



SERVICES AGREEMENT
FOR
COMPUTER AIDED DISPATCH AND AUTOMATED VEHICLE LOCATION SYSTEM
FOR
MET TRANSIT FIXED ROUTE BUS SERVICE

THIS AGREEMENT is made and entered into _____, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "**CITY**," and **PASSIO TECHNOLOGIES, LLC**, of 6100 Lake Forrest Dr, Suite 410, Atlanta, GA 30328 hereinafter referred to as "**CONTRACTOR**."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE:** **CITY** agrees to hire **CONTRACTOR** as an independent contractor to provide and host a Computer Aided Dispatch and Automated Vehicle Location (CAD/AVL) System for fixed-route bus service, more accurately described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.
2. **EFFECTIVE DATE AND TERM:** This **AGREEMENT** is effective upon the date of its execution. This agreement shall be for a period of five (5) years from the execution of this Agreement. This Agreement may be extended by mutual agreement of both parties, in writing, thirty (30) days prior to termination.
3. **SCOPE OF WORK:** The **CONTRACTOR** shall provide the products and perform the services outlined in Exhibit "A" – SCHEDULE C "Order Form". In performing these services, the **CONTRACTOR** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.
4. **INCORPORATION BY REFERENCE:** All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof; the **CONTRACTOR'S** "Master Services Agreement" is incorporated as Exhibit "A". If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of the **CITY'S AGREEMENT** shall control.
5. **PAYMENT:** **CITY** agrees to pay **CONTRACTOR** FOUR HUNDERED THOUSAND THREE HUNDERED FIFTEEN DOLLARS AND 40 CENTS (\$442,315.40) for the goods and work described in the SCHEDULE C in Exhibit "A". Any alteration or deviation from the described goods or work that involves extra costs will be executed only upon written request by the **CITY** to **CONTRACTOR** and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing. Except as otherwise specified herein, the **CONTRACTOR** shall invoice the **CITY** annually for all ongoing services rendered pursuant to this **AGREEMENT** and shall



invoice upon completion of work for initial setup fees and one-time fees. Product or equipment invoices shall be submitted upon delivery of equipment. All invoices shall specify the product or services provided to the **CITY** during the invoice period and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, the **CITY** shall pay, net of applicable withholding tax, if any, the **CONTRACTOR** for said invoice within thirty (30) days after receipt.

If partial payment is requested by **CONTRACTOR**, it shall be made upon invoice and said estimate being proportioned to the goods delivered and work completed by the **CONTRACTOR**. **CITY** shall deduct five percent (5%) from each pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final invoice by the **CITY**, and determination has been made by the **CITY** that the scope of work has been satisfactorily completed.

The prices established in this **AGREEMENT** may be extended to other political subdivisions within the State of Montana solely at the **CONTRACTOR'S** discretion.

6. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONTRACTOR** is an independent contractor for purposes of this **AGREEMENT** and may not to be considered an employee of the **CITY** for any purpose. **CONTRACTOR** is not subject to the terms and provisions of the **CITY's** personnel policies handbook and may not be considered a **CITY** employee for workers' compensation or any other purpose. **CONTRACTOR** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONTRACTOR** and any third parties.

7. **INDEMNITY:**

The **CONTRACTOR** SHALL:

- A. Indemnify and hold **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CONTRACTOR** or its agents or employees.
- B. Not indemnify and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CITY** and the **CONTRACTOR**, the **CONTRACTOR** shall indemnify and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, to the extent caused by the **CONTRACTOR'S** or any



subcontractor's wrongful or negligent acts occurring as a result from the **CONTRACTOR'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

- D. Indemnify and hold **CONTRACTOR**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CITY** or its agents or employees.
- E. Not indemnify and hold the **CONTRACTOR** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CONTRACTOR** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- F. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CONTRACTOR** and the **CITY**, the **CITY** shall indemnify and hold the **CONTRACTOR** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, to the extent caused by the **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

8. INSURANCE:

- A. The **CONTRACTOR** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONTRACTOR** shall furnish the **CITY** with proof of insurance in accordance with this Section.

The **CONTRACTOR** shall provide the following insurance:

- Workers' compensation and employer's liability coverage as required by Montana law.
- Commercial general liability, including contractual liability assumed under an insured agreement and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
- Automobile liability -- \$1,500,000 per accident.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the **CITY** prior to cancellation.

The **CITY** shall be listed as an additional insured on all policies except Worker's Compensation Policies.

CONTRACTOR shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. **CONTRACTOR** shall maintain workers' compensation insurance coverage for all members and employees of **CONTRACTOR'S**



business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

CONTRACTOR shall furnish **CITY** with copies showing one of the following: **(1)** proof of registration as a registered contractor under Title 39, Chapter 9, MCA; **(2)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(3)** proof of exemption from workers' compensation granted by law for independent contractors.

9. **WARRANTY:** **CONTRACTOR** warrants that all services and work will be performed in a good workman-like manner. **CONTRACTOR** acknowledges that it will be liable for any breach of this warranty for the lesser period of one (1) year from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".
10. **COMPLIANCE WITH LAWS:** **CONTRACTOR** agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. **CONTRACTOR** agrees to purchase a **CITY** business license. This **CONTRACTOR** agrees to abide by the Federal Transit Administration requirements and clauses found in Exhibit "B".
11. **NONDISCRIMINATION:**
 - A. **CONTRACTOR** shall, in performance of work under this **AGREEMENT**, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. **CONTRACTOR** is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **CONTRACTOR** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. **CONTRACTOR** agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this **AGREEMENT**.
 - B. The **CONTRACTOR** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

The **CONTRACTOR** and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and

advance in employment qualified protected veterans and individuals with disabilities.

The **CONTRACTOR** and any subcontractor shall abide by the requirements of 41 CRF 60-1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the **CONTRACTOR'S** legal duty to furnish information.

- C. The **CONTRACTOR** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
- D. The **CONTRACTOR** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
- E. The **CONTRACTOR** shall include the provisions of Subsections A through D of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such subcontractor or vendor of the **CONTRACTOR** under this **AGREEMENT**.
- F. The **CONTRACTOR** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

12. **TERMINATION:**

a. **DEFAULT:**

If either party fails to comply with any condition of this **AGREEMENT** at the time or in the manner provided for, the other party may, at its option, terminate this **AGREEMENT** and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this **AGREEMENT**.

b. **CONVENIENCE:**

The **CITY** may terminate this contract, in whole or in part, at any time by 30-days written notice to the **CONTRACTOR** when it is in the **CITY'S** best interest. The **CONTRACTOR** shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The **CONTRACTOR** shall promptly submit its termination claim to the **CITY** to be paid to the **CONTRACTOR**. If the **CONTRACTOR** has any property in its possession belonging to the **CITY**, the **CONTRACTOR** will account for the same, and



dispose of it in the manner the **CITY** directs. If this contract is terminated, the **CITY** shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

13. **LIAISON:** **CITY's** designated liaison for this **AGREEMENT** is Rusty Logan, Transit Manager and **CONTRACTOR's** designated liaison for this **AGREEMENT** is Mitch Skyer, President.
14. **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 the State of Montana Thirteenth Judicial District Court, Yellowstone County.
15. **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 **CITY** and the **CONTRACTOR**, 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.
16. **SUCCESSORS AND ASSIGNS:** Neither the **CITY** nor the **CONTRACTOR** shall assign, transfer or encumber any rights, duties or interests accruing from this **AGREEMENT** without the written consent of the other.
17. **OWNERSHIP OF DOCUMENTS:** All documents, data, drawings, specifications, software applications and other products or materials produced by the **CONTRACTOR** in connection with the services rendered under this **AGREEMENT** shall be the property of the **CITY** whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the **CITY** at its request and may be used by the **CITY** as it sees fit. The **CITY** agrees that if the documents, products and materials prepared by the **CONTRACTOR** are used for purposes other than those intended by the **AGREEMENT**, the **CITY** does so at its sole risk and agrees to hold the **CONTRACTOR** harmless for such use. All or any portions of materials, products and documents produced under this **AGREEMENT** may be used by the **CONTRACTOR** upon confirmation from the **CITY** that they are subject to disclosure under the Public Disclosure Act. All services performed under this **AGREEMENT** will be conducted solely for the benefit of the **CITY** and will not be used for any other purpose without written consent of the **CITY**. Any information relating to the services will not be released without the written permission of the **CITY**. The **CONTRACTOR** shall preserve the confidentiality of all **CITY** documents and data accessed for use in **CONTRACTOR's** work product.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.



