

SERVICE AGREEMENT
FOR
PARATRANSIT SCHEDULING AND DISPATCHING SOFTWARE
FOR
CITY OF BILLINGS MET TRANSIT

This Agreement, made and entered into this ____ day of _____, 20____, between the **CITY OF BILLINGS, MET TRANSIT**, hereinafter designated **MET**, and **ECOLANE USA, INC.**, known as **VENDOR**.

VENDOR shall commence the work to be performed, or provide the specified product, hereunder promptly upon Notice to Proceed from the **OWNER**.

CONSIDERATION

MET shall pay **VENDOR** for services listed below the sum of \$99,762.05 for the first year in accordance with the pricing exhibit in Attachment C.

Federal funds will, will not, be used to pay for the services listed herein.

If Federal funds will be used to pay for the services described herein, **VENDOR** will also be required to adhere to the Federal requirements set forth in Attachment E.

COORDINATION

All work under this Agreement will be coordinated for **MET** through Rusty Logan, Transit Manager, at 406-657-8218, and for **VENDOR**, coordinate through Priscilla Vargas at 206-799-9574.

TERM

This agreement shall be for a period of three (3) years from the execution of this Agreement. This Agreement may be extended for two (2) one (1) year options by mutual agreement of both parties, in writing, thirty (30) days prior to termination.

VENDOR'S DUTY

In consideration of the payment or payments herein specified and agreed to by **MET**, **VENDOR** hereby covenants and agrees to furnish the product as specified in the following sections of this Agreement for the **MET**.

INDEPENDENT CONTRACTOR STATUS

The parties agree that **VENDOR** is an independent contractor for purposes of this Agreement, and is not to be considered an employee of the **MET** for any purpose. **VENDOR** is not authorized to represent the **MET** or otherwise bind the **MET** in any dealings between **VENDOR** and any third parties.

SECTION I: SCOPE OF WORK

This project will provide a Paratransit Scheduling and Dispatching Software System for MET Transit. The **VENDOR** shall provide all materials, labor, and equipment to provide a usable software package in accordance with the product and processes according to the terms and conditions set forth.

SECTION II: SUPPLIES, MATERIALS, AND LABOR

VENDOR shall provide for all supplies, materials, and labor necessary and incident to the performance of all services required by this Agreement.

VENDOR has and will continue to have proper facilities and personnel to perform the services and provide the product agreed to.

VENDOR shall comply with all State and Federal regulations and City codes, including OSHA.

MET will furnish all personnel and necessary equipment required to utilize the software package.

SECTION III: OTHER PROVISIONS

INDEMNITY

The **VENDOR** shall indemnify and save harmless the **MET** from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description made, brought or recovered against the **MET** by reason of any act, negligence, recklessness, misconduct or omission of the **VENDOR**, his agents, or employees, in the execution of the work. **VENDOR** agrees to reimburse **MET** for any loss due to theft by any of the **VENDOR'S** employees.

EXTRA WORK

It is expressly understood and agreed that no claim for extra work or materials, not specifically herein provided, done or furnished by the **VENDOR**, shall be allowed by the **MET**, nor shall the **VENDOR** do any work or furnish any materials or products not covered by this Agreement unless such work is ordered in writing by the **MET**, and in no event shall the **VENDOR** incur any liability by reason of any verbal instructions that he/she may be given by the **MET**, or its authorized agent; nor will the said **MET** be liable for any extra materials furnished or used, or for any extra work or labor done, unless said materials, work, or labor are required by said **VENDOR'S** own risk, cost and expense, and he/she hereby covenants and agrees that without such written order, he/she shall make no claim for compensation for work or materials so done or furnished.

AMENDMENTS

Any modifications or amendments to this Agreement must be in writing and executed by the parties hereto.

TERMINATION OF AGREEMENT

The **VENDOR** acknowledges and agrees as follows:

1. Termination for Convenience. **MET** may, on no less than thirty (30) days' prior written notice, terminate this Agreement, in whole or in part, at any time by written notice to the **VENDOR** when it is in **MET's** best interest. The **VENDOR** shall be paid its costs, including Agreement closeout costs, and profit on work performed up to the time of termination. The **VENDOR** shall promptly submit its termination claim to **MET** for payment to the **VENDOR**. If the **VENDOR** has any property in its possession belonging to **MET**, the **VENDOR** will account for the said property, and dispose of it in the manner **MET** directs. If **MET** exercises its right to terminate the Agreement for its convenience prior to the expiration of the initial twelve (12) month, **VENDOR** shall not be required to return any prepaid and unused fees to **MET**; provided however that if **MET** exercises this right after the expiration of the initial twelve (12) month term, **MET** shall not be obligated to make any payments after the expiration of such thirty (30) day notice period.

2. Termination for Default (Breach or Cause). If the **VENDOR** does not deliver supplies in accordance with the Agreement delivery schedule, or if the Agreement is for services, the **VENDOR** fails to perform in the manner called for in the Agreement, or if the **VENDOR** fails to comply with any other provisions of the Agreement, **MET** may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the **VENDOR** setting forth the manner in which the **VENDOR** is in default. The **VENDOR** will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement. If it is later determined by **MET** that the **VENDOR** had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the **VENDOR**, **MET**, after setting up a new delivery of performance schedule, may allow the **VENDOR** to continue work, or treat the termination as a termination for convenience.
3. Opportunity to Cure. **MET** in its sole discretion may, in the case of a termination for breach or default, allow the **VENDOR** an appropriately short period of time in which to cure the default. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If **VENDOR** fails to remedy to **MET's** satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within thirty (30) days after receipt by **VENDOR** of written notice from **MET** setting forth the nature of said breach or default, **MET** shall have the right to terminate the Agreement without further obligations to **VENDOR**. Any such termination for default shall not in any way operate to preclude **MET** from also pursuing all available remedies against **VENDOR** and its sureties for said breach or default.
4. Waiver of Remedies for Any Breach. In the event that **MET** elects to waive its remedies for any breach by **VENDOR** of any covenant, term or condition of this Agreement, such waiver by **MET** shall not limit **MET's** remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.
5. Cancellation by **VENDOR**. This Agreement shall be subject to cancellation by **VENDOR** after the default by **MET** in the performance of any covenant or agreement herein required to be performed by **MET** and the failure of **MET** to remedy such default for a period of ninety (90) days after receipt from **VENDOR** or written notice to remedy same.

VENDOR may exercise such right of termination by written notice to **MET** at any time after the lapse of the above applicable periods of time and this Agreement shall terminate as of that date. Consideration due hereunder shall be payable only to the date of the happening of the event which results in said termination.

6. Cancellation by **MET**. This Agreement shall be subject to cancellation by **MET** in the event **VENDOR** shall:
 - a) File a voluntary petition of bankruptcy.
 - b) Make a general assignment for the benefit of creditors.
 - c) Default in the performance of any of the covenants and conditions required herein to be kept and performed by **VENDOR**, and such default continues for a period of thirty (30) days after written notice from the **MET** of said default.

DISPUTES

Disputes arising in the performance of this Agreement that are not resolved by agreement of the parties shall be decided in writing by the Director of Aviation and Transit. This decision shall be final and conclusive

unless within ten (10) days from the date of receipt of its copy, the **VENDOR** mails or otherwise furnishes a written appeal to the Director of Aviation and Transit. In connection with any such appeal, the **VENDOR** shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Aviation and Transit shall be binding upon the **VENDOR** and the **VENDOR** shall abide by the decision.

Unless otherwise directed by the **MET**, **VENDOR** shall continue performance under this Agreement while matters in dispute are being resolved.

ATTORNEY FEES AND COSTS

In the event that either party is required to retain the services of an attorney, or use in-house counsel to enforce the terms and conditions of this Agreement, then the prevailing party shall recover from the other party all reasonable costs, expenses and attorney fees, including fees of in-house counsel, expended or incurred in connection therewith.

This Agreement shall be governed by and construed in accordance with the laws of the State of Montana. Venue in any proceedings held hereunder shall be in the State of Montana Thirteenth Judicial District Court, Yellowstone County, Montana.

PAYMENT

The **VENDOR** will submit an annual claim for payment on the first of the month for that portion of the Agreement that has been completed. The final initial year payment shall be made only after acceptance of final invoice by the **MET**, and determination has been made by the **MET** that the Scope of Work has been satisfactorily completed. This claim will be made to the **MET**.

