

**PROCUREMENT CONTRACT ROUTING SLIP AND CHECK LIST**

**Instructions:** This form should be completed at each step of the procurement process and should follow each request for review or approval. Contracts under \$5,000 require only Department Head approval. Contracts over \$5,000 require City Manager approval. They do not require competitive bids but require documentation of source selection process. Contracts over \$10,000 require City Attorney and City Manager approval. Competitive bidding process is required. Contracts over \$25,000 require City Council approval.

**ALL CONTRACTS**

Procurement Description: Computer scanning, counting IRV ballots # \_\_\_\_\_  
Budget estimate: \$ 2500  
Is proposed expenditure approved in the Department's budget?  Yes or use savings  No  
Explain process for vendor selection: sole source  
4/17/09 Dept. Head approval of proposal: K. Shook Finance Review: \_\_\_\_\_  
City Manager Approval if Sole Source: \_\_\_\_\_

**CONTRACTS OVER \$5,000 AND UNDER \$10,000**

Competitive Quotes: \_\_\_\_\_ \$ \_\_\_\_\_  
(attach) \_\_\_\_\_ \$ \_\_\_\_\_  
Contractor/Vendor Selected: True Ballot \$ 2500  
4/17/09 Dept. Head approval: K. Shook  
4/17/09 City Attorney review: [Signature] 4-21-09 City Manager Approval: SCAS  
Original signed contract documents to City Clerk, Department and to Vendor/Contractor

**CONTRACTS OVER \$10,000**

\_\_\_\_\_ RFP or ITB Completed: \_\_\_\_\_ Eng. Dept. Review: \_\_\_\_\_  
\_\_\_\_\_ RFP or ITB Reviewed by City Attorney: \_\_\_\_\_  
\_\_\_\_\_ 1<sup>st</sup> Advertisement \_\_\_\_\_ 2<sup>nd</sup> Advertisement (Attach Advertisement)  
\_\_\_\_\_ Bid Opening: \_\_\_\_\_  
Contractor/Vendor Selected: \_\_\_\_\_  
\_\_\_\_\_ Dept. Head approval: \_\_\_\_\_  
\_\_\_\_\_ Award letter sent: \_\_\_\_\_  
\_\_\_\_\_ 3 signed contracts returned by vendor/contractor.  
\_\_\_\_\_ Performance and Payment Bonds received  
\_\_\_\_\_ Certificate of insurance received  
\_\_\_\_\_ Finance Department Review: \_\_\_\_\_

**CONTRACTS OVER \$25,000**

If Over \$25,000, \_\_\_\_\_ Prepare cover memo and resolution for City Council Approval \_\_\_\_\_  
\_\_\_\_\_ Finance Department Review: \_\_\_\_\_  
\_\_\_\_\_ City Attorney Review \_\_\_\_\_ City Manager Approval \_\_\_\_\_  
\_\_\_\_\_ City Council Approval \_\_\_\_\_ Notice to Proceed \_\_\_\_\_





1

## BALLOTING AGREEMENT

This Agreement is by and between TrueBallot, Inc., a Maryland corporation, 3 Bethesda Metro Center, Suite 700, Bethesda, MD 20814, (hereinafter referred to as "TBI") and the City of Aspen, Colorado, a municipal corporation, 130 S. Galena Street 2nd Floor, Aspen, CO 81611 (hereinafter referred to as "City").

Whereas, TrueBallot, Inc. is engaged in the business of election and ballot administration; and

Whereas, City desires to use the services of TrueBallot, Inc. for ballot scanning, reviewing, tallying, and auditing of the results of its municipal election on Tuesday, May 5, 2009;

Now therefore, in consideration of the mutual promises and covenants as stated herein, TrueBallot, Inc. and City agree as follows:

### Definitions

"Ballot" means the issue or issues and elective offices to be decided by the eligible voters of the City at the municipal election on Tuesday, May 5, 2009.

"Voters" mean those qualified voters of the City who participate in the ballot by voting in the Tuesday, May 5, 2009 municipal election.

A "vote" when used in the singular means a tangible paper form generated by City and registered by an eligible voter entitled to cast a ballot.