CITY OF BILLINGS, MONTANA

Passio Technologies, LLC

BUSINESS NAME (CONTRACTOR)

Mitchel Skyer

SIGNATURE

CHRIS A. KUKULSKI,
CITY ADMINISTRATOR

(or change to WILLIAM A. COLE, MAYOR)

Mitchel Skyer **APPR**

PRINT NAME

OVED AS TO FORM:

President

PRINT TITLE

By _____
CITY ATTORNEY'S OFFICE

ATTEST:

DENISE BOHLMAN, CITY CLERK



EXHIBIT A

Passio Master Services Agreement

This Master Services Agreement (“Agreement”) dated as of the last date it is signed (the “Effective Date”) is between Passio Technologies, LLC., with a notice address at 6100 Lake Forrest Dr., Suite 410, Atlanta, GA 30328 (“Passio”) and the City of Billings, 210 N. 27th Street, Billings, MT 59101.

Background

Customer wishes to purchase hardware and/or license Passio’s proprietary software for the purpose of transit management. These areas include passenger counting, reporting, automated voice announcement, scheduling, automated customer service, passenger media capture/validation, and other related transit operations management software solutions. Passio will make these services available to Customer under the terms and conditions outlined in this Agreement, and Customer agrees to follow the same terms and conditions.

Passio and Customer agree as follows:

This “Agreement” consists of this signature page and those schedules listed below, all exhibits attached to such schedules, all order forms referencing this Agreement and incorporating its terms.

Schedules

Schedule A – General Terms and Conditions

Schedule B – Service Level Agreement

Schedule C – Template Order Form

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives effective on the Effective Date.



Schedule A – General Terms and Conditions

1. **DEFINITIONS.** Capitalized terms used in this Agreement shall have their meaning as set out in Exhibit A.

a. **“Documentation”** means publicly available user guides, documentation, and specifications for the Hosted Services, as may be updated by Passio from time to time.

b. **“Equipment”** means the goods, hardware, or equipment set out in an Order and provided to Customer for its use in connection with the Hosted Services.

c. **“Hosted Services”** means the software services to be provided by Passio to Customer over the internet through a web browser or other Passio authorized application, as further described and set forth in an Order and this Agreement, and that works in conjunction with the Equipment.

d. **“Order”** means an order specifying the Services to be provided hereunder that is executed by the parties, including any addenda and supplements thereto. The agreed form of Order is attached hereto as Schedule C.

e. **“Professional Services”** means any consulting, implementation, or training services that are described herein or in an Order. Professional Services does not include Hosted Services.

f. **“Services”** means Hosted Services and Professional Services.

g. **“Users”** means Customer’s designated end users of the Hosted Services and Equipment Software.

2. **SERVICES.**

a. **Orders for Services.** Passio will provide and make the Services available to Customer in accordance with the terms and conditions of this Agreement and any applicable Order. In the event of a conflict between the terms of this Agreement and the terms of an Order, the terms of this Agreement will govern to the extent of the conflict unless the Order expressly states that it is intended to modify the conflicting terms of this Agreement, in which case the terms of the Order will govern to the extent of the conflict.

b. **Hosted Services.** Passio will provide to Customer the Hosted Services specified in an Order. Passio will provide the Hosted Services in accordance with the service level agreement set forth in Schedule B. The Hosted Services typically are activated on the first of the month following the completion of the installation of the Equipment,

but Passio will use commercially reasonable efforts to accommodate earlier activation dates upon written request of Customer.

c. **Professional Services.** If specified in an Order, Passio will provide Professional Services to Customer in accordance with this Agreement and the applicable Order. Passio will own any improvements, enhancements, configurations, or other derivative works to the Hosted Services made by Passio in connection with the Professional Services.

d. **Training Services.** If Customer elects to receive these Professional Services in an Order, Passio shall provide training services via web-based internet sessions for all services purchased, which shall include the provided instructional materials. Training services will include training for supervisory functions, train the trainer, and operators of the Hosted Services and Equipment. Upon Customer’s written request, including if set out in an Order, Passio may provide such training services onsite for an additional fee at Passio’s then current rates (unless specified in an Order otherwise) plus travel expenses, including, without limitation, airfare, ground transportation, parking, lodging, per diem, and administrative expenses.

e. **Implementation/Configuration Services.** If Customer elects to receive these Professional Services in an Order, Passio shall provide Customer with account setup information and configuration information setup within five (5) days of the effective date of such Order. In order to permit Passio to perform these Professional Services, Customer must provide Passio with any requested configuration information within twenty (20) business days of the applicable Order’s effective date. Customer acknowledges that the technology solutions offered by Passio are dynamic and require designated on site contact(s) to update software, confirm connectivity, and troubleshoot hardware and system issues. Customer may provide Passio configuration updates, such as routes, drivers, and stops, and Passio typically applies those within two (2) business days for standard updates. Customer may, at its option, self-update configuration information through the Hosted Services.

f. **Services Delivery.** Passio may provide the Services from any facility and may from time to time transfer any or all of the Services being provided hereunder to any new facility(ies) or relocate the personnel, equipment and other resources used in providing those Services.

3. **PROJECT MANAGEMENT.**



a. Project Managers. Each party shall, throughout the Term, maintain within its organization a project manager to serve as such party's primary point of contact for day-to-day communications, consultation and decision-making regarding the Services. Each such project manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Customer's project manager will be responsible for scheduling training sessions, delivery and installation dates for the Equipment to the extent not set out in an Order, and any other requests Customer may have for the Services. Each party shall ensure its project manager has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity.

b. Delays in Performance. If Passio's performance of its obligations under this Agreement is prevented or delayed by the unavailability of Customer's vehicle fleet, mechanical issues with such vehicle fleet, differences between the vehicle design and descriptions provided by Customer, or any other act or omission of Customer, its project manager, or any other of its agents, subcontractors, consultants or employees, Passio shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay, and Passio's obligation to perform will be extended by the same number of days as Customer's contingent action is delayed.

