

**CONTRACTUAL AGREEMENT between
FRANKLIN TRANSIT AUTHORITY
AND SEON SYSTEMS SALES**

THIS AGREEMENT is hereby made and entered into on the ____ day of _____, 2011, in Franklin, Tennessee, by and between the **Franklin Transit Authority (FTA)** and **Seon Systems Sales (Contractor)**.

This Agreement consists of the following documents:

- A. This Purchase Agreement**
- B. Those provisions, specifications, and instructions to Proposer as set forth in FTA's Request for Proposal (RFP) #2011-003, attached as Exhibit A;**
- C. Contractor's Best and Final Offer dated September 12, 2011, attached as Exhibit B;**
- D. Contractor's Original Proposal dated September 12, 2011, attached as Exhibit C; and**

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. STATEMENT OF WORK

The contractor shall furnish, as per RFP #2011-003 all cameras, cables and equipment required to have on board security surveillance equipment in the Franklin Transit vehicles, including all required installation, training and DVR components with playback and storage, in strict accordance with the specifications, which said specifications drawings and addenda, if any, are incorporated herein by reference and made a part thereof. The contractor shall also provide service and technical support as needed throughout the term of this Agreement.

2. PURCHASE PRICE/DELIVERY/TERM

PURCHASE PRICE

As submitted in Contractor's quote dated September 12, 2011 price will not exceed: Thirty-four Thousand Six Hundred and No/100 Dollars (\$34,645.00).

DELIVERY

A delivery schedule will be determined upon execution of contract.

EFFECTIVE DATE

This contract shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of FTA. When it has been so signed and filed, this contract shall be effective as of the date first written above.

TERM

The term of this contract will begin on the date this contract is signed by all required parties and filed in the office of the Chief Executive Officer of FTA. The initial contract term will be three (3) years from the effective date.

3. SUSPENSION/DEBARMENT/FEDERAL GUIDELINES

This contract is awarded to a reliable and dependable contractor and subcontractors. Federal agencies can suspend or debar a business or individual from receiving contracts, grants, cooperative agreement, or loans for the misuse of federal dollars. Contractors and subcontractors found guilty of unethical, irresponsible business practices will be suspended and debarred from conducting future business with the government.

As a condition of award, Contractors and subcontractors performing work will comply with reporting requirements and deadlines. False claims will be grounds for immediate termination of contract.

Contractors and subcontractors must maintain up to date Central Contractor Registration (CCR), DUNS number, or other registration databases that may be required.

4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants to FTA as follows:

a. Contractor is a corporation duly organized, validly existing and in good standing under the laws, and has full corporate power and authority to execute, deliver and perform its obligations under this Agreement, the instruments attached hereto, and any other agreements and instruments contemplated by this Agreement. Contractor has all requisite corporate power and authority to own its properties, inventory, equipment and assets, and to conduct its business as now conducted. Contractor is qualified to do business in all jurisdictions where it is required to do so and has all necessary permits and authorizations required to carry out Contractor's Business.

b. The execution and delivery of this Agreement, the instruments attached hereto, and the other agreements and instruments contemplated by this Agreement have been duly authorized by all necessary actions of Contractor and by anyone else whose approval or authorization is required. Upon execution and delivery, this Agreement, the instruments attached hereto, and the other agreements and instruments contemplated by this Agreement will be legal, valid and binding obligations of Contractor, enforceable against it in accordance with its respective terms.

c. The execution and delivery of this Agreement do not, and the execution and delivery of the instruments attached hereto and other agreements and instruments contemplated by this Agreement will not, and the consummation of the transactions contemplated hereby and thereby will not: (i) violate any provisions of any of Contractor's Charter, Bylaws or other organizational documents; (ii) violate any provision of law or any order, judgment or decree of any court or other governmental or regulatory authority applicable to Contractor; (iii) violate or result in a breach of, an acceleration under, or constitute (with due notice or lapse of time or both) a default under, any contract, lease, loan agreement, mortgage, security agreement, or other agreement or instrument to which Contractor is a party or by which it is bound or to which any of Contractor's properties, inventory, or assets is subject, which would prevent Contractor from transferring any of the goods/services in the manner and as contemplated by and in accordance with the terms and provisions of this Agreement; or (iv) result in the imposition of

any liens or restrictions on Contractor's Business or any properties and inventory (including Goods/services) thereof.

