

RESOLUTION NO. 08-520

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT  
WITH CASCADE ENGINEERING SERVICES, INC. TO  
PROVIDE SPEED MEASURING DEVICE STANDARD  
CALIBRATION/CERTIFICATION FOR THE POLICE  
DEPARTMENT

**WHEREAS**, the City's police department is required to have their speed measuring devices calibrated and certified annually; and

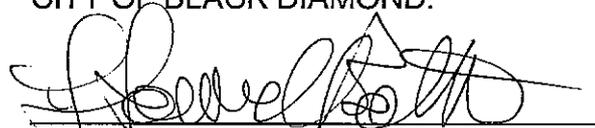
**WHEREAS**, the City desires to retain the services of Cascade Engineering, a firm skilled and qualified in the calibration and certification of speed measuring devices;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:**

**Section 1.** The Mayor is hereby authorized to execute a three-year contract/agreement with Cascade Engineering as contained in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19TH DAY OF JUNE, 2008.**

CITY OF BLACK DIAMOND:

  
Howard Botts, Mayor

Attest:

  
Brenda L. Streepy, City Clerk

## SECTION 1

# SPEED MEASURING DEVICES (SMD) COMPREHENSIVE CALIBRATION AGREEMENT

This Comprehensive Speed Measuring Device (SMD) Standard Calibration / Certification Agreement is entered into as of this 20 day of JUNE, 2008 (the "Effective Date"), by and between the **City of Black Diamond Police Department** and **Cascade Engineering Services, Inc. ("Cascade")**.

### 1.0 CALIBRATION / CERTIFICATION:

- 1.1 **Cascade** shall provide the **City of Black Diamond Police Department** with the Speed Measuring Device (**SMD Standard Calibration / Certification Plan**), as set forth below, for all SMD's listed in "**SECTION 3**", traceable to the National Institute of Standards and Technology and in accordance with ISO/IEC 17025:2005. Under the "**SMD Standard Calibration / Certification Plan**", **Cascade** shall verify proper operation of all parameters, using the manufacturers, procedures and specifications. The SMD Standard Calibration / Certification Plan include adjustments as necessary. All calibrations / certifications shall include replacement of standard fuses. **Batteries and special fuses** will result in additional costs. SMD's calibrated / certified "In Cascades" laboratory shall be delivered within five to seven work days from date of receipt. (Excluding weekends and holidays.)
- 1.2 Additional terms and conditions regarding the calibration / certification services to be provided by **Cascade** under this agreement are set forth on "**SECTION 2**", and incorporated herein.
- 1.3 Upon prior written consent from the **City of Black Diamond Police Department** (including email), **Cascade** may subcontract certain repairs to the OEM. **Cascade** shall not be held responsible to meet the above stated services for turnaround times for SMD's that are subcontracted. A repair charge for equipment that is subcontracted is subject to change based upon the costs incurred by **Cascade**. **Cascade** will give notice and seek your prior approval.
- 1.4 Simultaneously with the execution of this Agreement, **Cascade** will provide the **City of Black Diamond Police Department** with a Certificate of Guarantee, the form of which is attached hereto in "**SECTION 5**". Such Certificate of Guarantee will provide for the representations and warranties as set forth therein.

### 2.0 SCHEDULING OF SERVICE

- 2.1 The majority of the **City of Black Diamond Police Department** equipment listed in "**SECTION 3**" maybe be calibrated / certified at **City of Black Diamond Police Department's** facility, by **Cascade's** laboratory service team. The minority number of the **City of Black Diamond Police Department** equipment may be required to be calibrated / certified at **Cascade's** facility. On-site calibration / certification events shall be scheduled as required.



### 3.0 CALIBRATION REPORTS & CERTIFICATES

- 3.1 **Cascade** shall provide Calibration Certificates and/or detailed Service Reports, for all repair and calibration / certification events. Reports and Summary Activity and or actual certificates shall be provided (as verification of service) at the completion of each On-Site calibration / certification event. Notarized certification documents will be mailed to the appropriate agency.