4. **EQUIPMENT.**

a. General. Passio will provide the Equipment to Customer set out in an Order in exchange for the fees and expenses set out therein. Risk of loss in and to the Equipment will transfer to Customer upon shipment to the location specified by Customer in an Order, or if not specified therein, the location specified by Customer in writing.

b. Installation. In exchange for the fees set out in the applicable Order, Passio shall assist Customer in installing the Equipment in its vehicle fleet based on the fleet descriptions provided by Customer in an Order. If installation times are extended or Passio is required to make additional in person trips to finish an installation for any reason rising under Section 3(b), additional fees and expenses may apply, and Customer shall pay such additional fees and expenses. Customer acknowledges that the interior design of vehicles within a fleet may differ even among those vehicles with the same make, model and manufacturer, and Customer shall be responsible for identifying the location for power, ground, and ignition sources for each component on each vehicle to ensure proper installation connections.

c. Inspection; Acceptance. Following Passio's completion of the installation of the Equipment (the "Installed

Equipment"), Customer shall inspect the Installed Equipment within five business days of the completion of such installation ("Inspection Period") and either accept or, if any of the Installed Equipment is not in material conformance with the applicable equipment warranty (collectively, "Nonconforming Equipment"), reject such Nonconforming Equipment. Customer will be deemed to have accepted the Installed Equipment unless it notifies Passio in writing of any Nonconforming Equipment during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Passio, including appropriate descriptions, pictures, and other documentation requested. If Customer timely notifies Passio of any Nonconforming Equipment and Passio confirms that the Equipment are Nonconforming Equipment, Passio shall, in its sole discretion: (i) repair or replace such Nonconforming Equipment with conforming Equipment, or (ii) refund the amounts paid for such Nonconforming Equipment, together with all shipping and handling expenses incurred by Customer in connection therewith. CLIENT ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN SECTION ARE CLIENT'S EXCLUSIVE REMEDIES AND PASSIO'S SOLE OBLIGATION FOR THE DELIVERY OR INSTALLATION OF NONCONFORMING EQUIPMENT.

5. **FEES AND EXPENSES.**

a. Services Fees. For the Services provided under this Agreement, Customer shall pay Passio the fees in the amounts set forth in the applicable Order. All non-recurring fees, including, but not limited to software, equipment, installation, warranty, project management, and licenses are due upon delivery. Recurring fees for the Hosted Services are invoiced within 30 days of the installation date of the Equipment or on the date the Hosted Services become available for use by the Customer. Fees are non-cancelable and non-refundable. Customer shall pay all invoices net 30 days from the date of the Passio's invoice. All fees paid and expenses reimbursed under this Agreement will be in United States currency.

b. Late Fees. If any invoiced amount is not received by Passio by the due date, then, without limiting Passio's rights or remedies, those amounts will accrue interest at a rate of 1.5% per month or the maximum allowed under state law (whichever is lower). Passio, at its option, may suspend the Services, in whole or in part, if Passio does not receive all undisputed amounts due and owing under this Agreement within thirty (30) days after delivery of notice to Customer of the failure to pay such overdue balances. Passio may charge a reinstatement fee for any suspended or cancelled Service. To the extent Passio must pursue Customer for collection of past due amounts, Customer shall pay for all costs related to such collection attempts, including any reasonable attorney's fees and court cost.



c. Taxes. Passio's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Passio has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Passio will invoice Customer and Customer will pay that amount unless Customer provides Passio with a valid tax exemption certificate authorized by the appropriate taxing authority.

d. Equipment; Shipping and Handling. Customer shall pay all fees and expenses related to the purchase of the Equipment and the shipping and handling of such Equipment to Customer's designated location.

e. No Offset. Fees and expenses due from Customer under this Agreement may not be withheld or offset by Customer against other amounts for any reason.

6. CONFIDENTIALITY.

a. Definition of Confidential Information. "**Confidential Information**" means information disclosed by a party to the other party that is designated as confidential or that reasonably should be considered confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Passio includes the Services and Documentation; and Confidential Information of each party includes the terms and conditions of this Agreement and all Orders (including pricing), as well as information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing; "**Disclosing Party**" refers to the party disclosing Confidential Information hereunder, whether such disclosure is directly from Disclosing Party or through Disclosing Party's employees or agents; and "**Recipient**" refers to the party receiving any Confidential Information hereunder, whether such disclosure is received directly or through Recipient's employees or agents. Confidential Information does not include information that: (a) is already known to the Recipient without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Recipient; (c) is developed by the Recipient independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Recipient from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

b. Requirement of Confidentiality. The Recipient agrees that it will use the same degree of care it uses to protect the confidentiality of its own confidential

information of like kind (but not less than reasonable care) to: (a) not disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party, provided that the Recipient may disclose the Confidential Information of the Disclosing Party to its, and its affiliates', officers, employees, consultants and legal advisors who have a "need to know," who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 6; and (b) use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations or as otherwise authorized under this Agreement. The Recipient will promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party. The obligations in this Section 6 will survive termination and continue for so long as the applicable information constitutes Confidential Information.

c. Compelled Disclosure. The Recipient may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Recipient gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Recipient is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Recipient for its reasonable cost of compiling and providing secure access to that Confidential Information.

7. TERM; TERMINATION.

a. Term. This Agreement will commence on the Effective Date and will continue for a period as specified in the Agreement unless earlier terminated in accordance with this Agreement. At the end of the Initial Term, this Agreement may be renewed by mutual agreement between the parties for additional one-year periods (each, a "Renewal Term" and together with the Initial Term, the "Term").

b. Recurring Fees automatically increase annually by 3% or the prevailing Consumer Price Index Rate, whichever is greater, up to a maximum of 5% per year unless otherwise determined by mutual agreement and documented, in writing, by all parties. Initial pricing setout and agreed upon in execution of the agreement shall be in effect for the duration of the agreement.

c. Termination. Without prejudice to any other remedies and in addition to any other termination rights herein, this Agreement may be terminated as provided below:

i. By either party if the other party commits a material breach of this Agreement and such breach remains uncured 30) days after written notice of such breach is



delivered to such other party, with a material breach including Customer's failure to pay, when due, any fees due to Passio; or

ii. By either party if the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws, laws of debtor's moratorium or similar laws.

iii. By the terms indicated in the City of Billings services agreement.

d. Entitlement to Payment. In the event this Agreement expires or terminates for any reason, Customer shall pay Passio for work that has actually been performed on and prior to the effective date of such termination. Customer shall not be entitled to any refunds of previously paid funds unless said funds are paid in advance of work to be completed, in advance of equipment yet to be delivered, or for unused or uninstalled equipment remitted or returned to Passio within 120 (one hundred twenty) days from delivery. If Customer terminates agreement early, for any reason other than those specified in this agreement, all remaining payments will immediately come due and full payment will be made within 10 (ten) days of notification.

e. Effect of Termination or Expiration. Upon expiration or termination of this Agreement for any reason: (a) all Orders hereunder will terminate, and all rights and licenses granted by Passio hereunder to Customer will immediately cease; and (b) Customer will immediately cease use of any Services and, within thirty (30) days after termination or expiration of this Agreement, return to Passio or, at Passio's written request destroy, all Passio Confidential Information in Customer's possession or control. Any section that must survive in order to give force to its intended effect shall survive the expiration or termination of this Agreement, including, without limitation, this section, a party's payment obligations, and a party's defense and indemnification obligations.

