedies which it may have against QAS, including but not limited to, cancellation of this Agreement and the remedy of specific performance.

19. Representations & Warranties

QAS warrants that it owns or is otherwise authorized to grant the rights to the Software Service and content hereunder. QAS shall comply with all applicable local, state and federal laws, treaties and regulations in connection with provision of the Service, including those related to accessibility for disabled users. QAS provides an industry standard initial warranty of ninety days after acceptance by Customer. QAS warrants that Services provided by it will be performed in a professional and workmanlike manner, in accordance with industry standards and in accordance with the Proposal. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. QAS represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with normal use and circumstances. Customer represents and warrants that they have not falsely identified them self nor provided any false information to gain access to the Service and that Customer billing information is correct.

20. Mutual Indemnification

Customer shall indemnify and hold QAS, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) QAS needs to add something concerning data; (ii) QAS needs to add something concerning control systems (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by Customer of Customer's representations and warranties; or (iii) a claim arising from the breach by Customer or Customer's users of this Agreement, provided in any such case that QAS (a) gives written notice of the claim promptly to Customer; (b) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless Customer unconditionally releases QAS of all liability and such settlement does not affect QAS' business or Service); (c) provides to Customer all available information and assistance; and (d) has not compromised or settled such claim.

QAS shall indemnify and hold Customer and Customer's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, a trademark or other intellectual property right of a third party; (ii) a claim, which if true, would constitute a violation by QAS of its representations or warranties; or (iii) a claim arising from breach of this Agreement by QAS; provided that Customer (a) promptly give written notice of the claim to QAS; (b) give QAS sole control of the defense and settlement of the claim (provided that QAS may not settle or defend any claim unless it unconditionally releases Customer of all liability); (c) provide to QAS all available information and assistance; and (d) have not compromised or settled such claim. QAS shall have no indemnification obligation, and Customer shall indemnify QAS pursuant to this Agreement, for claims arising from any infringement to the extent arising from the combination of the Service with any of Customer products, service, hardware or business process(s), other than hardware purchased through QAS.

21. Disclaimer of Warranties

Except as otherwise provided in this Agreement or any Maintenance Agreement, QAS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. QAS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA not acquired through QAS, (B) THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER THROUGH THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY QAS AND ITS LICENSORS.

22. Internet Delays

QAS' SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. QAS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

23. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

24. Additional Rights

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to Customer.

25. Local Laws and Export Control

This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, Customer represents and warrants that they are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer agrees to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

QAS and its licensors make no representation that the Service is appropriate or available for use in other locations. If Customer uses the Service from outside the United States of America, Switzerland and/or the European Union, Customer is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States, Swiss or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

26. Notice

QAS may give notice by means of electronic mail to Customer's e-mail address on record in QAS' account information, or by written communication sent by first class mail or pre-paid post to Customer's address on record in QAS' account information. Such notice shall be deemed to have been given when received by customer. Customer may give notice to QAS (such notice shall be deemed given when received by QAS) at any time by any of the following: letter sent by confirmed facsimile to QAS at the following fax number: (515) 233-3380; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to QAS at the following address: Quality Attributes Software, Inc., 416 Billy Sunday Road, Suite 150, Ames, IA 50010.

27. Modification to Terms

QAS reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service if mandated by state or federal law at any time, effective upon posting of an updated version of this Agreement on the Service. QAS is responsible for notifying Customer of changes to this Agreement.

28. Assignment; Change in Control

This Agreement may not be assigned by Customer without the prior written approval of QAS but may be assigned without Customer's consent by QAS to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of QAS directly or indirectly owning or controlling 50% or more of Customer shall entitle QAS to terminate this Agreement for cause immediately upon written notice.

If you are not the intended recipient, please contact the originator and delete and destroy all copies of the original document.

29. Marketing

With written permission from Customer, QAS reserves the right to use Customer information provided including, but not restricted to Customer name and logo, for marketing purposes including, but not restricted to, programs that generate awareness and educate and update users on new features, functionality, and news. The format and frequency of these marketing messages will not be restricted unless specifically requested by Customer.