WARRANTY

The **VENDOR** warrants to the **MET** that services and product furnished under this Service Agreement will be of good and operating quality. The **VENDOR** further warrants that the service will conform to the requirements of the Service Agreement and will be free from disabling defects. Service not conforming to these requirements may be considered defective.

SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the **MET** and the **VENDOR**, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

SUCCESSORS AND ASSIGNS

Neither the **MET** nor the **VENDOR** shall assign, transfer, or encumber any rights, duties, or interests accruing from this Agreement without the written consent of the other.

COMPLIANCE WITH LAWS

VENDOR agrees to comply with all Federal, State, and Local laws, ordinances, rules, and regulations. **VENDOR** agrees to purchase a City business license.

GOVERNING LAW AND VENUE

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be in the State of Montana Thirteenth Judicial District Court, Yellowstone County.

CIVIL RIGHTS

The following requirements apply to the underlying Contract:

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5332, the **VENDOR** agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. In addition, the **VENDOR** agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying Contract:
 - a) **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the **VENDOR** agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, Equal Employment Opportunity, as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The **VENDOR** agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. In addition, the **VENDOR** agrees to comply with any implementing requirements FTA may issue.
 - b) **Age.** In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623, and Federal transit law at 49 U.S.C. 5332, the **VENDOR** agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the **VENDOR** agrees to comply with any implementing requirements FTA may issue.
 - c) **Disabilities.** In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the **VENDOR** agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the **VENDOR** agrees to comply with any implementing requirements FTA may issue.
3. The **VENDOR** also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The **MET** has established a DBE goal for the year. Under this Agreement, the **VENDOR**, subrecipient, or subVENDOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The **VENDOR** shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the **VENDOR** to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy, as the **MET** deems appropriate.

On Federally funded projects, the **VENDOR** is required to review and complete the DBE Certifications and Forms set forth in Attachment C.

CONDITIONS AND NON-COLLUSION AGREEMENT

We have read and agree to the conditions and stipulations contained herein.

We further agree to furnish the product/services specified at the prices stated herein. We additionally agree to deliver the product/services to the location and by the date set forth herein, if applicable.

In signing, you also certify that you have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a Bid/Proposal; that this Bid/Proposal has been independently arrived at without collusion with any other competitor; that the above statement is accurate under penalty of perjury.

THIS AGREEMENT EXECUTED THE DAY AND YEAR FIRST WRITTEN ABOVE.

BY: _____
VENDOR

BY: _____
CITY OF BILLINGS
MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

CITY CLERK

DEBARMENT CERTIFICATION

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OTHER
INELIGIBILITY, AND VOLUNTARY EXCLUSION**

The **VENDOR**, _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not, within a three-year period preceding this Bid/Proposal, been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public function (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Paragraph 2. of this certification.
4. Have not, within a three-year period preceding this Bid/Proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the **VENDOR** is unable to certify to any of the statements in this certification, such **VENDOR** shall attach an explanation to this Bid/Proposal.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

VENDOR

DATE

ATTACHMENT A

ECOLANE USA INC.

SOFTWARE LICENSE & SERVICES AGREEMENT

THIS SOFTWARE LICENSE & SERVICES AGREEMENT (this "**Agreement**") is made and entered into as of March 24, 2020 by and between Ecolane USA Inc., a Delaware corporation ("**Licensor**"), located at 940 West Valley Road, Suite 1400, Wayne, PA 19087 and City of Billings Metropolitan Transit System ("**Licensee**") located at 1705 Monad Rd, Billings, MT 59101. Licensor and Licensee may be referred to individually as a "**Party**," or together as the "**Parties**."

1. AGREEMENT DEFINITIONS

- 1.1 "**Confidential Information**" means information relating to or disclosed in the course of, or in connection with this Agreement, which is, or should be reasonably understood to be, confidential or proprietary to a Party, including, but not limited to, information concerning such Party's business, products, services, content, finances, subscribers, source code, tools, protocols, product designs and plans, customer lists and other marketing and technical information, the existence of any business discussions, negotiations or agreements between the Parties, the terms of this Agreement, and any other unpublished information.
- 1.2 "**Contractor**" means a non-employee individual or business hired by Licensee to perform on Licensee's behalf certain functions permitted hereunder.
- 1.3 "**Documentation**" means Licensor's User Guides and Training Manuals and any other written materials provided by Licensor for aid in the use and operation of the Licensor Software that Licensor indicates in writing as constituting "Documentation" under this Agreement.
- 1.4 "**Intellectual Property Rights**" means all patents, inventions, trademarks, service marks, copyrights, moral rights, trade secrets, database rights, rights in designs, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration, and whether subsisting in the United States or any other part of the world, together with all or any goodwill relating to the same.
- 1.5 "**License Date**" has the meaning set forth in Section 3.
- 1.6 "**Licensor Software**" means Licensor's Ecolane DRT software, in object code format, licensed to Licensee hereunder and, in the event, Licensee purchases applicable license, all updates and upgrades provided under the Support Services, if any. The "Mobile Module" shall be deemed part of the Licensor Software for all purposes.
- 1.7 "**Mobile Module**" means the portion of Licensor Software that is installed on a mobile unit.
- 1.8 "**Support Services**" means Licensor's support and maintenance services described on Exhibit B.
- 1.9 "**Support Period**" means the time period during which Licensee is current in license fees.

2. SOFTWARE LICENSE

- 2.1 **License Grant.** Subject to the terms and conditions hereof, Licensor grants to Licensee a non-exclusive, limited, non-transferable, without right to sublicense, license to use and otherwise access the Licensor Software, Mobile Module, and Documentation, all for Licensee's own internal business uses. Under the foregoing license, Licensee may either (a) install and/or host the Licensor Software and/or Mobile Module on Licensor's

provided hardware, as agreed by the Parties under a separate written installation and hosting agreement that shall include a right for Licensee to terminate, at its convenience, Licensor's hosting of the Licensor Software without unreasonable penalties for early termination, (b) install and/or host the Licensor Software and/or Mobile Module on Licensee's, or its designated Contractor's, hardware in accord with Sections 2.2, 2.3, and 2.4, or (c) any combination of the foregoing (a) and (b).

2.2 License Restrictions; Licensee Rights and Obligations.

Licensee shall not:

- a. modify, make derivative works of, reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code for the Licensor Software,
- b. allow the Licensor Software to be combined with or become incorporated in any other computer programs, absent Licensor's written consent,
- c. distribute, encumber, sell, rent, lease, sublicense, or otherwise transfer rights to the Licensor Software (except as expressly permitted hereunder),
- d. only install and use the Mobile Module on a mobile unit approved by Licensor,
- e. remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Licensor Software, or
- f. Except as set forth in Sections 2.3, 2.4, or as otherwise may be agreed to in writing by Licensor, permit any third party to use the Licensor Software or Documentation or use the Licensor Software or Documentation on behalf of or for the benefit of any third party in any way whatsoever.

2.3 Copies; Records. Licensee may make only so many copies of the Mobile Module as are reasonably necessary for operational security and for its permitted use hereunder. Licensee shall supervise and control and maintain accurate and complete records regarding the use and location of the Mobile Module Software and Documentation, and the access to the Licensor Software.

2.4 Limited Use by Contractors. Licensee may allow its Contractors to exercise the rights granted hereunder on behalf of Licensee and solely for Licensee's benefit, provided that (a) Licensee ensures that such Contractors use the Licensor Software only in accordance with the terms of this Agreement and (b) Contractors are subject to confidentiality obligations substantially similar to Licensee's obligations herein. Licensee shall be fully responsible for any breach of this Agreement caused by Contractors.

3. DELIVERY ACCESS. On or before the 120 days following the date hereof, Licensor shall (a) deliver the number of copies of Software and Documentation, all as may be identified on Exhibit A, by electronic means, and/or (b) provide access to the Licensor Software. The first date of such delivery or access shall be referred to herein as the "License Date". Licensor shall use commercially reasonable efforts to make the Licensor Software available for the hours and days as described in Exhibit A beginning on the License Date. Scheduled maintenance done by Licensor will be done outside Licensee's scheduled hours of availability as identified in Exhibit B.

4. PROPRIETARY RIGHTS. Licensor (and/or its affiliates or vendors) retain all right, title and interest in and to the Licensor Software and Documentation, including, without limitation, all Intellectual Property Rights related thereto and all modifications thereof. The Parties acknowledge each other's trademark rights, and except as permitted by Section 15.11, neither Party shall use the other Party's trade name or trademarks in any manner whatsoever absent the other Party's prior written consent. Nothing in this Agreement assigns any rights, title or interest in any Licensor's (and/or its affiliates' or vendors') Intellectual Property Rights to Licensee.