### 4.0 TRANSPORTATION

- 4.1 **Cascade** shall provide pick-up and delivery within a fifty (75) mile radius of Redmond, Washington 98052, as reasonably required at no additional charge. All other shipments are FOB Redmond, WA. Your agency may at its option elect to provide their own i.e. UPS, DHL, FED EX account number for handling and shipping costs.

### 5.0 RECALL

- 5.1 All SMD instruments calibrated shall be placed on **Cascade's** automatic recall program for interval tracking and notice generation in accordance with your calibration certification service cycles. Reports are also available on line through "**IndySoft Gage InSite**" tracking software. Recall reports shall be sent to client one (1) month prior to calibration due date.

### 6.0 CALIBRATION STICKERS

- 6.1 Calibration / certification stickers shall be affixed to each item and shall contain the following:

- |                 |                               |
|-----------------|-------------------------------|
| * Report Number | * Date Calibrated / Certified |
| * Date Due      | * Technician's Initials       |

### 7.0 MONTHLY ACTIVITY REPORTS

- 7.1 **Cascade** shall provide the **City of Black Diamond Police Department** with Monthly Activity Reports, as necessary, detailing calibration / certification and repair activity, from the prior month, upon request.

### 8.0 EVALUATIONS AND REPAIRS

- 8.1 In the event an SMD requires repair, **Cascade** shall provide the **City of Black Diamond Police Department** with an evaluation repair quote, via e-mail or Fax for agency approval. **Cascade** shall not proceed with any repairs until signed approval is received, along with a Purchase Order Number, from your agency. The standard minimum hourly evaluation fee is **\$85.00** and shall be applied to each SMD repair. The \$85.00 /hour rate is invoiced in fifteen **(15) minute increments**. If the repair is approved, the evaluation fee is waived.
- 8.2 **Cascade** will make every effort to ensure that **repair turnaround time** is Fifteen (15) work days after approval is received.
- 8.3 All repaired items shall be warranted for a period of ninety (90) days from date of service.



## 9.0 TEAM START-UP MEETING/AGENCY PROFILE

- 9.1 Upon receipt of a purchase order, **Cascade** shall create a technical and administrative profile for the **City of Black Diamond Police Department**. This profile shall include a detailed listing of service requirements relative to any compliance standards or of those unique to the **City of Black Diamond Police Department**.
- 9.2 **Cascade** shall initiate a "start-up" meeting between its service team and the respective personnel from the **City of Black Diamond Police Department**. This meeting shall provide for formal introduction of personnel; a review of location, equipment, control and identification, scheduling of service, and the agency profile.

## 10.0 SERVICE REVIEWS

- 10.1 **Cascade** encourages formal service reviews of commitments made in the initial calibration / certification service agreement. Personnel present at the start up meeting should attend. This meeting should not only be a report card of performance, but also a mechanism of control with a focus on contractual commitments.

## 11.0 ONE, TWO OR THREE YEAR PROGRAM

- 11.1 **Cascade** is pleased to offer the **City of Black Diamond Police Department** a **ONE (1), TWO (2), or THREE (3)** YEAR Standard SMD Calibration / Certification Service Program, which guarantees the list prices set forth on "**SECTION 3**" shall remain constant for the term of **TWELVE, TWENTY FOUR or THIRTY SIX** months from the Effective Date.
- 11.2 Your agency has accepted the THREE year program. Notwithstanding the foregoing, either party may terminate the agreement upon 30 days written notice to the other party. In addition, either party may terminate this Agreement immediately upon written notice to the other party in the event the other party (a) becomes subject to a voluntary or involuntary petition in bankruptcy or makes a general assignment for the benefit of creditors, or (b) commits a material breach of this Agreement which is not cured within thirty (30) days of receiving notice from the non-breaching party. Upon termination, the **City of Black Diamond Police Department**, shall be relieved of all payment obligations for the remainder of the term of the agreement (except unpaid fees relating to services provided prior to the date of termination for which the **City of Black Diamond Police Department** shall remain liable), and **Cascade** shall promptly reimburse the **City of Black Diamond Police Department** for any fees paid by the **City of Black Diamond Police Department** in advance for future services under the agreement
- 11.3 This Agreement shall be automatically renewable by the **City of Black Diamond Police Department** at its option for **TWELVE** months from the initial term, subject to (**but not necessarily imposed**) an increase to the list prices set forth on "**SECTION 3**" not to exceed seven (7) percent.