30.1 General

With respect to U.S. Customers, this Agreement shall be governed by Iowa law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Customer and QAS as a result of this agreement or use of the Service. The failure of QAS to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by QAS in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between Customer and QAS and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

30.2 Arbitration

If any dispute between the parties is not resolved by informal mediation, then such dispute shall be submitted to nonbinding arbitration conducted in accordance with the Comprehensive Arbitration Rules and Procedures (the "Rules") of Judicial Arbitration and Mediation Services, Inc. ("JAMS"). The parties shall select a single neutral arbitrator to hear the Dispute from a list provided by JAMS. If the parties cannot agree upon a single neutral arbitrator within ten (10) days of the filing of the demand for arbitration, then three neutral arbitrators shall be appointed in accordance with the Rules. The arbitration decision shall be in writing and shall specify the factual and legal basis for the decision. The arbitration shall be conducted in a mutually agreeable location in Maricopa County, Arizona. Neither party shall be entitled to seek or recover punitive damages in considering or fixing any award under these proceedings.

31. Definitions

As used in this Agreement and in any Order Forms now or hereafter associated herewith: "Agreement" means these terms of use, any Order Forms, whether written or submitted online, and any materials available on the QAS website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by QAS from time to time. Any changes to this Agreement must be approved in advance in writing by Customer.; "Content" means the audio and visual information, documents, software, products, data and services contained or made available to Customer in the course of using the Service; "Customer Data" means any data, information or material provided or submitted by Customer to the Service in the course of using the Service; "Effective Date" means date this Agreement is accepted by signing this agreement; "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world "QAS" means collectively Quality Attributes Software, Inc., an Iowa corporation, having its principal place of business at 416 Billy Sunday Road, Suite 150, Ames, IA 50010; "QAS Technology" means all of QAS' proprietary technology (including software, data, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by QAS in providing the Service; "Service(s)" means the specific software features identified

during the ordering process, developed, operated, and maintained by QAS, accessible via <http://www.qualityattributes.com> or another designated web site or IP address, or ancillary online or offline products and services provided to Customer by QAS, to which Customer is being granted access under this Agreement, including the QAS Technology and the Content; "User(s)" means employees, representatives, consultants, contractors, students, visitors or agents that use the Service.

32. Escrow Provision

(a) Escrow. Promptly after the installation of the kiosk software ("Software") and access to the Service, QAS shall deposit in escrow with an escrow agent reasonably acceptable to both parties, the source code and related documentation for the Software (collectively, "Source Code"), which Source Code will be in such a form and contain sufficient documentation and interpretive materials that a reasonably skilled programmer would be able to maintain and support the Software. The cost of depositing and maintaining the escrow account shall be borne by QAS. QAS shall from time to time update and supplement the Source Code escrow deposit with the Source Code of all updates, releases, customizations and material modifications to the Software. Upon three (3) business days' written notice to QAS, Customer will have the right to verify the currency and completeness of the Source code through inspection and on equipment located, at the option of Customer, on the premises of the escrow agent, Customer or QAS. Customer may not access the Source Code (other than for verification, as provided in this Section) except upon the occurrence of an Escrow Release Condition (defined below) and not use the Source Code for any other purpose except as specifically permitted by this Agreement.

(b) Escrow Release Conditions. Customer will be entitled to access the Source Code in the event of any of the following (an "Escrow Release Condition"):

- i. QAS has filed a voluntary petition in bankruptcy, made a general assignment for the benefit of its creditors, suffered or permitted the appointment of a trustee or receiver for its business assets, become subject to any proceeding under any bankruptcy or insolvency law which is either consented by QAS or not dismissed within sixty (60) days, initiated actions to wind up or liquidate its business voluntarily or otherwise, or ceased to do business in the ordinary course.
- ii. QAS has discontinued, phased out or ceased to support any of the Software or made an unauthorized assignment or disposition of this Agreement.