5. SERVICES.

- 5.1 **Support Services.** Licensor shall provide Support Services commencing on the License Date on the terms and conditions set forth on Exhibit B.
- 5.2 **Installation Assistance, Training or Other Services.** If Licensee and Licensor have agreed that Licensor will provide Licensee with any installation assistance of Mobile Modules, training or other services, the terms and conditions of such services will be identified on Exhibit A or another Exhibit to this Agreement.
- 5.3 **Custom Development.** If Licensor agrees to perform any customized software development work for Licensee that the parties intend for Licensee to own, Licensee will have no such ownership rights unless the parties mutually execute a written addendum to this Agreement that fully satisfies the following conditions: (i) the scope and description of the mutually agreed work product is described, and (ii) the addendum includes an express statement that such work product is "intended to be a work made for hire for, and owned by, Licensee". Notwithstanding the foregoing or any content of any such addendum, in no case whatsoever does Licensor assign or otherwise transfer to Licensee any right, title or interest in or to Licensor Software, Documentation or any other preexisting Intellectual Property Rights of Licensor.

6. GENERAL OBLIGATIONS OF LICENSEE

- 6.1 Licensee shall (a) promptly provide Licensor and its authorized agents with such information and assistance as may be reasonably requested in order to carry out its obligations hereunder, (b) without charge, provide suitable office accommodation, materials, equipment and support services (including use of telephone and support services) reasonably requested in connection with performance of any services at Licensee's premises ordered by Licensee under Section 5, (c) procure all necessary rights from third parties (including intellectual property licenses in relation to Licensee's computer software) which are from time to time required in order for Licensor to provide services in an authorized and legal manner, and (d) with ten (10) days advance notice, permit Licensor and its authorized representatives to enter on to Licensee's premises or mobile units where the Mobile Modules or Documentation are located or from where the Licensor Software is accessed or services are provided in order to verify Licensee's compliance with the terms of this Agreement. In connection with this review, Licensor may inspect records directly related to Licensee's performance of this Agreement or use of Licensor Software or Documentation kept by or on behalf of the Licensee and make copies of the same.

7. FEES AND PAYMENT.

- 7.1 **Payment.** Licensee agrees to pay Licensor the fees specified in Exhibit A in accordance with the payment schedules set forth in Exhibit A. The Parties agree to the allocation of the fees and payments to software, service (if any) and hardware (if any) as designated on Exhibit A. Licensee shall pay Licensor's invoices in U.S. dollars to Licensor's address set forth on Exhibit A no later than thirty (30) days following the receipt of a written invoice. Any overdue payments will bear interest at the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate allowed under applicable law until the overdue payment and accrued interest are fully paid.
- 7.2 **Taxes.** Licensee shall be responsible for any and all sales, use, excise, value-added or similar taxes that may be due under this Agreement and Licensor will use commercially reasonable efforts to identify any applicable taxes on its invoice to Licensee. Licensee will pay applicable taxes on the invoice or, in lieu of the payment of any such taxes; Licensee may provide Licensor with a certificate acceptable to the taxing authorities exempting Licensee from payment of these taxes. Notwithstanding the foregoing, in no event shall Licensee be obligated to pay any tax paid or owed on income or net worth of Licensor or paid for Licensor's doing business in any particular locality or jurisdiction.

8. WARRANTIES.

- 8.1 **Licensor Software Warranties.** With respect to the Licensor Software, Licensor warrants that: (a) the tangible media on which the Mobile Module resides, if applicable, shall be free of material defects in workmanship, design and material, (b) neither the Licensor Software nor the Documentation infringes, misappropriates or otherwise violates any U.S. Intellectual Property Rights of any third parties, (c) the Licensor Software does not contain any computer viruses, Trojan horses, time bombs, cancel bots or other computer programming routines that are intended to detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information, and (d) Licensor Software will operate substantially in accordance with the Documentation. The warranties set forth in Section 8.1 ("Software Warranties") shall survive for a period of three hundred sixty-five days (365) days following the License Date ("Warranty Period"). In the event of a breach of a Software Warranty reported to Licensor in writing during the Warranty Period, Licensee's sole remedy for such breach shall be to have Licensor use commercially reasonable efforts to promptly correct, replace or provide a work around for such error or failure, at no charge to Licensee, or in Licensor's discretion, provide an equitable refund to Licensee. The Software Warranties and remedies apply only to the most recent version of the Licensor Software, and shall not apply to any breach, fault or error that has been caused by Licensee's failure to use the Licensor Software in accordance with the Documentation requirements, any misuse, corruption, or abuse of, or modification to, the Licensor Software by Licensee or any use of the Licensor Software with any software or equipment not approved in advance in writing by Licensor.
- 8.2 **Licensor Services Warranties.** Licensor warrants that all services that are performed under this Agreement will be performed in a professional and workmanlike manner by qualified personnel, and Licensor has the required skills and experience to perform such services and such warranties shall survive for thirty days following performance of the services. Licensee's sole remedy for breach of a warranty in Section 8.2 shall be to notify Licensor of any breach within ninety (90) day following performance of the services and have Licensor use commercially reasonable efforts to promptly correct, replace or provide a work around for such breach, at no charge to Licensee, or in Licensor's discretion, provide an equitable refund to Licensee.
- 8.3 **Licensor General Warranties.** Licensor represents and warrants that Licensor owns, or has all necessary rights to, the Licensor Software and Documentation, and has all necessary rights and authority to grant the rights granted hereunder to Licensee and to carry out its obligations hereunder.
- 8.4 **Mutual Warranties.** Each Party represents and warrants to the other Party: (a) such Party's execution, delivery and performance of this Agreement have been authorized by all necessary corporate action, do not violate in any material respect the terms of any law, regulation, or court order to which Licensor is subject, do not violate the terms of any material agreement to which Licensor is a party, and are not subject to the consent or approval of any third party, (b) this Agreement is the valid and binding obligation of such Party, enforceable against Licensor in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other similar laws relating to creditors' rights generally, or general equitable principles, (c) such Party is not subject to any pending or, to such Party's knowledge, threatened litigation or governmental action which could interfere with such Party's performance of its obligations hereunder, and (d) such Party has secured or shall secure all material permits, licenses, regulatory approvals and registrations to perform its obligations hereunder.
- 8.5 **Disclaimer of Warranty.** EXCEPT AS SET FORTH IN SECTIONS 8.1 to 8.4, LICENSOR DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION,

WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NONINFRINGEMENT OF THIRD PARTIES' RIGHTS, AND SECURE, ERROR-FREE OR UNINTERRUPTED OPERATION.

- 8.6 **Limitation of liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF THE PARTY SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM AGAINST THE OTHER BY ANY THIRD PARTY, UNLESS SUCH CLAIMS ARISE OUT OF THE INDEMNITY OBLIGATIONS UNDER SECTIONS 10.1 AND 10.4 OR ARE DUE TO A BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 9. LICENSOR'S LIABILITY TO LICENSEE UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AMOUNT ACTUALLY PAID BY LICENSEE TO LICENSOR PURSUANT TO THIS AGREEMENT DURING THE TWELVE-MONTH PERIOD PRECEDING THE DATE OF ANY CLAIM. A "CLAIM" IS WHEN ANY OCCURRENCE GIVING RISE TO LICENSOR LIABILITY HEREUNDER IS KNOWN TO LICENSEE OR SHOULD BE KNOWN.

Licensee acknowledges and agrees that (i) it is solely responsible for providing and ensuring the proper training of its drivers, owners or operators in the operation of the motor vehicle or motor vehicles (i.e. any automotive machinery utilized for the transport of persons or goods in which Ecolane Products has been incorporated or installed) in conjunction with the use or operation of Licensor Software and Mobile Modules (the "Ecolane Products"), (ii) Licensor shall not be liable to Licensee for any claim or action including costs arising out of the use or misuse of any motor vehicle operated by the Licensee in conjunction with or separate from the use of the Ecolane Products, including any personal injury or property damage claim or action, and Licensee shall defend, indemnify and hold Licensor harmless from any such claim or action, and (iii) Licensee shall include this paragraph, or the substance thereof, in any third party agreements pursuant to which Ecolane Products are provided to a third party.