## 12.0 PROGRAM PRICE

- 12.1 **Cascade** is pleased to offer the *City of Black Diamond Police Department* Corporation the above stated Calibration / Certification Service Program for the equipment listed in SECTION 3.
- 12.2 All work performed on-site must reflect a minimum billing computation of **\$750.00** per man day, unless otherwise agreed to in writing by **Cascade**. Any substantial delays during the on-site resulting in downtime for **Cascade's** field service team shall be billed at a rate of **\$150.00** per hour unless the delays are due to conditions out of the *City of Black Diamond Police Department* reasonable control.

## 13.0 PAYMENT TERMS

- 13.1 Payment terms: **Cascade** will invoice the *City of Black Diamond Police Department* on the day services are provided. All payments shall be due within thirty (30) days of date of service. A 1.5 percent monthly fee will apply to all outstanding balances past thirty (30) days from date service is provided.

## 14.0 SOFTWARE LICENSE

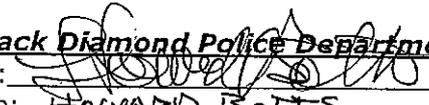
- 14.1 During the term of this Agreement, the *City of Black Diamond Police Department* shall have a royalty-free license to use one (1) copy of the following software of **Cascade (Cascade Software): IndySoft Gage InSite** software. Your agency may authorize additional personnel as you designate, to access **IndySoft Gage InSite** software after notifying **Cascade**.
- 14.2 Additional terms and conditions regarding the license set forth in Section 15.1 are set forth on "**SECTION 4**", and incorporated herein. In the event of a conflict between this Agreement and "**SECTION 4**", this Agreement shall control.

## 15.0 GENERAL

- 15.1 **Solicitation of Employees.** During the term of this Agreement and for a period of one (1) year after termination of this Agreement, neither party will employ, offer employment to, or engage as a contractor, or otherwise obtain the service or skills of, any individual who is or was engaged by the other party as an employee at any time during the term of this Agreement.
- 15.2 **Entire Agreement; Modification.** This Agreement, together with the attached Exhibits, constitute the entire agreement of the parties with respect to its subject matter, supersede any and all prior proposals, agreements and understandings of the parties, whether written or oral, and may not be amended except by a writing signed by both parties. The terms and conditions of this Agreement shall prevail notwithstanding any conflict with the terms and conditions of any other instrument submitted by **Cascade** or the *City of Black Diamond Police Department*.
- 15.3 **Governing Law.** This Agreement shall in all respects be governed by the laws of the State of Washington without reference to its principles of conflicts of laws.

- 15.4 **Caption Headings.** The captions and headings used in this document are for convenience of reading only and are not to be used in the interpretation or construction of this Agreement.
- 15.5 **Severability.** If any of the provisions of this Agreement are held to be invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted.
- 15.6 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.
- 15.7 **Relationship of Parties.** Each party will be and act as an independent contractor and not as an agent or partner with the other party for any purpose related to this Agreement or the transactions contemplated hereunder, and neither party will by virtue of this Agreement have any right, power or authority to act or create any obligation, expressed or implied, on behalf of the other party.

**City of Black Diamond Police Department**

Signed By:   
Print Name: HOWARD ISOTTS  
Title: MAYOR  
Date: 6-20-08

**Cascade Engineering Services, Inc.**

Signed By:   
Print Name: Dennis G. Klinger  
Title: Director  
Date: 6/20/08

Purchase Order # \_\_\_\_\_

Effective 6/20/08 through 6/19/11 Dates

Your agency has accepted **Cascades Standard SMD Calibration / Certification** services ~~THREE~~ year program. Please return a signed copy of this agreement along with your \_\_\_\_\_ year term Purchase Order for the amount contracted referencing this quotation, to begin your Service Program with Cascade Engineering Services, Inc.