### Services

TBI shall conduct the Ballots for the City municipal election on Tuesday, May 5, 2009 in a fair, secure, accurate and impartial manner using its ScanVote scanning, reviewing, tallying and auditing system. Neither TrueBallot nor the City shall be able to discern how any particular voter voted. To that end TBI shall provide the following services:

1. TBI shall consult with City on the design of ballots and instant runoff voting (IRV) instructions.

2. On or before Election Day, TBI shall perform a Logic and Accuracy (L&A) test by scanning, reviewing and tallying a test deck of no more than 200 ballots filled out by the City in pre-determined patterns.
3. On Election Day, TBI shall set up and run its ScanVote system in a location designated by the City for scanning, reviewing, tallying and auditing ballots.
4. TBI shall tabulate all of the printed ballots deposited in the ballot boxes along with all valid absentee ballots received by City and shall provide a final tabulation on that day.

#### **Information and materials to be provided by City**

City shall provide electronic copies of draft ballots as soon as practical and at least 100 physical ballots as soon as they are printed.

City shall provide TBI with sufficient facilities in Aspen, CO for TBI to scan, review, tally, and audit the ballots on Election Day. To that end, the City shall provide space with electrical outlets, tables, devices for maintaining observer areas, and other facilities, which may be needed.

At the close of polls, City shall remove all ballots from ballot boxes, unfold and orient them, and deliver them to TBI for scanning. The City shall authenticate all absentee ballots, unfold and orient them, and deliver them to TBI for scanning.

City shall promptly provide any other information or assistance as may reasonably be necessary for TBI to carry out the purposes of this agreement.

#### **Tabulation and certification**

TBI shall set up and test its ScanVote system and equipment in the ballot tabulation area, prior to the closing of the polls so as to be prepared to begin tabulation promptly upon delivery of the ballots by the election judges. Logic and Accuracy testing shall be conducted first, in the presence of the judges and the public, while ballots are being prepared for delivery to TBI.

TBI's ballot tabulation shall occur promptly following the close of voting on May 5, 2009. Tabulation shall be via optical or digital means so as to accurately report the results of each ballot cast.

Upon completion of the tabulation of the ballot, TBI and/or John L. Seibel Esq. shall, if no substantial irregularity has occurred, certify the ballot as fair and accurate. The results of the balloting at the May 5, 2009 municipal election, along with all data collected, shall be delivered to City with a report thereon on Election Day, after the close of the balloting. The results shall be listed in sequence from the highest number of votes to the lowest number of votes with total counts for each candidate and shall include results of any instant runoff tallies required by City according to City rules. TBI shall deliver a CD-ROM with all election data to the City Clerk.

#### **Contract price**

City shall pay TBI for the contract services as follows:

<b>Ballot design and data conferences</b> Conferences as necessary with the City to discuss ballot structure, design, rules, reporting, logistics, procedure and data.	Included
<b>Computer workstation</b> Includes computers and peripherals	Included
<b>Optical scanners</b> Minimum 40 ppm optical scanner	Included
<b>Programming</b> All programming, including network programming, registration and tabulation programming and software licenses.	Included
<b>Results information</b> Results certification report. PC-compatible reports and Microsoft Access compatible data, and ballot images delivered on CD-ROM.	Included Included
<b>Travel</b> Transportation, meals and hotel for three TrueBallot staffers, maximum of three nights unless additional nights are requested by Aspen.	@cost
<b>TrueBallot Services</b> Includes services of three TBI staff to arrive, set up, and tabulate election results on May 5, 2009.	\$7,500
<b>Non-contracted billing</b> In the event that the City requests work outside the scope of this agreement, TBI may charge up to \$150 per hour.	\$150 per hour

The City shall reimburse TBI for the out of pocket transportation expenses and printing costs within 10 days of receipt of a written request or invoice from TBI along with supporting documentation of such expense.

Provided the contract services have been satisfactorily performed, the City shall make payment to TBI of the \$7,500.00 for TrueBallot's services, following the May 5, 2009 municipal election within 10 days of receipt of a written request or invoice by TBI. Past due balances may subject to interest at 18% per annum.

#### **Contract term**

The contract term shall begin upon execution of this Balloting Agreement by both parties and shall continue through the municipal election on May 5, 2009, and the tabulation of and certification of all ballots.