Licensee agrees that, to the fullest extent permitted by law, Licensor shall not be liable to Licensee or any third party for any special, indirect or consequential damages of any kind arising directly or indirectly from the use of or inability to use Ecolane Products including any claim for lost revenue, profit, data, privacy, security, interruption or loss of service or use of the products, or any loss of business even if Licensor has been advised of the possibility of such damages.

9. CONFIDENTIALITY.

- 9.1 **Confidentiality Obligations.** Each Party acknowledges that Confidential Information may be disclosed to the other Party during the course of this Agreement. Each Party agrees that, during and following the term of this Agreement, it shall hold in strict confidence the other Party's Confidential Information and will take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to (a) prevent use of the other Party's Confidential Information for any purpose other than to carry out its rights and obligations hereunder, and (b) prevent the disclosure of the other Party's Confidential Information, other than to its employees or Contractors who must have access to such Confidential Information for such Party to exercise its rights and perform its obligations hereunder and who each agree to be bound by agreements with a duty of confidentiality no less protective of confidential information than provided herein.
- 9.2 **Exclusions.** The Parties' obligations set forth in Section 9.1 shall not apply with respect to any portion of the Confidential Information that: (a) was in the public domain at the time it was disclosed to or observed by the receiving Party; (b) entered the public domain through no fault of the receiving Party; (c) is rightfully received by the receiving Party from a third party without a duty of confidentiality; (d) is independently developed by

the receiving Party without reference to or incorporation of the other Party's Confidential Information; (e) is disclosed in accordance with the state Public Information Act, except that the receiving Party will disclose only such information as is legally required and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed and will provide the disclosing Party notice of such possible disclosure prior to disclosure in order to allow an opportunity for the disclosing Party to contest such disclosure; or (f) is disclosed with the other Party's prior written approval.

- 9.3 **Return of Confidential Information.** Each Party agrees to return to the other Party or, at the request and instruction of the disclosing Party, destroy, and certify that it has destroyed, all material embodying Confidential Information (in any form or medium and including, without limitation, all summaries, copies and excerpts of Confidential Information) at any such time as the disclosing Party may so request.

10. INDEMNIFICATION.

- 10.1 **Indemnification by Licensor.** Licensor shall to the extent allowed by state law indemnify, defend and hold harmless Licensee, and its officers, directors, employees and agents, from and against any and all claims made or threatened by any third party and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation or defense ("Damages"), to the extent such Damages arise out of or relate to a third-party claim that the Licensor Software, Documentation or services provided by Licensor hereunder, or Licensee's use of the same in accordance with this Agreement, infringe, misappropriate, or otherwise violate any third party's U.S. Intellectual Property Rights. Licensor's indemnity obligation shall not extend to claims based on an unauthorized modification, combination or use of the Licensor Software by Licensee.
- 10.2 **Notification of 3rd Party Claims.** Licensor will promptly notify Licensee of any threat, warning, claim or action against Licensor or suppliers, that could have an adverse impact on Licensee's use of the Licensor Software.
- 10.3 **Remedies.** If Licensor informs Licensee or Licensee determines that it must discontinue use of the Licensor Software, the Documentation, or any service furnished under this Agreement because of an existing or anticipated claim, or adjudication, that the Licensor Software, Documentation, or service infringes, misappropriates or otherwise violates any intellectual property right of a third party, Licensor, at its own expense and in its reasonable discretion, shall either: (a) secure for Licensee the right to continue using the Licensor Software, Documentation, or service; (b) replace or modify the Licensor Software, Documentation, or service to make it non-infringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Licensor Software, Documentation, or service; or if Licensor determines (a) or (b) to be commercially unreasonable, then (c) refund to Licensee any unamortized portions of the fees paid by Licensee, based on a straight line amortization over the initial term of this Agreement.
- 10.4 **Indemnification by Licensee.** Licensee shall indemnify, defend and hold harmless Licensor, and their officers, directors, employees, and agents ("Indemnified Parties") from and against any and all claims made or threatened by any third party and all Damages, to the extent such Damages arise out of or relate to (a) Licensee's breach of the obligations assumed under this Agreement, or (b) an infringement or related claim that unauthorized modification, combination or use of the Licensor Software made by Licensee.
- 10.5 **Defense and Settlement.** A Party seeking indemnity ("Indemnified Party") shall provide the other Party ("Indemnifying Party") prompt notice of any such claim made against it for which it is entitled to indemnity hereunder. Each party shall cooperate with

the other party and in the defense of any such claim, suit or proceeding, including appeals, negotiations and any settlement or compromise thereof, provided that Indemnifying Party shall control the defense, negotiations and settlement or compromise thereof and shall keep the Indemnified Party informed of the proceedings and review and consider input from the Indemnified Party; provided, that Indemnified Party shall be given the right to consent to the terms of any settlement or compromise with respect to such matter, and such approval shall not be unreasonably withheld by Indemnified Party.

11. EXPORT CONTROL. The Parties agree that Licensee shall not, and shall not permit, use of the Licensor Software and Documentation outside of the United States and Canada. To the extent Licensee seeks to use Licensor Software and Documentation outside of the United States and Canada, Licensee shall be solely responsible for full compliance with all export and import laws and restrictions and regulations of any United States or foreign agency or authority and shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to the same.

12. NOTICES. Any notice, approval, request, authorization, direction or other communication under this Agreement will be given in English in writing and will be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered by confirmed facsimile; (ii) on the delivery date if delivered personally to the party to whom the same is directed; (iii) one business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iv) five business days after the mailing date, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. Licensor's and Licensee's Addresses for receipt of notices are provided on Exhibit A.

13. TERM AND TERMINATION.

13.1 **Term.** Unless terminated earlier in accordance with Section 13.2, this Agreement shall remain in effect for the applicable term or terms set forth on Exhibit A, as the term or terms may vary for the license to the Licensed Software and Documentation and the Support Services or other services. The term of the agreement will commence upon contract signing and will continue for as long as license fees are maintained. In the case where the base agreement expires and neither party has extended the said base agreement, this agreement will renew automatically each year, until a new agreement is signed.

13.2 **Termination; Effect of Termination.** A Party may terminate this Agreement prior to the expiration of an applicable term as follows: (a) if the other Party breaches a material obligation under this Agreement, and fails to cure such breach within thirty (30) days from the date it receives from the non-breaching Party a written notice of the breach and a demand for cure, (b) immediately by written notice if the other Party (i) materially breaches Section 9, or (ii) files a petition in bankruptcy, makes a general assignment for the benefit of its creditors, has a receiver appointed or applied for it, or winds up or liquidates. Upon termination, Licensee shall return the Licensor Software and Documentation to Licensor, and pay all accrued but unpaid fees and expenses, provided, this shall in no way limit any legal or equitable remedies that Licensor may be entitled to. Any fees paid by Licensee for services not performed by Licensor as of the termination date will be refunded, within 90 days following termination.

14. SURVIVAL. Sections 1, 2.2, 4, 8.5, 8.6, 9, 10, 12, 13, 14 and 15 shall survive termination of this Agreement for any reason.

15. GENERAL

15.1 **Entire Agreement.** This Software Agreement (including the Exhibits) is in addition to the primary agreement between the Parties concerning the subject matter; the entire agreement, including the City of Billings Service Agreement, hereof and supersedes all prior and contemporaneous proposals, agreements and communications, whether oral

or written, between the parties relating to the subject matter hereof, and all past courses of dealing or industry custom. This Agreement may be amended only by a writing signed by the duly authorized representatives of both Parties.