## SECTION 2

### 1.0 TERMS & CONDITIONS

- 1.1 For the purposes of these Terms and Conditions, "AGENCY" shall mean the **City of Black Diamond Police Department**.

### 2.0 ON-SITE TERMS

- 2.1 Completion of **Cascade's** work is contingent upon access to the **City of Black Diamond Police Department's** SMD equipment in order to perform meaningful work.

Once **Cascade** has staffed the job and commenced work, **Cascade** is to be permitted to work without interruption. Any delays caused by events not under the direct control of **Cascade** shall be chargeable to the agency at current rates at time of work. Work performed is billed according to the Agreement of which these terms and conditions are an Exhibit. If overtime becomes necessary to accelerate the work schedule per the agency request, the overtime portion shall be billable, unless agency has obtained in writing from **Cascade** agreement to other terms. Premium rate is applicable when on-site service is required on a demand basis, within 72 hours notice. Premium rate is 1.5 and/or 2.0 times the standard costs when performed during normal working hours. Overtime/Double time charges will be billed when service is performed per the agency's request according to the outline within this document. Overtime for **Cascade** employees is defined as all hours worked fewer than twelve (12) and over eight (8) on any workday. Double time for **Cascade** employees is defined as all hours worked over twelve (12) on any workday and all hours worked on the employees seventh consecutive day worked in a workweek. Work performed outside normal work hours (8:00 a.m. to 5:00 p.m.) per the agency's request as defined above will be billed the contract cost plus an overtime multiplier of 1.5 or 2.0 whichever is applicable, (i.e. unit cost times multiplier = premium rates).

### 3.0 CANCELLATION

- 3.1 When a service call, and/or pre-scheduled service date has been confirmed with your agency and is canceled by your agency with less than seven (7) days notice, **Cascade** reserves the right to invoice for non-cancelable costs, such as airline tickets, lodging agreements, etc., **Cascade** shall provide agency with receipt/s of all non-cancelable charges.

### 4.0 DELAYS IN PERFORMANCE

- 4.1 **Cascade** will not be liable for delays in performance or for non-performance due to unforeseen circumstances or causes beyond its reasonable control.

### 5.0 PAYMENT AND SECURITY TERMS

- 5.1 Should the agency fails to pay any sum when due or fail to perform any other material provision of any agreement with **Cascade**, **Cascade** will not be obligated to continue performance under any agreement with agency after 10 days from the date of written notice to agency unless full payment is received within such time.
- 5.2 Title to the equipment remains with and is retained by **Cascade** until the purchase price is paid in full. Warranty will be voided if Cascade does not receive payment by the tenth day after any previously agreed credit terms expire.

## 6.0 OFF-SETS

- 6.1 **Cascade** shall be entitled at all times to off-set any amount owing at any time from the **City of Black Diamond Police Department** or any of its affiliated companies to **Cascade**, against any amount payable at any time to **Cascade** or any of its affiliated companies.

## 7.0 WARRANTIES

- 7.1 **Cascade** warrants that the services of its On-Site/In-House personnel shall be competent. If any portion of the repair work performed by **Cascade** shall prove to have been defective within three (3) months after completion of work by **Cascade**, **Cascade** shall, upon prompt written notice from the agency, as its sole obligation, correct such defective work or repair such SMD's. After three (3) months, all such liability shall terminate. Calibration and certification services warrants the accuracy results at date of test only and does not warrant the accuracy during the entire recall period. **Cascade** will provide a second test upon request to verify a questionable accuracy when tamper seals are intact, unit has not been damaged or abused, and test is requested within 90 days.
- 7.2 **Cascade** warrants that the calibration / certification service it provides is warranted for 90 days from date of service. In the event that the agency believes to have discovered any such defect during the applicable Warranty Period, the agency may return the equipment believed to defective, freight prepaid, to **Cascade** during the Warranty Period, and if **Cascade** determines that the returned SMD in question, is defective, **Cascade** shall, at its option, repair the defective SMD and return it to the agency, freight prepaid. Call **Cascade** at 425.895.8617 for a return authorization number before returning any equipment.
- 7.3 If **Cascade** determines that the equipment is not defective or was not under warranty, it will return it to the agency, freight collect. **Cascade** shall have no responsibility or obligation with respect to any deficiency resulting from accidents, misuse, or modifications to SMD's by agency personnel. **Cascade** will only be responsible with respect to any deficiency when all tamper seals are completely intact. **Cascade's** limited warranty on equipment is exclusive and in lieu of all other warranties, and **Cascade** makes no other warranties, express or implied, and **Cascade** expressly disclaims any warranty of merchantability or fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusions may not apply.