(c) Escrow Release Procedure. Upon the occurrence of an Escrow Release condition, Customer will promptly give QAS and the escrow agent written notice that an Escrow Release condition has occurred and the escrow agent will release the Source Code to Customer after two (2) business days. In the event that QAS, as debtor in possession, or a trustee in bankruptcy for QAS in a case under the United States Bankruptcy code, rejects this Agreement, Customer will have the right to elect to retain its rights under this Agreement. Upon written request of Customer to QAS or to such trustee, QAS or such trustee will not interfere with the rights granted in this Agreement, including the right to access the Source Code.

(d) Source Code License. QAS hereby grants Customer a nonexclusive, nontransferable license to use, modify, and enhance the Source Code, subject to the same limitations as those specified in this Agreement for Customer's non-disclosure of the Software, as appropriate, for the sole purpose of maintaining, supporting, and enhancing the Software to meet the needs of Customer, provided that Customer shall not exercise such license unless and until an Escrow Release Condition occurs. Any modified versions of the Software resulting from modification of the Source Code shall be subject to all of the terms and conditions of this Agreement.

"CUSTOMER"

By: _____

"QAS"

Quality Attributes Software, Inc.

By:  _____

(name)

(name) GREGG THOMPSON

(title)

(title) CEO

Date: _____

Date: 5/27/08

Contract or PO #: _____

Billing Contact: _____

Billing Phone: _____

Billing Address: _____

Shipping Contact: _____

Shipping Phone: _____

Shipping Address: _____



Quality Attributes Software Quote

Date: 12-19-2007

Requesting Company Name:	City of Tempe
Company Address:	31 East Fifth Street, Tempe AZ
Role of Requesting Company:	Owner
Contact Name:	Robert Yabes
Title:	Project Director, Transportation
E-mail:	robert_yabes@tempe.gov
Phone:	480-350-2734
Fax:	
Project Name:	East Valley Bus Operations & Maintenance Facility
Project Address:	
Owner of Project Facility:	
Primary Function of Facility:	
Construction Start Date:	
Construction End Date:	01-Oct-07
Anticipated Kiosk Installation Date:	Jan-08

Solution Totals	One Time Fee	Monthly Subscription Fee
Kiosk Software Total	\$29,000	
iBPortal Total	\$0	\$0
Hardware Total	\$13,698	
Yearly Maintenance Desired to Pay Upfront	\$0	
Solution Total Price	\$42,698	\$0

Kiosk Yearly Maintenance Total	\$1,500.00
Includes:	
10 hours of Support and Development	
Any company released Version updates	
Bi-monthly activity report	
Bi-monthly error check and report	
Customer portal to facilitate communication	



Quality Attributes Software
Empowering Intelligent Buildings

Quality Attributes Software Quote

Requesting Company Name:	City of Tempe
Company Address:	31 East 5th Street, Tempe AZ 85281
Role of Requesting Company:	Owner
Contact Name:	Bonnie Richardson
Title:	Principal Planner
E-mail:	bonnie_richardson@tempe.gov
Phone:	480-350-8628
Fax:	
Project Name:	Tempe Transportation Center
Project Address:	500 East 5th Street, Tempe AZ
Owner of Project Facility:	City of Tempe
Primary Function of Facility:	Transportation Center
Construction Start Date:	
Construction End Date:	
Anticipated Kiosk Installation Date:	

Solution Totals	One Time Fee	Monthly Subscription Fee (IBPortal Only)
Kiosk Software Total	\$41,925	
IBPortal Total	\$0	\$0
Hardware Total	\$14,398	
Yearly Maintenance Desired to Pay Upfront	\$0	
Solution Total Price	\$56,323	\$0

Kiosk Yearly Maintenance Total	\$1,500.00
Includes: 10 hours of Support and Development Any company released Version updates Bi-monthly activity report Bi-monthly error check and report Customer portal to facilitate communication	