- 15.2 **Independent Contractors.** In performing this Agreement, the Parties are independent contractors, and nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between the Parties. Except as expressly set forth in this Agreement, at no time shall either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.
- 15.3 **Assignment.** Neither Party may assign this Agreement or any right, interest or benefit under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld; provided that in the event of a change in control of a Party, except for a change of control of Licensee to a direct or indirect competitor of Licensor, either Party shall have the right to assign this Agreement to a successor who acquired substantially all of the assets or equity of such Party. Subject to the foregoing, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, Licensor may subcontract the performance of any or all of its obligations under this Agreement, provided it remains directly liable to Licensee.
- 15.4 **No Third-Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing in this Agreement, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.
- 15.5 **Severability/Waiver.** If any provision in this Agreement should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect. A waiver by either Party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.
- 15.6 **Dispute Resolution.** In the event any controversy or claim arises in connection with any provision of this Agreement, or in connection with the rights or obligations of the Parties to this Agreement, the Parties shall try to settle their differences amicably between themselves by referring the disputed matter to the appropriate executives at the Director level or higher for discussion and resolution. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and as soon as possible but no later than fifteen (15) days after such notice such representatives of the Parties shall meet for attempted resolution by good faith negotiations. If such representatives are unable to resolve such dispute within thirty (30) days of initiating such negotiations, either Party may seek the remedies available to such Party under law. The parties agree that the State of Tennessee shall be the venue where disputes are settled.
- 15.7 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Tennessee, without regard to its conflicts of law principles or to the United Nations Convention on Contracts for the International Sale of Goods. For purposes of all claims brought under this Agreement, each Party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts located in State of Tennessee. Notwithstanding anything to the contrary set forth in this Agreement, the Parties agree that any threatened or actual violation of Sections 2, 4 or 9, will cause irreparable harm and injury to the Licensor and Licensor shall be entitled, in addition to

any other rights and remedies it may have at law or in equity, to an injunction enjoining and restraining Licensee from doing or continuing to do any such act and any other violations or threatened violations of this Agreement, and for purposes of such injunction, each Party hereby irrevocably submits to the exclusive jurisdiction and proper venue of the state and federal courts located in State of Tennessee.

- 15.8 **Force Majeure.** Neither Party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of circumstances beyond the reasonable control of such Party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs (whether or not by that Party), strikes and other industrial disputes (in each case, whether or not relating to that Party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions.
- 15.9 **Headings; Interpretation.** The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of the Agreement. The expression "person" means any individual, entity, partnership, association, governmental body or the like. The words "include", "includes", "including" and "included" will be construed without limitation. This Agreement shall be construed fairly according to its terms, without regard to the identity of the drafter of any provision in the Agreement.
- 15.10 **Counterparts; Facsimile.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
- 15.11 **Publicity.** Neither Party will make any public statements regarding the existence of this Agreement nor the relationship described herein, without the prior written consent of the other Party, except as required by law or as otherwise provided for herein. Notwithstanding the foregoing, Licensor shall have the right to use Licensee's name in customer lists that identify a substantial number of Licensor's customers, and Licensor shall provide a copy of any such listing to Licensee to the extent distributed to any third parties.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each Party has caused this Software License & Services Agreement to be executed by its authorized representative to be effective as of the date hereof.

Ecolane USA Inc.

[LICENSEE, STATE]

Signature: _____

Signature: _____

Printed Name: Steve Ross

Printed Name: _____

Title: CEO

Title: _____

Date: _____

Date: _____

[Remainder of page intentionally left blank]

ATTACHMENT C

License Terms

This Attachment C is made part of and incorporated in that certain Service Agreement, including Software License & Services Agreement, dated _____, 2020 by and between Ecolane USA Inc., a Delaware corporation ("**Licensee**" or "**Ecolane**"), and City of Billings Metropolitan Transit System ("**Licensee**" or "**Customer**").

A. Pricing/Payment

Ecolane		Price Quote	
Ecolane 940 W Valley Rd, Suite 1400 Wayne, PA 19087 844-ECOLANE 610-312-0033 SALES@ECOLANE.COM			
DATE 2/21/2020	TRANSIT AGENCY NAME City of Billings - MET Transit	ADDRESS 1705 Monad Road	CITY, STATE ZIP Billings, MT 59101
PROJECT RFP #4013-P Transit Technologies	ATTENTION Lindsey Gran	PHONE 406-657-8219	E-MAIL granl@billingsmt.gov
BD DIRECTOR Priscilla Vargas	E-MAIL priscilla.vargas@ecolane.com	PHONE 206-799-9574	PRICING TERMS 75% due at system set up 20% due at completion of training 5% due at system acceptance
DAYS PRICING IS VALID FOR 90	DATE PRICE EXPIRES 5/21/2020		
Initial Licenses			
QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
15	Ecolane DRT/MDT Software License (per vehicle) (unlimited users)	\$ 4,000.00	\$60,000.00
1	Map data for Service Area - up to 5 contiguous counties	Included	Included
1	Self Service Trip Bookings App with credit card capabilities (flat rate) (3rd party charges will apply)	\$29,995.00	\$29,995.00
1	SMS Text Messaging Arrival Notification License (Includes 10k of SMS Text msg credit to start that never expires) (flat rate)	\$19,995.00	\$19,995.00
1	Self Service Trip Bookings Website (flat rate)	\$19,995.00	\$19,995.00
1	GTFS Interface for Public Transportation (flat rate)	Included	Included
<i>Initial licenses subtotal</i>			\$129,985.00
<i>Discount</i>			47%
<i>Initial licenses cost with discount applied subtotal</i>			\$68,892.05
Additional items			
QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
15	8" Android Tablet, similar to a Samsung Galaxy Tab A, 8" (+\$100 per for 10" tablet) (if agency purchases separately, price will be reduced)	\$294.00	MET Transit will provide
15	Vehicle Mounting Hardware (RAM-1011U, Otter box type case, and vehicle charger) (additional \$100 per for locking mount hardware) (if agency purchases separately, price will be reduced)	\$199.00	MET Transit will provide
<i>Additional items subtotal</i>			\$0.00

Services

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
11	Remote set up of Ecolane DRT and MDT software (8 hr. work days), includes remote training and project management	\$990.00	\$10,890.00
12	Onsite Training/Go-live days (8 hr. work days)	\$990.00	\$11,880.00
3	Travel for # of Onsite Trips indicated (Onsite Survey, Training, and Go-live)	\$2,700.00	\$8,100.00
<i>Services subtotal</i>			\$30,870.00

Annual Licensing Year 1

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
15	All Inclusive Annual Licensing plan includes support for all licenses listed above and all items below (per vehicle):	Included	Included
	Hosting Costs		Included
	Server Maintenance		Included
	24/7/365 Support via web, email and phone		Included
	Map Updates		Included
	Upgrades** and Updates		Included
	Free monthly webinar training and access to Aha! Idea portal to help drive functionality for new development for Ecolane and its customers		Included
<i>Annual licensing year 1 subtotal</i>			Included
<p>PLEASE NOTE! Ecolane offers a MONEY BACK GUARANTEE that provides our software for free in the event you do not see an increase in rides per hour productivity over your current software provider solution. In order to give this guarantee, we will review your system, ask that you follow the Ecolane training methods and use the Ecolane System Productivity report to establish the productivity amounts regularly. We will jointly create language to honor this provision in the software license agreement.</p>		SUBTOTAL	\$99,762.05
		TOTAL SYSTEM PURCHASE COSTS FOR YEAR 1	\$99,762.05

Annual Licensing for years 2-5 (per year) | Please ask your Biz Dev Director about pre-paid maintenance discounts!

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
15	All Inclusive Annual Licensing plan includes support for all licenses listed above in initial licenses and all items below (per vehicle):	\$433.28	\$6,499.20
	Hosting Costs		Included
	Server Maintenance		Included
	24/7/365 Support via web, email and phone		Included
	Map Updates		Included
	Upgrades** and Updates		Included
	Free monthly webinar training and access to Aha! Idea portal to help drive functionality for new development for Ecolane and its customers		Included
<i>Annual Licensing years 2-5 (per year) subtotal</i>			\$6,499.20

Annual licensing will be held at this rate for as long as your agency is an Ecolane customer. (Based on originally purchased solution)



Ryan Larsen, Senior Vice President

2/21/2020

Date

Optional Items | Please ask your Biz Dev Director for more info about these great options to help your agency grow!

QUANTITY	DESCRIPTION	UNIT PRICE	ANNUAL LICENSE COST
1	Pre/Post Trip functionality on MDT *** (Initial License cost, flat rate)	\$19,995.00	\$999.75
1	Ecolane IVR *** (Initial License cost, flat rate) (3rd party charges will apply)	\$40,000.00	\$2,000.00
1	Electronic Signature Capture functionality on MDT *** (Initial License cost, per vehicle)	\$200.00	\$10.00
1	GTFS Interface for Public Transportation *** (Initial License cost, flat rate)	\$19,995.00	\$999.75
1	SMS Text message credit bundle (10,000/bundle) (Never expires until used up completely)	\$1,500.00	
1	Customer Service and Feedback module*** (Initial License cost, flat rate)	\$6,995.00	\$349.75
1	Centers Management Portal *** (Initial License cost, flat rate)	\$19,995.00	\$999.75
1	Ecolane DRT Brokerage (Primary) *** (Initial License cost, flat rate)	\$12,995.00	\$649.75
1	Subcontractor Portal *** (Initial License cost, flat rate)	\$9,995.00	\$499.75
1	Subcontractor Reporting Portal *** (Initial License cost, flat rate)	\$6,995.00	\$349.75
1	Least cost scheduling algorithm for brokerage solution (Initial License cost, flat rate) ***	\$6,995.00	\$349.75
1	Order Importer module *** (Initial License cost, flat rate)	\$19,995.00	\$999.75
1	Each additional Week onsite over standard 2 weeks Training/Go-live Support (includes travel)	\$8,700.00	
1	Annual Review - Up to 10 days of remote review of your system by a Ecolane Professional Services member and 3 days onsite training (includes travel)	\$6,300.00	

THIS PROPOSAL INCLUDES THE CONDITIONS NOTED:

Implementation/ Training assumes 8 hrs. per day on-site excluding weekends and holidays.