d. There is no litigation pending or threatened against or relating to Contractor which could materially or adversely affect the Goods/services the subject of this sale.

e. There is not now and will not be at the delivery of the Goods/services to FTA any damage, destruction or loss not covered by Contractor's insurance which could materially or adversely affect the Goods/services; it being expressly agreed that the risk of loss of said Goods/services shall remain with Contractor until delivery of Goods/services to FTA and after acceptance of the delivery of said Goods/services after final inspection is made by FTA.

f. Contractor shall have and convey at delivery good and marketable title to all of the Goods/services free and clear of all liens, pledges, security interests and encumbrances.

g. Comply with all laws; and

h. Give any notices required prior to the transfer of the Goods/services to FTA.

The foregoing representations and warranties of Contractor are made with the knowledge and expectation that Contractor is placing complete reliance on such representations and warranties in entering into this Agreement and shall survive the delivery and acceptance of the Goods/services to and by FTA.

5. TAXES.

FTA shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to FTA.

6. COPYRIGHT, TRADEMARK, SERVICE MARK, OR PATENT INFRINGEMENT.

- a. Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against FTA to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. The Contractor shall have sole discretion in selecting counsel. Contractor shall further indemnify and hold harmless FTA against any award of damages and costs made against FTA by a final judgment of a court of last resort in any such suit. FTA shall provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Contractor to do so. No costs or expenses shall be incurred for the account of Contractor without its written consent. FTA reserves the right to participate in the defense of any such action. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon FTA unless approved by the FTA Board.
- b. If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
 - i. *Procure for FTA the right to continue using the products or services.*
 - ii. *Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to FTA, so that they become non-infringing.*
 - iii. *Remove the products or discontinue the services and cancel any future charges pertaining thereto.*

- iv. *Provided, however, that Contractor will not exercise option b.iii. until Contractor and FTA have determined that options b.i. and b.ii. are impractical.*
- c. Contractor shall have no liability to FTA, however, if any such infringement or claim thereof is based upon or arises out of:
 - i. *The use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor.*
 - ii. *The use of the products or services in a manner for which the products or services were neither designated nor contemplated.*
 - iii. *The claimed infringement in which FTA has any direct or indirect interest by license or otherwise, separate from that granted herein.*

7. TERMINATION--BREACH

Should Contractor fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract, FTA shall have the right to immediately terminate the contract. Such termination shall not relieve Contractor of any liability to FTA for damages sustained by virtue of any breach by Contractor. Contractor will have fourteen (14) days to commence cure before termination.

8. TERMINATION--FUNDING

Should funding for this contract be discontinued, FTA shall have the right to terminate the contract is entitled to payment for work performed to the date of notice of termination.

9. TERMINATION--NOTICE

FTA may terminate this contract with or without cause at any time upon thirty (30) days written notice to Contractor.

10. MAINTENANCE OF RECORDS

Contractor shall maintain documentation for all charges against FTA. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by FTA or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

11. MODIFICATION OF CONTRACT

This contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with FTA Purchasing Policy and signed by the Chief Executive Officer.

12. PARTNERSHIP/JOINT VENTURE

Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

13. WAIVER.

No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

14. EMPLOYMENT

Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

15. INSURANCE

During the term of this Contract, Contractor shall maintain Professional Liability insurance with a minimal coverage amount of two million (\$2,000,000.00) to include Commercial General Liability. A certificate of insurance, in a form satisfactory to FTA, evidencing said coverage shall be provided to FTA prior to commencement of performance of this Contract. Throughout the term of this contract, Contractor shall provide an updated certificate of insurance upon expiration of the current certificate.

16. CONTINGENT FEES

Contractor hereby represents that Contractor has not been retained or retained any persons to solicit or secure a FTA contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Franklin Transit Authority.

17. GRATUITIES AND KICKBACKS

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee of FTA, or for any employee or former employee of FTA to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Franklin Transit Authority contracts.