8. PROPRIETARY RIGHTS AND LICENSES.

a. Reservation. Passio and its licensors reserve all of their rights, title, and interest in and to the Services and the Documentation, including all intellectual property rights therein. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement.

b. Access to Hosted Services. Subject to Customer's compliance with this Agreement and any Orders, Passio grants to Customer a non-exclusive, non-transferable, limited license for Designated Users to access and use the Hosted Services and Documentation solely for Customer's internal business purposes.

c. License to Equipment Software. Subject to Customer's compliance with the terms and conditions of this Agreement, Passio grants to Customer, solely for the benefit of Customer, the following non-exclusive, non-sublicensable, non-transferable (except solely in connection with the sale of Equipment), and perpetual rights and licenses to use one copy of the Equipment Software on each piece of Equipment solely in furtherance of the use of such Equipment. "Equipment Software" means the software included within the Equipment for the purposes of supporting and interacting with the Hosted Services. Customer may not, and shall not, (i) use the Equipment Software other than in connection with the use of the Equipment, (ii) transfer, rent, donate, assign, lease, or otherwise use the Equipment Software in any time-sharing or service bureau arrangement, or (iii) copy, reproduce, distribute, sublicense, create derivative works of, reverse engineer, decompile, disassemble, or otherwise modify or commercially exploit the Equipment Software.

d. Trademark License. To the extent that Customer requests that Passio rebrand the outward appearance of the Hosted Services, or "white label" the Hosted Services, Customer hereby grants Passio a limited, non-exclusive, non-transferable and royalty-free license to publish, display, and use Customer's trademarks, service marks, names, or logos provided by Customer solely in connection with the provision of Services to Customer under this Agreement.

e. Blind Data. Notwithstanding anything to the contrary in this Agreement, Passio may use certain data inputted into, processed, or generated by the Hosted Services to generate Blind Data, and such Blind Data will be owned solely by Passio. Passio may exploit Blind Data for any lawful purpose without any duty of accounting to Customer. "Blind Data" means any of the following to the extent it has been de-identified and anonymized so that it does not identify Customer or any individual: (a) data, records, files, content, or information, in any form or format, acquired, collected, received, stored, or maintained by Passio from or on behalf of Customer or otherwise in connection the Services; or (b) derived therefrom.

f. Feedback. Customer grants to Passio a worldwide, perpetual, irrevocable, transferable, sub-licensable, fully paid-up, royalty-free license to use and incorporate into the Services or Equipment any suggestions, enhancements, requests, recommendations, corrections, or other feedback provided by Customer or Users relating to the operation of the Services or Equipment without restriction.

9. CUSTOMER RESPONSIBILITIES; LICENSE RESTRICTIONS.

a. Customer Responsibilities. Customer shall: (a) be responsible for its and the Users compliance with this Agreement and for all acts and omissions of the Users as if



they were Customer's acts or omissions; (b) be responsible for the accuracy, quality, and legality of data and information inputted into the Hosted Services ("Input Data") and the means by which Customer acquired the Input Data; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Hosted Services and notify Passio promptly of any unauthorized access or use of which Customer becomes aware; (d) use Hosted Services and Equipment Software only in accordance with this Agreement, any applicable Order, and the Documentation; (e) comply with all laws applicable to Customer's use of the Hosted Services and Equipment Software; and (f) promptly and fully cooperate with Passio and make the necessary personnel and resources available to Passio for Passio to deliver the Services, as reasonably requested by Passio.

b. Technical Requirements. Customer will need Equipment and certain other equipment (including its vehicle fleet), software, and/or Internet access to be able to access and/or use the Hosted Services and otherwise receive the Services hereunder. The (i) acquisition, (ii) installation and maintenance (other than the Equipment), and (iii) operation of the Equipment, such other equipment, software and/or Internet access is solely Customer's responsibility. Passio neither represents nor warrants that the Hosted Services will be accessible through all web browser releases.

c. Prohibited Uses. Customer shall not and will not permit others in using the Hosted Services to: (i) infringe or otherwise violate the legal rights (such as rights of privacy, publicity and intellectual property) of others or Passio; (ii) transmit or upload any material through the Hosted Services that contains viruses, trojan horses, worms, time bombs, cancelbots, or any other programs with the intent or effect of damaging, destroying, disrupting or otherwise impairing Passio's, or any other person's or entity's, network, computer system, or other equipment; (iii) attempt to gain unauthorized access to the Hosted Services; (iv) make the Hosted Services available to, or use any Service for the benefit of, anyone other than Customer or Users; (v) lease, license, sell, sublicense or otherwise transfer its access to or use of the Hosted Services, or include any Hosted Service in a service bureau or outsourcing offering; (vi) access any Service in order to build a competitive product or service; or (vii) reverse engineer, decompile, or disassemble any Hosted Service. Passio has no obligation to monitor Customer's use of the Hosted Services. However, Passio reserves the right (but has no obligation) at all times to monitor, review, retain and disclose any information as necessary to satisfy or cooperate with any applicable law, regulation, legal process or governmental request.

10. WARRANTIES.

a. Passio. Passio represents and warrants that (i) Passio's personnel assigned to perform Services under this

Agreement have the proper skill, training and background so as to be able to perform in a manner consistent with accepted industry standards and practices; (ii) the Hosted Services be provided in conformance with the Documentation in all material respects; and (iii) the Professional Services shall be provided in a professional and workmanlike manner consistent with generally accepted industry standards.

b. Limited Equipment Warranty.

i. Scope of Warranty. Passio warrants that, for one year following delivery, the Equipment shall be free of any material defects in material and workmanship. The foregoing warranty does not cover defects, damages, or issues arising from the following: (1) negligence, abuse, neglect, or misuse of the Equipment by any person or entity other than Passio; (2) use of the Equipment other than in accordance with Documentation or with hardware or software not previously approved by Passio in writing; (3) damages sustained from vehicle malfunctions or accidents; (4) repairs, attempted repairs, alterations, installations, or reinstallations of the Equipment by any person or entity other than Passio; or (5) theft or vandalism. Customer may purchase extended warranty coverage by entering into an Order with Passio for the same.

ii. Return Procedures. Customer's remedy for any defective Equipment is conditioned on its compliance with this section. Customer shall (1) notify Passio, in writing, of any alleged claim or defect within 10 days from the date Customer discovers an alleged claim or defect, (2) complete and return a Return Materials Authorization (RMA) to Passio, and (3) ship, at its expense and risk of loss, such allegedly defective Equipment to Passio's facility located at 6100 Lake Forrest Dr. Suite 410, Atlanta, GA 30328 or other location as designated by Passio for inspection and testing by Passio. Upon receipt of the Equipment alleged to be defective, Passio shall inspect and test such Equipment for defects, and if such inspection and testing confirms the reported defect, Passio shall, in its sole discretion, repair or replace such Equipment. If Passio elects to repair or replace the Equipment, Passio shall ship the repaired or replacement Equipment to Customer at Passio's expense. If Passio determines that any returned Equipment is not defective, Passio may charge Customer a service fee per piece of Equipment at its then current service rates plus pass through shipping costs for the return of the Equipment. THIS SECTION SETS FORTH THE CLIENT'S SOLE AND EXCLUSIVE REMEDY AND PASSIO'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8(b).

iii. Non-Warranty Repairs. For Equipment returned for repair or replacement outside of the warranty period, Passio shall charge Customer, and Customer shall pay, all costs associated with the repaired or replacement



Equipment, shipping, and labor overhead and order processing.

c. Customer. Customer represents and warrants that (i) it shall perform its obligations hereunder in a professional and workmanlike manner consistent with generally accepted industry standards, and (ii) promptly respond to and provide Passio with all materials, information, and facility access requested by Passio as necessary for Passio to provide the Services and otherwise perform its obligations hereunder.

d. Disclaimer. Customer acknowledges that (i) the Services are an information tool only and are not a substitute for competent management and oversight of Customer's vehicle fleet, transportation systems, and personnel generally and (ii) the Services depend upon a number of variables over which Passio has no control, including data being transmitted over the internet, Customer's network, GPS satellites, and third-party carrier networks and fiber and telecommunication lines. OTHER THAN AS EXPRESSLY SET FORTH IN THIS SECTION 10, PASSIO DISCLAIMS ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO CUSTOMER REGARDING THIS AGREEMENT AND THE SERVICES, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY PASSIO. NO WARRANTY IS MADE THAT USE OF THE SERVICES WILL BE ERROR FREE OR UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED, OR THAT THE SERVICES FUNCTIONALITY WILL MEET CUSTOMER'S REQUIREMENTS.