## 8.0 ABNORMAL ABUSE

- 8.1 **Cascade** warrants the calibration / certification service under normal circumstances for 90 days from service date. If **Cascade** determines that the SMD in question has been subjected to abuse, i.e. dropping, water damage during the warranty period the warranty is null and void. **Cascade** will notify your agency of it's findings and seek further disposition of the unit.

## 9.0 ABANDONED PROPERTY

- 9.1 Any client equipment on hold pending client action, such as estimate approval, purchase order or prepayment, will be subject to a storage fee of \$150.00 per month for each month the item remains at Cascade Engineering Services Metrology Laboratories. Storage fees will be effective 30 days after initial notification by Cascade Engineering Services Metrology Laboratories. The storage fee will be assessed at \$75.00 per week. Items abandoned at Cascade Engineering Services Metrology Laboratories will be confiscated and sold to collect storage fees and reasonable legal and administrative expenses.

## 10.0 SUB-CONTRACTORS

- 10.1 **Cascade** may at times be required to send the SMD back to the OEM for repairs / updates that are beyond **Cascade's** capabilities. The prices quoted from these contractors are valid at time price is issued. **Cascade** maintains no control when price changes are put in effect.

## 11.0 SHIPMENT, RISK OF LOSS AND PACKING

**Cascade** will package for shipment and storage and will ship in accordance with standard commercial practice. Agency may specify packing or shipping instructions subject to agreement by **Cascade**. Any additional charges for shipments moving under agency instructions will be freight prepaid and added to **Cascade's** invoice. Title to products and risk of loss and damage will pass to agency at destination. However, when products are shipped under agency shipping instructions, title and risk of loss and damage will pass to agency at **Cascade's** shipping dock.

## 12.0 LIABILITY

- 12.1 **Cascade**, its successors, assigns, subcontractors and suppliers of any tier shall not be liable in contract or in tort (including negligence or strict liability) for any special, indirect, incidental, or consequential damages, including but not limited to damage or loss of adjacent property or equipment, loss of profit or revenue, loss of use of facility or equipment, cost of capital, cost of replacement equipment or claims of any third party. The remedies of the agency set forth herein are exclusive and the total cumulative liability of **Cascade** with respect to any contract, or anything done in connection therewith such as the performance or breach thereof, or from the manufacture, sale, delivery, resale, installation or technical direction of installation, repair, maintenance or any equipment covered by or furnished under a contract whether in contract, in tort (including negligence or strict liability), or otherwise, shall not exceed the price set forth herein for the work.

## 13.0 RESTRICTION OF PERFORMANCE

- 13.1 The prices set forth are conditioned on the right of Cascade to have the work performed by its service technicians or such other persons as it may choose.

## SECTION 3 EQUIPMENT LIST & COST ANALYSIS

Black Diamond Police Department  
 25510 Lawson St/PO Box 309  
 Black Diamond, WA 98010  
 253-631-1012 Fax 360-886-2901  
 Speed Measuring Device Listing May 2008