All prices are in US dollars. All applicable sales/use taxes are additional and payment of such is the sole responsibility of the purchaser.

Customer may purchase Android tablets and airtime for Tablets through cellular provider. Prices for tablets range from \$0 to \$499 depending on carrier. Please coordinate your cellular provider/tablets with Ecolane prior to ordering hardware.

*Data plan does not include web browsing, etc. 2GB data plan is more than sufficient for the Ecolane Touchscreen MDT Software and Navigation. Agency is responsible for any overages.

**Upgrade and webinar training is included for upgrades, additional on site or new employee training is charged at Refresher Training rate plus travel as applicable.

*** All Optional item license costs include annual hosting, support & licensing fees due 1 year from contract signing set at: 5%

B. Term of License; Term of Support

The term of the Software License shall be from the License Date through 5 full years of use.

The terms of the Support Services shall be from the License Date through 5 full years of use.

The term outlined above will renew annually on the license date above, unless renegotiated by either or both parties with a minimum of 60 days' notice.

Ecolane deploys a learning management system for agency staff training. By signing of this agreement, you agree to mandate that your staff attend and test on the key concepts of the Ecolane software.

C. Delivery & Access Terms:

Delivery of the System. Licensor commits to delivery of the Licensor Software in the timeframe set forth in Section 3 and it shall be deemed fully delivered when the Licensor Software conforms to the Documentation in all material respects; provided, if there are issues preventing Licensor Software from conforming to the Documentation in all material respects, Licensor will seek to remedy the issues as soon as commercially practicable, and provided, further, if Licensee uses the Licensor Software for 14 days in a live environment, then any such issues shall be deemed waived.

System Access. Standard hours of Licensee operations are from 5:30 AM to 7:00 PM, Monday through Saturday, Mountain time zone. The Licensor Software is expected to be available for use from one hour before to one hour after the standard hours; provided Mobile Modules are expressly excluded from the Licensor Software downtime counting, meaning that any downtime experienced by a Mobile Modules is not counted as system downtime.

The downtime means a "Critical" level problem as defined in the Support Services.

D. Addresses for Notices:

For Ecolane ("Licensor"):

Ecolane USA Inc.

940 West Valley Road,

Suite 1400

Wayne, PA 19087

Licensor has right to change the address for notifications by notifying Licensee by the means set up in Section 12 of this contract.

For City of Billings Metropolitan Transit System ("Licensee"):

Attention: Rusty Logan

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ATTACHMENT D

SUPPORT SERVICES/SERVICE LEVEL AGREEMENT

This Attachment D is made part of and incorporated in that certain Service Agreement, including Software License & Services Agreement ("**Agreement**"), dated _____, 2020 by and between Ecolane USA Inc., a Delaware corporation ("**Licensor**" or "**Ecolane**"), and City of Billings MET Transit ("**Licensee**" or "**Customer**").

Overview

Ecolane's Support Services are set forth in this Service Level Agreement. During the term of this Agreement, Ecolane will provide the following support services if the Licensor Software does not operate substantially in accordance with the Documentation. Support will be handled via phone, email, and the internet when Ecolane support personnel are not at the customer site. The infrastructure for this plan is a request tracking system used to facilitate the process of tracking and resolving customer needs and issues. Every service request is logged into the system and is accessible by Ecolane support representatives.

Assignment of Service Request Severity

When a customer has opened a service request and reaches customer support, the Ecolane associate will assess the severity of the request based on the customer's description of the issue. The severity of the service request will be recorded at support.ecolane.com.

Table 1 below describes the definitions used in identifying and assigning a severity to the customer's reported issue.

Severity	Criteria
Critical	<ul style="list-style-type: none">• Customer's production system is down• Ecolane product is unusable resulting in total disruption of work or other critical business impact.• No workaround is available
High	<ul style="list-style-type: none">• Major feature/function failure• Operations are severely restricted• A workaround is available
Medium	<ul style="list-style-type: none">• Minor feature/function failure• Product does not operate as designed, minor impact on usage, acceptable workaround deployed
Low	<ul style="list-style-type: none">• Minor issue• Documentation, general information, enhancement request, etc.

Response and Resolution Targets

Ecolane Customer Support response and resolution targets are described below:

Response: When Ecolane Customer Support receives a support request, a support engineer will provide feedback to the customer that the request has been logged and assigned to the appropriate resource. The exact response (described below) will vary depending on the support method used by the customer, and the response time will commence as soon as the support request is received and Ecolane has **a clear understanding, the ability to reproduce or identify from the system log the issue at hand (support request)**

Web: Ecolane will assign a status and severity and update the service request to let the customer know the request has been received. A Service Request ID # will be assigned immediately when the support request is submitted from the Web.

E-Mail: An automated e-mail reply will be sent immediately after receiving the e-mail request. Ecolane will reply to the e-mail with a Service Request ID # and a time frame when to expect a response or contain a request for additional information.

Phone: Ecolane will answer the call or respond to a call that has gone to voice mail, document product specific information in the service request, provide the customer with a Service Request ID # and begin support activities. Including a roll back to an earlier version if possible and it is likely to solve the issue. Ecolane staff will be available for contact between 8 AM and 5 PM EST.

Resolution: An answer, fix or a satisfactory workaround to the support request

Solution: The long-term resolution to the support request, issue or question.

Severity	Target Response	Target Resolution	Solution (1 or more of the following)
Critical	1 Business Hours	Within 4 hours from actual response	<ul style="list-style-type: none"> • Satisfactory workaround is provided • Product patch is provided • Fix incorporated into future release • Fix or workaround incorporated into Solution Library
High	8 Business Hours	Within 36 hours from actual response	<ul style="list-style-type: none"> • Satisfactory workaround is provided • Product patch is provided • Fix incorporated into future release • Fix or workaround incorporated into Solution Library
Medium	24 Business Hours	Within 15 Business Days	<ul style="list-style-type: none"> • Answer to question is provided • Satisfactory workaround is provided • Fix or workaround incorporated into Solution Library • Fix incorporated into future release
Low	72 Business Hours	Within 30 Business Days	<ul style="list-style-type: none"> • Answer to question is provided through FAQ, Knowledge Base, or through trained customer subject matter experts (SME) • Fix or workaround incorporated into Solution Library

Assignment of Service Request Status

When a customer contacts Ecolane Customer Support and requests help to resolve a question or an issue, a service request is opened. The following table describes the possible status that may be assigned to a service request.

Status	Criteria
Open	A service request has just been submitted. It may be assigned to an individual or a queue. Ecolane has not responded yet to customer.
Responded	Ecolane has responded to the customer regarding the receipt of the service request and is actively pursuing a resolution.
On Hold	Ecolane is not actively working on the resolution of the service request. Generally, this is due to information pending from the submitter of the service request. However, service requests may be put on hold for other reasons as well.
More Info Required	Ecolane is waiting for more information to be able to clearly understand, have the ability to reproduce or identify from the system log the issue at hand.
Closed	<p>Closed status reflects that:</p> <ul style="list-style-type: none">• The customer and the Ecolane agree that a satisfactory resolution has been provided, or• The customer understands that there is not a solution to the issue at hand, and the issue is not a result of a product defect, or• Ecolane has made multiple attempts to contact the customer that opened the log and the customer has not responded. <p>Electronic service requests (Web, e-mail) may be closed when Ecolane Professional Services has provided an electronic reply with a high degree of confidence that the reply will resolve the issue or answer the question.</p>

Networking, hardware and installed software at the site are the sole responsibility of the customer and are not covered in Support Services. Customer misuse or unauthorized use of Licensor Software or Mobile Modules also is not covered in Support Services.