11. INDEMNIFICATION.

a. Passio Indemnification. Passio will at its sole expense defend Customer and its officers, directors, employees, agents, successors and permitted assigns against any claim, suit, action or proceeding brought by a third party alleging that Customer's receipt or use of the Hosted Services in accordance with this Agreement infringes any intellectual property right or misappropriates any trade secret of that third party (each, a "Claim Against Customer"), and will pay all settlements entered into and damages awarded against Customer by the court adjudicating a Claim Against Customer; provided, however, that Passio will have no obligations under this section with respect to claims to the extent arising out of: (a) any instruction, information, designs, specifications or other materials provided by Customer to

Passio; (b) use of the Hosted Services in combination with any materials or equipment not supplied to Customer by Passio; (c) any modifications or changes made to the Hosted Services by or on behalf of any person or entity other than Passio; (d) Customer's Confidential Information; or (e) Customer's breach of this Agreement, the Documentation, or the applicable Order(s). If a Hosted Service, or any part thereof, becomes, or in the opinion of Passio may become, the subject of a claim of infringement or misappropriation, Passio may, at its option: (x) obtain a license for Customer's continued use of that Hosted Service in accordance with this Agreement; (y) replace or modify the Hosted Services so that they are no longer claimed to infringe or misappropriate; or (z) terminate this Agreement and refund to Customer a pro rata portion of the fees prepaid by Customer for the infringing Hosted Service covering the unused portion remaining in the then current term. THIS SECTION SETS OUT CUSTOMER'S EXCLUSIVE REMEDY AND PASSIO'S SOLE OBLIGATION IN RESPECT OF ANY INTELLECTUAL PROPERTY RELATED CLAIMS BY THIRD PARTIES.

b. Customer Indemnification. Customer will defend Passio and its officers, directors, employees, agents, affiliates, successors and permitted assigns against any claim, suit, action or proceeding brought by a third party: (a) alleging that any information, data, or materials provided by Customer, or Passio's receipt or use thereof, violates or infringes any intellectual property, proprietary, or privacy right or misappropriates any trade secret of that third party; (b) arising from Customer's failure to comply with applicable law; or (c) arising from a dispute between Customer and any client or passenger of Customer that isn't caused by Passio's negligence (each of (a) – (c), a "Claim Against Passio") and will pay all settlements entered into and damages awarded against Passio as a result of a Claim Against Passio.

c. Indemnification Procedures. The party seeking indemnification hereunder will promptly notify the indemnifying party in writing of a claim for which it seeks indemnification hereunder and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party will immediately take control of the defense and investigation of the claim and will employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party will not settle any claim hereunder in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which will not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this Section will not relieve the indemnifying party of its obligations under this Section except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.



12. LIMITATION ON LIABILITY.

a. Exclusion of Damages. EXCEPT AS OTHERWISE PROVIDED IN SECTION 12.c, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE, REVENUE, PROFIT, OR DATA ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SUCH DAMAGE WAS FORESEEABLE OR A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. Liability Cap. EXCEPT AS OTHERWISE PROVIDED IN SECTION 12.c, IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO PASSIO PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

c. Exceptions. The exclusions and limitations in Section 12(a) and Section 12(b) will not apply to: (a) a party's payment obligations, (b) use of the Hosted Services or Equipment Software outside the scope of licenses granted herein, (c) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under Section 6 (Non-Disclosure and Confidentiality); or (d) a party's obligations under Section 11 (Indemnification).

13. GENERAL.

a. Assignment. This Agreement shall be binding upon the parties' respective successors and permitted assigns. Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party; provided that, upon prior written notice to the other party, either party may assign this Agreement, in whole, to a successor of all or substantially all of the assets of that party through merger, reorganization, consolidation or acquisition, whether by operation of law or otherwise. Any such assignment shall be subject to the assignee's express written acceptance of all of the terms of this Agreement. Both parties agree that any permitted assignment it makes hereunder shall not relieve the parties of their respective obligations hereunder.

b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana without reference to the conflicts of law provisions thereof. The sole jurisdiction and venue for any

litigation arising out of this Agreement shall be the state courts in the State of Montana, and the parties irrevocably consent to the personal jurisdiction of such courts.

c. Waiver. A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder.

d. Complete Agreement. This Agreement together with any Order and the Schedules hereto set forth the entire understanding of the parties as to the subject matter therein and may not be modified except in a writing executed by both parties. No modification, amendment, supplement to or waiver of this Agreement hereunder, or any of their provisions shall be binding upon the parties hereto unless made in writing and duly signed by both parties.

e. Export. Customer shall not itself, or permit any third party, to, export, re-export or release, directly or indirectly, the Services or Equipment to any country, jurisdiction or individual person to which the export, re-export or release of the Service or Equipment (a) is prohibited by applicable law and associated regulations or (b) without first completing all required undertakings, including obtaining any necessary export license or other governmental approval.

f. Severability. In the event any one or more of the provisions of this Agreement is invalid or otherwise unenforceable, the enforceability of remaining provisions shall be unimpaired.

g. Independent Contractor. Passio's relationship with Customer will be that of an independent contractor. Nothing in this Agreement is to be construed as designating Passio an agent or employee of Customer.

h. Remedies. The rights and remedies of the parties as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to them in law or in equity.

i. Force Majeure. Neither party will be liable for delay or failure in performing any of its obligations (other than payment obligations) hereunder due to causes beyond its reasonable control, including an act of nature, war, natural disaster, governmental regulations, terrorism, communication or utility failures or casualties or the failures or acts of the other party or third parties.

j. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.



k. Additional Service and/or Locations. Any additional services ordered by customer shall be considered an extension of this agreement. All terms and conditions shall apply to any orders so long as additional order has been approved, either in writing or electronically by Customer The order for additional services shall include pricing and term for

added services. Additional services may include, but are not limited to, adding solutions/equipment to existing fleet, adding solutions/equipment to additional vehicles, transferring equipment from decommissioned vehicles to new vehicles, adding services to new end user locations, or adding customized solutions/equipment/products.

Schedule B – Service Levels Agreement

1. Support. Passio will provide remote support for connectivity, configuration, and hardware troubleshooting. Passio will provide or arrange for on-site support services following installation of the Equipment for additional fees, which may include trip charges and/or travel expenses, hourly fees, and minimum charges as incurred. Passio’s support personnel will, under most circumstances, log and confirm support items within one working day. Passio shall use commercially reasonable efforts to resolve critical support items are within two working days or less.

2. Scheduled Maintenance. Passio shall use commercially reasonable efforts to provide Customer with prior notice of maintenance times, which Passio typically conducts during off-peak periods.