#### **Independent Contractor**

The parties agree that TBI is an independent contractor and that TBI's personnel are not employees of the City. TBI, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be, officers, agents or

employees of the City by reason of this Balloting Agreement. TBI, as an independent contractor, is not entitled to workers' compensation benefits, unemployment insurance benefits, or any other benefits from the City.

**Indemnification**

TBI is responsible for any loss, personal injury, death, and any other damage that may be done or suffered by reason of TBI's gross negligence or failure to perform any contractual obligations, up to a maximum amount of the \$7,500 contract price.

**Warranties and Representations**

TBI warrants and represents: that it is the sole entity, directly or indirectly, interested in compensation for the delivery of the services to be performed under this contract; that any proposal upon which this contract was based was made without any connection with or common interest in the profits with any undisclosed persons or entity; that the contract is fair and made without collusion or fraud; that no employee or official of the City is directly or indirectly interested therein; that TBI, in the performance of this contract, will not violate any laws applicable in the State of Colorado; and that TBI will in no way engage in or participate in any form of illegal discrimination.

**Miscellaneous**

This Balloting Agreement constitutes the final and entire agreement of the parties with respect to the subject matter of this agreement and shall not be amended or modified except in writing and signed by the party to be charged.

This Balloting Agreement shall not be assigned or subcontracted by TBI except with the City's prior written agreement.

TBI's liability hereunder shall be limited to its fees as described above. TBI shall have no liability for any consequential damages.

The person signing this Balloting Agreement on behalf of TBI and the City warrant that he or she is authorized and competent to do so.

**TrueBallot, Inc.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John L. Seibel, President  
3 Bethesda Metro Center, Suite 750  
Bethesda, MD 20814  
301-656-9500 phone

301-656-3558 fax

**City of Aspen, Colorado**

By: Kathryn Koch Date: 4/23/09

Kathryn S. Koch, MMC  
City Clerk, City of Aspen  
130 S. Galena Street 2nd Floor  
Aspen, CO 81611  
970-429-2685 phone  
970-920-5197 fax

**Certification and Supplemental Conditions to Contract for Services -  
Conformance with §8-17.5.101, et seq.**

Illegal Aliens – CRS 8-17.5-101 & 24-76.5-101.

a. Purpose. During the 2006 Colorado legislative session, the Legislature passed House Bills 06-1343 (subsequently amended by HB 07-1073) and 06-1023 that added new statutes relating to the employment of and contracting with illegal aliens. These new laws prohibit all state agencies and political subdivisions, including the Owner, from knowingly hiring an illegal alien to perform work under a contract, or to knowingly contract with a Contractor who knowingly hires with an illegal alien to perform work under the contract. The new laws also require that all contracts for services include certain specific language as set forth in the statutes. The following terms and conditions have been designed to comply with the requirements of this new law.

b. Definitions. The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the Owner.

1. "E-verify program" means the electronic employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is jointly administered by the United States Department of Homeland Security and the social security Administration, or its successor program.

2. "Department program" means the employment verification program established pursuant to Section 8-17.5-102(5)(c).

3. "Public Contract for Services" means this Agreement.

4. "Services" means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

c. By signing this document, Contractor certifies and represents that at this time:

1. Contractor shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services; and

2. Contractor has participated or attempted to participate in either the e-verify program or the department program in order to verify that new employees are not illegal aliens.

d. Contractor hereby confirms that:

1. Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Public Contract for Services.



2. Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Public Contract for Services.

3. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the department program.

4. Contractor shall not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while the Public Contract for Services is being performed.

5. If Contractor obtains actual knowledge that a subcontractor performing work under the Public Contract for Services knowingly employs or contracts with an illegal alien, Contractor shall:

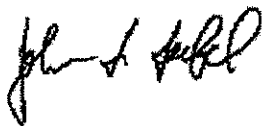
i. Notify such subcontractor and the Owner within three days that Contractor has actual knowledge that the subcontractor is employing or subcontracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the Public Contract for Services with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

7. If Contractor violates any provision of the Public Contract for Services pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Owner may terminate this Agreement. If this Agreement is so terminated, Contractor shall be liable for actual damages to the Owner arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

Public Contract for Services: \_\_\_\_\_  
Contractor: TrueBallot, Inc.



By: \_\_\_\_\_  
Title: John Seibel, President, 4/22/09

JPW- saved: 4/7/2009-867-M:\city\cityatty\contract\forms\certification - hb-06-1343.doc