ATTACHMENT E

FTA REQUIRED CLAUSES FOR CONSTRUCTION PROJECTS

For clarification purposes, Contract and Agreement throughout these clauses shall mean the same thing.

It is a requirement of the Federal Government that activities financed, in part, with Federal funds and performed by a third party contractor and its subcontractors on behalf of a Federal grantee must be carried out in accordance with Federal requirements. Activities performed resulting from the original Contract to this and any other prior or subsequent Contract amendments thereto are financed, in part, by a grant from the United States Department of Transportation (U.S. DOT), Federal Transit Administration (FTA), and are therefore subject to the applicable grant terms, conditions, and regulations. Accordingly, any **CONTRACTOR** and its subcontractors performing activities under this Contract must adhere to the Federal regulations stated herein as a condition of satisfactory performance. All subcontracts and subcontractors employed as a result of this Contract are subject to the same conditions and regulations as set forth herein unless specifically exempted. The prime **CONTRACTOR** shall ensure that its subcontractors at all tiers are made aware of and comply with these Federal regulations. The prime **CONTRACTOR** will be held liable for compliance failures by its subcontractors. Failure to comply will render the prime **CONTRACTOR** responsible for damages and/or Contract termination.

INCORPORATION OF FTA TERMS

General Contract provisions include, in part, certain standard terms and conditions required by U.S. DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The **CONTRACTOR** shall not perform any act, fail to perform any act, or refuse to comply with any City of Billings, Aviation and Transit Department, MET Transit Division (hereinafter referred to as **MET**) requests that would cause **MET** to be in violation of the FTA terms and conditions.

ACCESS TO RECORDS AND REPORTS **(For Contracts of \$100,000 or Greater Only)**

1. Record Retention. The **CONTRACTOR** will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. Retention Period. The **CONTRACTOR** agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The **CONTRACTOR** shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. The **CONTRACTOR** agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
4. Access to the Sites of Performance. The **CONTRACTOR** agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

BUY AMERICA
(For Contracts of \$100,000 or Greater Only)

The **CONTRACTOR** agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the U.S., unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11.

The [bidder or offeror] must submit to the City of Billings **MET** the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR Part 661.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j) (2), as amended, and the applicable regulations in 49 CFR § 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

LOBBYING RESTRICTIONS
(For Contracts of \$100,000 or Greater Only)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature of Contractor's Authorized Official: _____

Name of Contractor's Authorized Official: _____

Title of Contractor's Authorized Official: _____

Date: _____

CARGO PREFERENCE – USE OF UNITED STATES FLAG VESSELS
(For Contracts of \$100,000 or Greater Only)

The **CONTRACTOR** agrees:

1. To use privately owned U.S. Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for U.S. Flag commercial vessels.
2. To furnish within 20 working days following the date of loading for shipments originating within the U.S. or within 30 working days following the date of loading for shipments originating outside the U.S., a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
(For Contracts of \$100,000 or Greater Only)

The **CONTRACTOR** agrees:

1. It will not use any violating facilities.
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities."
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

ENERGY CONSERVATION

The **CONTRACTOR** agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

RECORDS RETENTION/AUDIT AND INSPECTION OF RECORDS

1. The **CONTRACTOR** shall permit the authorized representatives of **MET**, the U.S. DOT, and the Comptroller General of the U.S., or any of their duly authorized representatives, access to any books, documents, papers and records of the **CONTRACTOR**, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions of the **CONTRACTOR** relating to its performance under the Contract until the expiration of three years after final payment under this Contract.
2. The **CONTRACTOR** further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that **MET**, the U.S. DOT, and the Comptroller General of the U.S., or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this Contract.
3. The periods of access and examination described above, for records that relate to:
 - a) Appeals under the dispute clause of this Contract.
 - b) Litigation or the settlement of claims arising out of the performance of this Contract.
 - c) Costs and expenses of this Contract to which an exception has been taken by the Comptroller General of the U.S. or any of his duly authorized representatives.Shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including, without limitation, those listed directly or by reference in the Agreement (Form FTA MA (2) dated October 1995) between **MET** and FTA, as they may be amended or promulgated from time to time during the term of this Contract. **CONTRACTOR'S** failure to so comply shall constitute a material breach of this Contract.

RECYCLED PRODUCTS

The **CONTRACTOR** agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S. C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The **MET** and **CONTRACTOR** acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the **MET, CONTRACTOR**, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract. The **CONTRACTOR** agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The **CONTRACTOR** acknowledges and agrees as follows:

1. The **CONTRACTOR** acknowledges that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the Project. Accordingly, by signing the underlying Contract, the **CONTRACTOR** certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the **CONTRACTOR** also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the **CONTRACTOR** to the extent the Federal Government deems appropriate.
2. The **CONTRACTOR** also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the **CONTRACTOR** the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT, SUSPENSION, OTHER INELIGIBILITY, AND VOLUNTARY EXCLUSION

Title 49 CFR Part 29 and Executive Order 12549 establish regulations pertaining to DOT and other Federal contractors at any tier, and procedures applicable to their debarment, suspension, ineligibility, or exclusion from participation in any DOT or other Federal contracts. **CONTRACTORS** are required to review the above regulations and to complete and submit a Certification Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion (Section 1.4.15), or furnish an explanation as to why the Certification cannot be provided. The **CONTRACTOR** agrees by submitting the Bid/Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction

with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by **MET**. The **CONTRACTOR** further agrees by submitting this Bid/Proposal that it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction", in all lower tier covered transactions over \$25,000 and in all solicitations for lower tier contracts.

PRIVACY ACT

The following requirements apply to the **CONTRACTOR** and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The **CONTRACTOR** agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C.552a. Among other things, the **CONTRACTOR** agrees to obtain the express consent of the Federal Government before the **CONTRACTOR** or its employees operate a system of records on behalf of the Federal Government. The **CONTRACTOR** understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.
2. The **CONTRACTOR** also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES ADA **(For Contracts of \$100,000 or Greater Only)**

The **CONTRACTOR** agrees to comply with the requirements of 49 U.S.C. 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The **CONTRACTOR** also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. 12101 et seq., which Federal regulations, including any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board/ U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
4. U.S. DOT requires the provision of accessible facilities and services, and with the following regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
5. U.S. DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
6. U.S. GSA regulations, "Accommodations for Physically Handicapped," 41 CFR subpart 101-19;
7. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and
10. Any implementing requirements FTA may issue.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

1. **Goal.** **MET** sets an overall DBE goal every three years. While the expected percentage of DBE participation may vary from contract to contract due to availability of DBEs, **MET** believes the overall goals to be realistically obtainable over the year. The amount of DBE participation will be determined by the dollar value of the work subcontracted to DBEs, as compared to the total value of all work performed under this Contract and/or by the percentage of the net profit that the parties agree will be shared by DBEs where a joint venture is entered into for the completion of the project. **MET's** DBE goal is 0.69%.
2. **Instructions to Bidders and Contractors.** It is the policy of **MET** that equal opportunity to participate in its procurement will be provided to DBEs. To accomplish this objective, **MET** requires, as applicable, all bidders and contractors to complete and return with the Bid/Proposal submittals, all DBE Forms (included as Attachment B to this Agreement) of these Solicitation Documents), which obligates the **CONTRACTOR** to assert a good faith effort to attain the specified goal for DBE participation. A bidder/contractor may satisfy the requirements of DBE Form A by having DBE status, by subcontracting portions of the work to DBEs, and/or by entering into a joint venture with DBEs.
3. **Requirements, Terms, and Conditions.** A DBE is defined as a small business concern that is owned and controlled by socially and economically disadvantaged individuals. These socially and economically disadvantaged individuals must own 51 percent of the business, and they must control the management of the business. Socially and economically disadvantaged individuals include Women, Black Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, or any other minorities or individuals found to be disadvantaged by the Small Business Administration (SBA), pursuant to Section 8(a) of the Small Business Act. To be accepted as a qualified DBE, a **CONTRACTOR** must be certified as a DBE by the Montana Department of Transportation (MDT) before the time of Bid/Proposal submittal. The MDT DBE Program Manager is Wendy Stewart (406-444-6337) or westewart@mt.gov. MDT's DBE certification application forms are available, for contractors interested in securing MDT DBE certification prior to Bid/Proposal opening, on line at www.mdt.mt.gov/business/contracting/civil/dbe.shtml. Any questions regarding **MET's** DBE program or questions regarding the DBE forms should be directed to Wendy Stewart.