Officer	Unit #	Make	Model	Serial	Antenna Serial #	Tuning Forks 30 mph	Tuning Forks 50 mph	Calibrated Last	Cal Cost
<b>Vehicle Units</b>									
	10	Kustom	HR-12	AA-8476				5/7/2008	\$ 90.00
Cripe	15	Kustom	Golden Eagle	DP01597	Front DE02545 Rear DE02579	24834	32046	5/7/2008	\$ 90.00
Chatterson	K9	Kustom	Golden Eagle II	XE04300	Front DE10067 Rear DE10088	28761	30584	5/7/2008	\$ 90.00
Volpone	21	Kustom	Golden Eagle II	XE04286	DE10085 DE100895	28580	30588	no	
Dunn	35	Kustom	Golden Eagle	XE04281	Front DE10046 Rear DE10081	28769	30485	5/7/2008	\$ 90.00
Richards	11	Kustom	Golden Eagle II	XE04310	Front DE10089 Rear DE10057	28801	30337	5/7/2008	\$ 90.00
Weinreich	20	Kustom	Golden Eagle II	XE04292	DE10097 DE10098	28763	30483	5/7/2008	\$ 90.00
Macdonald	34	Kustom	Golden Eagle II	XE04298	DE10019 DE10074	28764	30333	5/7/2008	\$ 90.00
<b>Handheld Units</b>									
		Kustom	Falcon	FF9590			16826	5/7/2008	\$ 90.00
		Kustom	Falcon	FF6630			16540	5/7/2008	\$ 90.00
		Kustom	Falcon	FF9040		8419	7411 - 65 mph	5/7/2008	\$ 90.00
<b>Marine Unit</b>									
		Kustom	Falcon	FF18686			16451	5/7/2008	\$ 90.00
<b>Total cost per device, per calibration &amp; certification event.</b>									<b>\$ 990.00</b>

## The Calibration Costs for Calibration and Certification

Doppler radar, per calibration & certification event.	\$ 90.00 each device
Lidar, per calibration & certification event.	\$ 90.00 each device
Expert court testimony, portal-to-portal.	\$120.00.00 per hour

## SECTION 4

### Software License Terms and Conditions

**1. LICENSE.** The **Cascade** Software is licensed to you by **Cascade**. You own the media on which the **Cascade** Software is recorded but **Cascade** and/or **Cascade's** licensor(s) retain title to the **Cascade** Software. The **Cascade** Software in this package and any copies, which this License authorizes, you to make are subject to this License.

**2. PERMITTED USES AND RESTRICTIONS.** This License allows you to install and use the **Cascade's IndySoft Gage InSite** at your agency. You may make one copy of the **Cascade** Software in machine-readable form for backup purposes only. The backup copy must include all copyright information contained on the original. Except as expressly permitted in this License, you may not de-compile, reverse engineer, disassemble, modify, rent, lease, loan, sublicense, distribute or create derivative works based upon the **Cascade** Software in whole. You may not transfer your rights under this License. YOUR RIGHTS UNDER THIS LICENSE WILL TERMINATE AUTOMATICALLY WITHOUT NOTICE FROM **CASCADE** IF YOU FAIL TO COMPLY WITH ANY TERM(S) OF THIS LICENSE.

**3. The Black Diamond Police Department** may authorize additional agency personnel access to agency data stored within **IndySoft Gage InSite**. software. **Cascade** to be notified of the names of those additional personnel so access authorized.

**3. LIMITED WARRANTY ON MEDIA (IF APPLICABLE).** **Cascade** warrants the media on which the **Cascade** Software is recorded to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of original purchase. Your exclusive remedy under this paragraph shall be, at **Cascade's** option, a refund of the purchase price of the product containing the **Cascade** Software or replacement of the **Cascade** Software, which is returned to **Cascade** or a **Cascade** authorized representative with a copy of the receipt. THIS LIMITED WARRANTY AND ANY IMPLIED WARRANTIES ON THE MEDIA INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF ORIGINAL PURCHASE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG IMPLIED WARRANTY LASTS, SO THIS LIMITATION MAY NOT APPLY TO YOU. THE LIMITED WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND IN LIEU OF ALL OTHERS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. **CASCADE** SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY BY JURISDICTION.