18. INDEMNIFICATION

a. Contractor agrees to defend, indemnify and hold FTA harmless from and against, any and all claims, causes of action, damages, expenses, taxes, assessments, interest, penalties, judgments, and costs, including reasonable attorney fees, incurred directly or indirectly by FTA arising out of or in any way connected with:

(i) Breach of any of the representations, warranties, covenants and agreements of Contractor set forth in this Agreement, the instruments attached hereto, or any instrument or agreement delivered in connection with this Agreement;

(ii) Any claim or liability asserted by a third party or any governmental agency against FTA which arises out of or is in any way connected with the ownership or use of: the Goods/services by Contractor, the Premises and Seller's Business; and

(iii) The business responsibilities, expenses, costs and liabilities of Contractor, including, but not limited to, all of Contractor's accounts payable.

b. Contractor acknowledges that it is prohibited under the Laws of Tennessee for a governmental entity to indemnify Contractor for any loss arising out of the provisions of this Agreement. Accordingly, FTA does not make any indemnification to Contractor whatsoever under this agreement.

19. REMEDIES

Subject to the other provisions of this Agreement, in the event of a breach of any provision of this Agreement, the non-breaching party shall be entitled to reasonable attorney fees, costs and expenses incurred for the enforcement of said provisions, in addition to damages for the breach thereof. The remedies set forth in the Agreement shall be cumulative, and no one shall be construed as exclusive of any other or of any remedy provided by law, and the failure or delay of any party to exercise any remedy at any time shall not operate as a waiver of the right of such party to exercise any remedy for the same or subsequent default at any time thereafter.

20. NOTICES

All notices, requests, demands or other communications hereunder shall be in writing and shall be deemed to have been delivered on the same day if hand-delivered, or three (3) business days after it is mailed, if mailed by certified mail, return receipt requested, postage prepaid, to:

Ms. Debbie Henry
Executive Director
Franklin Transit Authority
708 Columbia Avenue
Franklin, Tennessee 37064

21. MISCELLANEOUS

This Agreement may not be amended orally, and no modification, termination or attempted waiver shall be valid unless in a writing signed by the parties hereto, except as specifically provided otherwise herein.

Except as provided herein below, this Agreement, the instruments attached hereto, and/or the rights and obligations set forth herein or in such instruments attached hereto, are not assignable without the prior written consent of the parties hereto, which consent may be granted or withheld by a party in its sole discretion. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, successors and permitted assigns.

22. ATTORNEY FEES

Contractor agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract, or in the event FTA prevails, Contractor shall pay all expenses of such action including FTA's attorney fees and costs at all stages of the litigation. This statement is reciprocal.

23. ASSIGNMENT--CONSENT REQUIRED

Any public agency (i.e., city, district, public authority, public agency, municipality, and other political subdivision or any FTA-funded entity) shall have the option of participating in any award made as a result of this proposal at the same prices, terms, and conditions, as provided by law. FTA reserves the right to assign any portion of the Goods/services awarded under this Contract including option quantities. This assignment, should it occur, shall be agreed to by FTA's Executive Director and the contractor. Once assigned, each agency will enter into its own contract and be solely responsible to the contractor for obligations to the goods/services assigned. FTA's right of assignment will remain in force over the three-year period or until completion of the contract to include options, whichever occurs first. FTA shall incur no financial responsibility in connection with contracts issued by another public agency. The public agency shall accept sole responsibility for placing orders or payments to the Contractor.

24. ENTIRE CONTRACT

This contract and its attachments sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

25. FORCE MAJEURE

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

26. GOVERNING LAW

The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide.

27. VENUE

Any action between the parties arising from this agreement shall be maintained in the courts of Williamson County, Tennessee.

28. SEVERABILITY

Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

30. COUNTERPARTS

This Agreement may be executed in one or more identical counterparts, each of which shall be deemed to be an original for all purposes, and all of which taken together shall constitute a single instrument.

31. TIME OF THE ESSENCE

The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date and year first above written.

FRANKLIN TRANSIT AUTHORITY

SEON SYSTEM SALES, INC.

Chairman

Contractor Signature

Preston Elliott

BY: _____
(Print)

Date

Title: _____

Date: _____

**Sworn to and subscribed to before me, a
Notary Public, this**

_____ day of
_____, 2011, by

_____,
the

_____ of Contractor
and duly authorized to execute this
instrument on Contractor's behalf.

Notary Public

My Commission Expires _____