3. Availability. Subject to the terms and conditions of this Agreement, Passio will use commercially reasonable efforts to make the Hosted Services Available (as defined below) at least ninety-nine percent (99.0%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a “**Service Period**”), excluding unavailability as a result of any of the Exceptions described below in this Section 1 (the “**Availability Requirement**”). “**Service Level Failure**” means a material failure of the Hosted Services to meet the Availability Requirement. “**Available**” and “**Availability**” mean the Hosted Services are available for access and use by Customer. For purposes of calculating the Availability Requirement, the following are “**Exceptions**” to the Availability Requirement, and neither will the Hosted Services be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer to access or use the Hosted Services that is due, in whole or in part, to any: (a) access to or use of the Hosted Services by Customer or any of its users, or using Customer’s or an users’ access credentials, that does not strictly comply with this Agreement or the Documentation; (b) Customer’s delay in performing, or failure to perform, any of its obligations under this Agreement; (c) Customer’s or its users’ Internet connectivity; (d) force majeure event; (e) failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Passio pursuant to this Agreement; (f) scheduled downtime for routine maintenance of which Passio has provided Customer at least 24 hours’ prior notice via email or though the Hosted Services; or (g) disabling, suspending, or terminating the Services pursuant to the Agreement.

4. Service Level Failures and Remedies. In the event of a Service Level Failure, Passio will issue a credit to Customer in the amount set forth in the table below, measured as a percentage of the monthly fees (or pro rata equivalent thereof) for the applicable Hosted Services paid or payable for the Service Period the Service Level Failure occurred (each a “**Service Credit**”).

Availability	Service Credit (as percentage of monthly fees (or pro rata equivalent thereof))
99.0% - 100%	0.0 %
95.0% - 98.9%	2.5 %
90.0% - 94.9%	5.0 %
< 90.0%	20.0 %



Notwithstanding the foregoing, Passio has no obligation to issue any Service Credit unless Customer: (i) reports the Service Failure to Passio immediately upon becoming aware of it, and (ii) requests such Service Credit in writing within 10 days of the Service Level Failure. Additionally, in no event will a Service Credit for any Service Period exceed [twenty percent (20%)] of the total monthly fees (or pro rata equivalent thereof) that would be payable for that Service Period if no Service Level Failure had occurred. For the avoidance of doubt, if a flat fee is agreed upon in the applicable Order, and as a result there is not a monthly fee, the Service Credit for any Service Period will not exceed twenty percent (20%) of the total flat fee divided by the total number of months that constitute the Term. Subject to the foregoing, any Service Credit payable to Customer under this Agreement will be issued to Customer in the calendar month following the Service Period in which the Service Level Failure occurred. This Section 4 sets forth Passio's sole obligation and liability and Customer's sole remedy for any Service Level Failure, and Passio and Customer agree that such credits are a reasonable estimation of the damages and are not a penalty.

5. Hardware Replacement. Passio will typically order and/or ship replacement hardware within two working days of receiving completed Return Merchandise Authorization from Customer. Replacement items not in stock will be processed using the available supplier with the fastest replacement schedule available at the time. Equipment replaced under Passio Warranty Program (either standard one year manufacturer's warranty or if extended warranty is purchased) covers equipment only and does not include labor or installation. Customer is responsible for shipping costs and warranty processing fees.

6. Equipment Installation. If equipment and installation services are contracted, customer shall provide direction, in writing, to Passio Technologies, a minimum of 10 days prior to installation date. Information to be provided shall include power source for all equipment, location of equipment installation, and any other installation parameters. Vehicle installation shall be deemed complete and accepted by customer after successful communications test by installer. Customer has two working days to alert Passio Technologies, in writing to any installation exception. Installation are warrantied for 30 days.

7. System Deployment and Testing. Initial system deployment testing to start a minimum of fourteen (14) working days prior to live deployment and typically continues for 30-90 days post live start. All equipment shall be fully installed to initiate deployment testing, any equipment not installed will extend testing period. Items to be reviewed and adjusted (but not limited to) will include equipment installation and communications, system configuration, schedule activity, and reporting and analytics. Customers will work directly with deployment team to review, update and provide feedback for edits and adjustments. Accuracy of reports and system data is directly related to the thoroughness of the deployment testing, and any limitations placed on the testing process may impact the amount of time needed to address reporting or configuration issues.

8. Customer Agreement. Customer agrees to the above terms and conditions upon acceptance of equipment and/or software licenses.

9. Payment Milestones.

Software: Setup and Licenses

MILESTONE: Contract Signature and/or Purchase Order Issued

50% Full Project Software Setup Fees Billed

50% All Vehicle License Fees Billed

MILESTONE: Access to Software (Typically within first 30 days or less)

50% Full Project Software Setup Fees Billed

50% All Vehicle License Fees Billed

Equipment & Installation

MILESTONE: Equipment received at client location.

50% Equipment Costs Billed

Invoices will include Vehicle Asset Number for each equipment component shipped.



MILESTONE: Equipment Installed and Communication Confirmed
50% Equipment Costs Billed
Vehicle Installation Fees Billed by Vehicle as completed
Trip fees billed when customer requires trips outside of the initial installation plan
Recurring Fees
MILESTONE: Go Live Date Plus One Week
100% Recurring Fees (Monthly or Annual)



Schedule C – Statement of Work and Order Form Template

Statement of Work

Term

This Agreement will commence on the Effective Date and will continue for the period specified unless earlier terminated in accordance with this Agreement.

Solutions Proposed

Passio quotes are provided next.



Quote

Passio Technologies
6100 Lake Forrest Dr
Atlanta, GA 30328
United States

Table with quote details: Quote # 1440 v2, Date Mar 15, 2023, Expires May 23, 2023, Contact Sam Tupman

Prepared for Billings Montana
Rusty Logan
United States
T: 406-657-8221
E: loganr@billingsmt.gov

ACCEPT QUOTE

Passio Technologies Quote GO, APC, MDT, NTD, LEDX

GO

One-Time Fees

Table with 5 columns: Category, Item, Qty, Price, Total. Rows include Setup (Passio GO CAD/AVL GPS Setup) and License (Passio GO GPS CAD/AVL Software License) with sub-totals and discounts.

Annual Fees

Table with 5 columns: Category, Item, Qty, Price, Total. Row includes Recurring (Passio GO GPS/AVL Recurring Annual).

* Recurring fees billed annually with 0 upfront payment(s).

Annual Subtotal \$20,271.00



Quote

MDT Mobile Data Terminals

One-Time Fees

Category	Item	Qty	Price	Total
Hardware	MDT - Mobile Data Terminal Rugged Android MDT, Multi Connections, Stationary Mount. Code: 1210003MDT	25	\$947.52	\$23,688.00
One-Time Subtotal				\$23,688.00

NTD

One-Time Fees

Category	Item	Qty	Price	Total
Setup	NTD Setup with OpsView NTD Parameters and Reporting Setup for NTD Information (Time Groups and Service Schedule) NTD Report Module in Passio Navigator OPSVIEW Account Setup Configuration <ul style="list-style-type: none"> • Route, Stop, and Driver Configuration • LiveMap • Replay Mode Code: NTDS	1	\$5,617.00	\$5,617.00 [†]
License	NTD Software License with OpsView NTD License plus per unit one time software license. Includes lifetime updates for OpsView NTD Parameters and Reporting for NTD Information (Time Groups and Service Schedule) NTD Report Module in Passio Navigator OPSVIEW Account Setup Configuration <ul style="list-style-type: none"> • Route, Stop, and Driver Configuration • LiveMap • Replay Mode Code: OPSNTDsl	25	\$138.00	\$3,450.00 [†]
One-Time Subtotal				\$9,067.00

Annual Fees

Category	Item	Qty	Price	Total
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Quote

Category	Item	Qty	Price	Total
Recurring	NTD: Annual Service Per unit annual recurring fee for NTD for customers with Passio GO. Configuration updates, reporting, and data storage. NTD Parameters and Reporting for NTD Information (Time Groups and Service Schedule) NTD Report Module in Passio Navigator	25	\$469.00	\$11,725.00 [†]
Code: NTDANN				