NOTICE OF FEDERAL REQUIREMENTS

New Federal laws, regulations, policies, and administrative practices may be established after the date of this Contract, which may apply to this Contract. If Federal requirements change, the changed requirements will apply to the Contract or the performance of work under the Contract as required. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements.

DAVIS-BACON ACT

All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor.

PREVAILING WAGE AND ANTI-KICKBACK

For all prime construction, alteration, or repair contracts in excess of \$2,000 awarded by FTA, the **CONTRACTOR** shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The **CONTRACTOR** will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In

accordance with the statute, the **CONTRACTOR** shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the **CONTRACTOR** agrees to pay wages not less than once a week. The **CONTRACTOR** shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR Part 3, "contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the U.S." The **CONTRACTOR** is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

CONTRACT WORK HOURS AND SAFETY STANDARDS

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the **CONTRACTOR** shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR Part 5. Under 40 U.S.C. § 3702 of the Act, the **CONTRACTOR** shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the **CONTRACTOR** and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the **CONTRACTOR** and subcontractor shall be liable to the U.S. (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the **CONTRACTOR** or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The **CONTRACTOR** or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

FLY AMERICA REQUIREMENTS

1. Definitions. As used in this clause:
 - a) "International air transportation" means transportation by air between a place in the U.S. and a place outside the U.S., or between two places both of which are outside the U.S.
 - b) "U.S." means the 50 States, the District of Columbia, and outlying areas.
 - c) "U.S. flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
2. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S. flag air carriers for U.S. Government financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the U.S., in the absence of satisfactory proof of the necessity for foreign flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the U.S., for international air transportation secured aboard a foreign flag air carrier if a U.S. flag air carrier is available to provide such services.
3. If available, the Contractor, in performing work under this contract, shall use U.S. flag carriers for international air transportation of personnel (and their personal effects) or property.
4. In the event that the Contractor selects a carrier other than a U.S. flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S. Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S. flag air carrier was not available or it was necessary to use foreign flag air carrier service for the following reasons. See FAR § 47.403. (State reasons):

(End of statement)

5. The Contractor shall include the substance of this clause, including this paragraph (5), in each subcontract or purchase under this contract that may involve international air transportation.

(End of Clause)

ATTACHMENT F

**DISADVANTAGED BUSINESS ENTERPRISE
CERTIFICATIONS AND FORMS**

DBE Form A

DBE STATUS

The Contractor hereby certifies that: _____
(Firm Name)

1. **Is – is not** (check one) a Disadvantaged Business Enterprise (DBE).
Note to Contractor: If the Contractor is a DBE, then the Contractor must provide proof of DBE certification by Montana Department of Transportation (MDT) with proposal submittal.

2. **Is – is not** (check one) a participant of a joint venture in this Proposal.
Note to Contractor: If the Contractor is a participant of a joint venture, then the Contractor must complete DBE Form "Schedule B: Information for Determining Joint Venture Eligibility" (unless all joint venture firms are minority owned). If the Contractor is not a participant, then the Contractor should write "N/A" on DBE Form Schedule B.

3. **Will – will not** (check one) involve DBE firms in this project.
Note to Contractor: If the Contractor will involve DBE firms, then the Contractor must complete DBE Form D "Record of Participation by DBE Firms." If the Contractor will not involve DBE firms, then the Contractor should write "N/A" on DBE Form D. In either case, the Contractor shall submit DBE Form E "DBE Unavailability Certification" for every DBE firm from which the Contractor unsuccessfully sought to secure DBE participation. DBE Form E and/or DBE Form D shall be submitted at the same time as the list of subcontractors (if requested) or shall accompany the Contractor's Proposal.

SIGNATURE: _____

DATE: _____

TITLE: _____

DBE Form C

DBE AFFIDAVIT

NOTE: THIS PAGE MUST BE COMPLETED BY THE DBE CONTRACTOR.

I HEREBY DECLARE AND AFFIRM that I, _____
(Name)

am the _____ and duly authorized representative
(Title)

of the firm _____
(Name of Corporation or Joint Venture)

whose address and phone number are _____

and further affirm that I am a DBE as defined by the City of Billings, Aviation and Transit Department, MET Transit Division in the specifications, and that I will provide information if requested by the City of Billings, Aviation and Transit Department, MET Transit Division to document this fact.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

(Affiant)

(Date)

DBE Form D

RECORD OF PARTICIPATION BY DBE FIRMS

NOTE: THIS FORM MUST BE FILLED OUT BY THE CONTRACTOR (OFFEROR) AND SHOULD INCLUDE A GENERAL DESCRIPTION OF WORK TO BE PERFORMED. MATERIALS AND/OR SUPPLIES UNDER THIS CONTRACT MUST BE LISTED BELOW.

Name of DBE Firm _____
Address _____
Description of Work _____
Materials/Supplies _____

Name of DBE Firm _____
Address _____
Description of Work _____
Materials/Supplies _____

Name of DBE Firm _____
Address _____
Description of Work _____
Materials/Supplies _____

Name of DBE Firm _____
Address _____
Description of Work _____
Materials/Supplies _____

TOTAL PERCENTAGE DBE PARTICIPATION _____

I _____ certify that the information given above on behalf of the
(Name)
Contractor is true and correct, and that as _____
(Position)

of the Contractor, of the proposer, I attest that I **have** – **have not** (check one) met the assigned DBE Goal for this Contract of ___%.

(Signature)

DBE Form E

DBE UNAVAILABILITY CERTIFICATION

Project: _____

Contractor's Name: _____

To demonstrate a good faith effort to utilize DBEs, contractors and suppliers who cannot meet their DBE participation goals must respond to either Item A or Item B below. Please use one sheet per DBE firm contracted.

ITEM A:

Name of DBE Firm Contacted: _____

Form of Proposal Sought (i.e., unit prices, etc.): _____

Dates Contacted: _____

Method of Contact: _____

Results: _____

To the best of my knowledge and belief, the above DBE contractor was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a proposal for the following reason(s):

I, _____, _____,
(Name) (Title)

of _____,
(Contractor's Firm)

do hereby certify that the above information is true and correct, and that I have made a good faith effort as documented in ITEM A above to obtain DBE participation in the performance of this Contract.

(Signature) (Date)

I, _____ of _____
(Name) (DBE Company Name)

was offered an opportunity to propose on the above project on _____.
(Date)

The above statement is a true and accurate account of why I did not submit a proposal on this project.

(Signature) (Title) (Date)

DBE Form E

ITEM B: *CERTIFICATION OF NO OPPORTUNITY FOR DBE PARTICIPATION*

There exists no opportunity for subcontracting as part of this project. It is the general practice of _____ to perform all work of this nature solely with its own work force, and to do otherwise would constitute a violation of industry standards.
(Name of Contractor)

I, _____, _____,
(Name) (Title)
of _____, do hereby certify that the above information is
(Name of Contractor)
true and correct, and that I have made a good faith effort as documented in ITEM B above to obtain DBE participation in the performance of this Contract.

(Signature)

(Date)

DBE Form Schedule B

INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY

This form must be completely filled out. If an item does not apply to you or your organization, write "NA" in the appropriate space.

NOTE: This form need not be completed if all joint venture firms are minority owned.

1. Name of Joint Venture: _____
2. Address: _____
3. Phone Number: _____
4. Identify the firms that comprise the joint venture.

 - (a) Describe the role of the DBE firm in the joint venture (attach extra sheets if necessary):

 - (b) Describe very briefly the experience and business qualifications of each non-DBE joint venture (attach extra sheets if necessary):

5. Nature of the joint venture's business:

6. Provide a copy of the joint venture agreement.
7. What is the claimed percentage of DBE Ownership? _____

8. Ownership of joint venture: (This need not be completed if described in the joint venture agreement, provided in Question 6.)
 - (a) Profit and loss sharing: _____
 - (b) Capital contributions, including equipment: _____
 - (c) Other applicable ownership interests: _____
9. Control of and participation in this Contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making including, but not limited to, those with prime responsibility for:

	Name	Race	Sex	Title
Final Decisions				
Estimating				
Marketing				
Sales				
Hiring/Firing of Management Personnel				
Purchaser of Major Items/Supplies				
Supervision of Field Operations				
Other				

NOTE: If, after filing this Schedule B and before the completion of the joint venture's work on the Contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee either directly or through the prime contractor if the joint venture is a subcontractor.