**4. DISCLAIMER OF WARRANTY ON CASCADE SOFTWARE.** You expressly acknowledge and agree that use of the **Cascade** Software is at your sole risk. The **Cascade** Software is provided "AS IS" and without warranty of any kind and **Cascade** and **Cascade's** licensor(s) (for the purposes of provisions 4 and 5, **Cascade** and **Cascade's** licensor(s) shall be collectively referred to as "**Cascade**") EXPRESSLY DISCLAIM ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS EXCEPT AS SET FORTH BELOW. **CASCADE** DOES NOT WARRANT THAT THE OPERATION OF THE **CASCADE** SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE **CASCADE** SOFTWARE WILL BE CORRECTED. HOWEVER, UPON NOTIFICATION OF ERRORS, OR MODIFICATION REQUESTS CAN AND WILL BE DECIDED BY **CASCADE ENGINEERING SERVICES, INC.** FURTHERMORE, **CASCADE** DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE

USE OF THE **CASCADE** SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

ALL ATTEMPTS WILL BE MADE TO CORRECT ANY ACCURACY, CORRECTNESS ISSUES **AT CASCADE'S** SOLE DISCRETION. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY A **CASCADE** AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. MODIFICATIONS TO THIS WARRANTY CAN ONLY BE AFFECTED THROUGH THE **CASCADE ENGINEERING SERVICES** CORPORATE OFFICE. SHOULD THE **CASCADE** SOFTWARE PROVE DEFECTIVE, YOU (AND NOT **CASCADE** OR A **CASCADE'S** AUTHORIZED REPRESENTATIVE) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THE TERMS OF THIS DISCLAIMER DO NOT AFFECT OR PREJUDICE THE STATUTORY RIGHTS OF A CONSUMER ACQUIRING **CASCADE** PRODUCTS OTHERWISE THAN IN THE COURSE OF A BUSINESS.

Notwithstanding the foregoing, Cascade agrees to defend, or at its option settle, any claim brought against you by a third party based on allegations that the Cascade Software licensed hereunder infringes any intellectual property rights, and to pay the damages and costs (including attorneys' fees) in respect of such claim; provided that you provide Cascade with: (i) prompt written notice of such claim, (ii) exclusive control over the defense and settlement of such claim, and (iii) reasonable assistance, at Cascade's request and expense, to settle or defend any such claim.

**5. LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL **CASCADE** BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS LICENSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THIS LIMITATION MAY NOT APPLY TO YOU. Excluding liability arising under the indemnification obligations set forth in Section 4, in no event shall **Cascade** total liability to you for all damages exceed the fees paid by you under the Contract.

**6. EXPORT LAW ASSURANCES.** You may not use or otherwise export or re-export the **Cascade** Software except as authorized by United States law and the laws of the jurisdiction in which the **Cascade** Software was obtained. In particular, but without limitation, the **Cascade** Software may not be exported or re-exported (i) into (or to a national or resident of) any U.S. embargoed country or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. By using the **Cascade** Software, you represent and warrant that you are not located in, under control of, or a national or resident of any such country or on any such list.

**7. GOVERNMENT END USERS.** If the **Cascade** Software is supplied to the United States Government, the **Cascade** Software is classified as "restricted computer software" as defined in clause 52.227-19 of the FAR. The United States Government's rights to the **Cascade** Software are as provided in clause 52.227-19 of the FAR.

## SECTION 5 Certificate of guarantee

This is to certify that Cascade Engineering Services, Inc. (CES) will guarantee all of the calibration/ certification services provided by us to meet the highest level of agency satisfaction or the calibration billing in question will be credited without hesitation. Furthermore, we certify that all instruments calibrated / certified or repaired at the CES Metrology Laboratory facilities are thoroughly tested, inspected and found to meet all OEM specifications in accordance with ISO/IEC 17025, ANSI/NCSL Z540-1-1994 and are traceable to the National Institute of Standards & Technology (NIST). If any questions or concerns arise, at the request of your agency, complete records to verify the above services are available for inspection.

All personnel of Cascade Engineering Services, Inc. will perform their duties in a professional and courteous manner, keeping in mind that the complete satisfaction of your agency is of the utmost importance. We will continually strive to ensure Cascade Engineering Service charter of our **Commitment, Quality, Integrity and Reliability**.

At Cascade Engineering Services, Inc. we take pride in our dedication and commitment to provide professional, reliable guaranteed (money back guarantee) calibration with certification and repair service performed by us and comparable to no other company in our industry.

WE TAKE CLIENT CARE PERSONALLY  
Cascade Engineering services, Inc.

*Reza Yasseri*

President/CEO