** Recurring fees billed annually with 0 upfront payment(s).*

Annual Subtotal \$11,725.00

APC 2 Door Vehicles 25

One-Time Fees

Category	Item	Qty	Price	Total
License	Passenger Counting:APC Software License Per unit one time software license. Includes lifetime updates. Code: APCsl	25	\$762.00	\$19,050.00 [†]
Setup	Passenger Counting:APC System Setup Configuration - sensor installed automated passenger count generator with mobile data terminal for driver log in and passenger type recording. 20% Item Discount (\$395.20) Code: APCss	1	\$1,976.00	\$1,976.00 \$1,580.80 [†]

One-Time Subtotal \$21,026.00

Discount (\$395.20)

Annual Fees

Category	Item	Qty	Price	Total
Recurring	Passenger Counting:APC Recurring Annually Per unit annual recurring fee. Configuration updates, reporting, and data storage. Code: APCA	25	\$710.00	\$17,750.00 [†]

** Recurring fees billed annually with 0 upfront payment(s).*

Annual Subtotal \$17,750.00



Quote

Cubic Integration

One-Time Fees

Category	Item	Qty	Price	Total
Setup	API Integration - Cubic Fare API Integration with Cubic Fare Code: APIGTAB	1	\$7,800.00	\$7,800.00
One-Time Subtotal				\$7,800.00

Annual Fees

Category	Item	Qty	Price	Total
Recurring	API Integration Recurring Annual Annual fee for API Integration. Includes software updates and real time location data integration, as well as updates to the integration protocols for any changes. Passio (Code: APIINTRECUR)	1	\$3,600.00	\$3,600.00
Annual Subtotal				\$3,600.00

* Recurring fees billed annually with 0 upfront payment(s).

Installation - 5 Vehicles, Client to do All Others

One-Time Fees

Category	Item	Qty	Price	Total
Installation	Installation Hardware installation and connectivity testing. On site charges, travel, and initial costs. Passio (Code: Install) Component Install: MDT (Mobile Data Terminal) (MDTINST) APC Two Door (APC2INST) LEDX Installation (LEDXINST) LEDx Engineer (LEDENG) On-Site Vehicle Audit (VEHAUD)	5	\$2,145.00	\$10,725.00
One-Time Subtotal				\$10,725.00

Training

One-Time Fees



Quote

Category	Item	Qty	Price	Total
Hardware / Maintenance	Training On Site On site training Code: TrainingOS	3	\$2,200.00	\$6,600.00†
One-Time Subtotal				\$6,600.00

Warranty

One-Time Fees

Category	Item	Qty	Price	Total
Hardware / Warranty	MDT Warranty Mobile Data Terminal Warranty - covers all manufacturers defects and device failures not related to damage, vandalism, misuse, accident, or other non normal wear and tear event. All devices include a 12 month standard warranty. Warranties may be extended to add to the initial 12 month period. Lilliput (Code: MDTwar) Extended Warranty: MDT 36 Month Warranty Per Device (MDTWY36)	25	\$225.00	\$5,625.00†
One-Time Subtotal				\$5,625.00

LEDX

One-Time Fees

Category	Item	Qty	Price	Total
License	LED Connect (LEDx) Destination Sign Software License Integration with J1708/J1939 exterior destination sign. Includes connection hardware. Controller and software for manufacturer signs required to push sign codes to headway sign from Passio Navigator. Updates to controller still required. Code: 1212020LEDX	25	\$515.00	\$12,875.00†
Setup	LED Connect (LEDx) Setup Account setup for J1708/J1939 Destination Signs. Includes mapping of manufacturer sign codes to Passio Navigator routes. Controller and software for manufacturer signs required to push sign codes to headway sign from Passio Navigator. Updates to controller still required. Code: 1212046LEDX	1	\$5,154.00	\$5,154.00†
HDW&INST	LED Hardware Wiring harness, mounts, hardware	25	\$278.00	\$6,950.00



Quote

Category	Item	Qty	Price	Total
	Code: LEDhard2			
			One-Time Subtotal	\$24,979.00

Annual Fees

Category	Item	Qty	Price	Total
Recurring	LED Connect (LEDx) Software Recurring Annual Per unit annual recurring fee for J1708/J1939 Destination LED sign integration and software management. Controller and software for manufacturer signs required to push sign codes to headway sign from Passio Navigator. Updates to controller still required. Code: 2210029LEDX	25	\$122.00	\$3,050.00 [†]

** Recurring fees billed annually with 0 upfront payment(s).*

Annual Subtotal \$3,050.00

Summary

[†] Non-taxable item

Please contact us if you have any questions.

One-Time Subtotal	\$116,033.00
Discount	(\$922.60)
Total One-Time	\$115,110.40 USD
Total Annually	\$56,396.00 USD

ACCEPT QUOTE



Quote

Cost Breakdown

Category	One-Time Fees	Annual Fees
Setup	\$23,184.00	—
License	\$39,261.00	—
Recurring	—	\$56,396.00
Hardware	\$23,688.00	—
Installation	\$10,725.00	—
Hardware / Maintenance	\$6,600.00	—
Hardware / Warranty	\$5,625.00	—
HDW&INST	\$6,950.00	—
Discount	(\$922.60)	—
Total	\$115,110.40 USD	\$56,396.00 USD

Standard Terms and Conditions

- Installation
 - All installation quotes are estimates based on customer provided vehicle information. Limited vehicle availability or undocumented vehicle configuration information may result in increased installation costs and/or trip charges.
- Sales & Use Tax
 - Customers are responsible for all applicable sales tax. If you are sales tax exempt or use taxes are accrued, please provide that documentation at the time of order acceptance.
- Term of Agreement
 - Standard term is 36 months for optimal pricing. Customers have the option to select 60 month term to lock in pricing for an extended period. Lesser term periods are subject to higher recurring fees. After term agreement is completed customer has the option to transition to a new term agreement or month to month arrangement, any price adjustments will be communicated, in writing, at that time. Month to month customers may cancel at any time by providing a minimum of 30 days' written notification.
- Deposit
 - New customers are required to pay a deposit equal to 50% of the one time costs prior to shipment of any equipment or account setup.



Quote

Passio Technologies
6100 Lake Forrest Dr
Atlanta, GA 30328
United States

Quote #	1474
Date	Mar 15, 2023
Expires	Jun 13, 2023
Contact	Sam Tupman

Prepared for Billings Montana
Rusty Logan
United States

T: 406-657-8221
E: loganr@billingsmt.gov

ACCEPT QUOTE

Passio Technologies Quote 25 Vehicles Telematics

Telematics

One-Time Fees

Category	Item	Qty	Price	Total
Setup/License	Telematics Setup Telematics Setup Code: TeleSet	25	\$476.00	\$11,900.00 [†]
License	Telematics Software License Telematics Software License Code: TeleSo	25	\$88.00	\$2,200.00 [†]
Hardware	VLU Telematics Vehicle Logic Unit for GPS Tracking includes external antenna and connection to JBUS or OBD for odometer, DTC codes, and telematics information. CalAmp (Code: VLUT)	25	\$721.00	\$18,025.00

One-Time Subtotal \$32,125.00

Annual Fees

Category	Item	Qty	Price	Total
Recurring	Telematics Recurring Annually Telematics Recurring Code: TeleA	25	\$96.00	\$2,400.00 [†]

** Recurring fees billed annually with 0 upfront payment(s).*

Annual Subtotal \$2,400.00



Quote

Installation

One-Time Fees

Category	Item	Qty	Price	Total
Installation	Installation of 5 Units, client to do all others, IF done at same time as core system Hardware installation and connectivity testing. On site charges, travel, and initial costs. Passio (Code: Install) Component Install: VLU (Vehicle Logic Unit) (VLUINST)	5	\$220.00	\$1,100.00
			One-Time Subtotal	\$1,100.00

Summary

[†] Non-taxable item

Please contact us if you have any questions.

Total One-Time	\$33,225.00 USD
Total Annually	\$2,400.00 USD

ACCEPT QUOTE

Cost Breakdown

Category	One-Time Fees	Annual Fees
Recurring	—	\$2,400.00
Setup/License	\$11,900.00	—
License	\$2,200.00	—
Hardware	\$18,025.00	—
Installation	\$1,100.00	—
Total	\$33,225.00 USD	\$2,400.00 USD

Standard Terms and Conditions

- Installation
 - All installation quotes are estimates based on customer provided vehicle information. Limited vehicle availability or undocumented vehicle configuration information may result in increased installation costs and/or trip charges.
- Sales & Use Tax
 - Customers are responsible for all applicable sales tax. If you are sales tax exempt or use taxes are accrued, please provide that documentation at the time of order acceptance.
- Term of Agreement



Quote

- Standard term is 36 months for optimal pricing. Customers have the option to select 60 month term to lock in pricing for an extended period. Lesser term periods are subject to higher recurring fees. After term agreement is completed customer has the option to transition to a new term agreement or month to month arrangement, any price adjustments will be communicated, in writing, at that time. Month to month customers may cancel at any time by providing a minimum of 30 days' written notification.
- Deposit
 - New customers are required to pay a deposit equal to 50% of the one time costs prior to shipment of any equipment or account setup.



EXHIBIT B

FTA Required Contract Clauses and Other Certifications

Contract Clauses Required for Federal Transit Administration (FTA) Funded Contracts

1. No Federal Government Obligation to Third Parties

The City of Billings, Aviation/Transit Department - MET Transit Division and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Governments 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 City, contractor, or any other party (whether or not a party to that 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.

2. Program Fraud and False or Fraudulent Statements and Related Acts

The Contractor acknowledges that the provisions 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 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, 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 further acknowledges that if it makes, or causes to be made, 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 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Access to Records



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-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.

Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.333. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 the Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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. The Contractor also agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

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.

FTA does not require the inclusion of these requirements in subcontracts.

4. Federal Changes

49 CFR Part 18 - The 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 Master Agreement between the City and the 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.

5. Civil Rights Laws and Regulations

- 1) **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.



2) **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3) **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4) **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1) **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2) **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor 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 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e



note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 Contractor agrees to comply with any implementing requirements FTA may issue.

3) **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

4) **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5) **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

The Contractor 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.

6. Safe Operation of Motor Vehicles

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the City.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device



supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

7. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 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 requests which would cause the City to be in violation of the FTA terms and conditions.

8. Energy Conservation

The Contactor 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.

9. Disadvantaged Business Enterprises

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the City makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the City's written consent; and that, unless the City's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the City and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.



10. Prompt Payment

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the City, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City.

11. Procurement of Recovered Materials

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 42 CFR Part 247, and Executive Order 12873, as they apply to the procure of the items designated in Subpart B of 40 CFR Part 247. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

12. ADA Access

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states 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 that policy. 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, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

14. Notification to FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the City, which will then notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the City is located. The Contractor is required to include an equivalent provision in



its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. § 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- (3) The City must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the City has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the City and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the City. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the City.

15. Debarment and Suspension

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.



16. Violation and Breach of Contract

Rights and Remedies of the City

The City shall have the following rights in the event that the City deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as the City for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include:

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City, the Contractor expressly agrees that no default, act or omission of the City shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the City directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the City will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the City takes action contemplated herein, the City will provide the Contractor with sixty (60) days written notice that the City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of The City. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City's authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City's authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited



in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the City's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by The City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City is located.

Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

17. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

18. Clean Air Act & Federal Water Pollution Control Act

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33



U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

22. Cargo Preference

Use of United States-Flag Vessels - The contractor agrees:

- a. to use privately owned United States-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 United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, 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 City (through the contractor in the case of a subcontractor's bill-of-lading.)
- c. 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.

23. Fly America Requirements

a) Definitions. As used in this clause—

- 1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

- 2) "United States" means the 50 States, the City of Columbia, and outlying areas.
- 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) 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, Agencies, 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 United States, 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 United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) 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.
- d) 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]:

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

26. Veterans Hiring Preference

Veterans Employment - Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

27. Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex,

sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and



remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

31. Conformance with ITS National Architecture

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

Other Certifications

1. The individual signing certifies that he/she is authorized to contract on behalf of the proposer.
2. The individual signing certifies that the proposer is not involved in any agreement to pay money or other consideration for the execution of this agreement, other than to an employee of the proposer.
3. The individual signing certifies that there has been no attempt by the proposer to discourage any potential proposer from submitting a proposal.

The proposer, by signing below, agrees to comply with these contract requirements and makes the certifications outlined above.

Signed

Date

Printed name

Title

Company



APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned [Contractor] 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 making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.* .)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date



DEBARMENT AND SUSPENSION CERTIFICATION

The prospective lower tier participant (Bidder/Proposer) certifies by submission of this Offer, that neither it nor its principals, as defined at 2 CFR § 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded (defined at 2 CFR § 180.940) or disqualified as defined at 2 CFR §180.935.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

- 1) It will comply and facilitate compliance with the requirements of 2 CFR § 180, subpart C and 2 CFR § 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- 2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently: debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified.
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 - i. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
 - ii. Violation of any Federal or State antitrust statute, or
 - iii. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
 - c. It is 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 listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
 - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 180 if it:
 - i. Equals or exceeds \$25,000
 - ii. Is for audit services, or
 - iii. Requires the consent of a Federal official, and
 - g. It will require that each covered lower tier contractor and subcontractor:



- i. Comply and facilitate compliance with the Federal requirements of 2 CFR part 180 and 3000, and
- ii. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - (a) Debarred, suspended, proposed for debarment, declared ineligible to participate, voluntarily excluded from participation or disqualified from participation in its federally funded project, and
- 3) It will provide a written explanation as indicated on a page attached in FTA's TEAM-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

The certification in this clause is a material representation of fact relied upon by the City of Billings, Aviation/Transit Department - MET Transit. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Billings, Aviation/Transit Department - MET Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

_____ **Signature of Bidder or Proposer's Authorized Official**

_____ **Name and Title of Bidder or Proposer's
Authorized Official**

_____ **Date**



Bidder List Required Information

The bidder listed below acknowledges that this information is required to be complied and reported in accordance with the City's DBE Program and with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. 11(c).

Business Name: _____

Business Address: _____

Years in Business: _____ Telephone: _____

Fax: _____ Email: _____

Type of Organization (Check one):

- a. Sole Proprietorship () b. Partnership () c. Corporation () d. Joint Venture ()

Is Business Registered With the State of Montana as a Disadvantaged Business Enterprise?

- a. Yes () b. No ()

Annual Gross Receipts of Business:

Less than \$500,000 ()

\$500,000 - \$1,000,000 ()

\$1,000,000 - \$5,000,000 ()

\$5,000,000 - \$10,000,000 ()

Over \$10,000,000 ()

Signature

Title