



INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Avail Technologies, Inc.**, a Pennsylvania corporation ("Contractor"), to be effective for all purposes August 9, 2023 ("Effective Date").

WHEREAS, Contractor is developer of certain Intelligent Transportation System ("ITS") software and related equipment and technologies which help manage various aspects of public transit services; and

WHEREAS, the County and Contractor entered into Agreement No. AGR14-4014 dated July 1, 2013 for the purchase of a software application and related equipment from Contractor which works to track, schedule, locate, monitor, and provide transit rider information for County transit services and vehicles; and

WHEREAS, Agreement No. AGR14-4014 expired one June 30, 2020, but the use and ownership of the transit software, application, and installed equipment and technologies continues, per the prior agreement, within the County; and

WHEREAS, support and software updates have terminated for the software and equipment under the prior agreement, the County prefers Contractor continue to perform annual maintenance support services on the purchased proprietary software and associated equipment; and

WHEREAS, the Transit Manager has justified, and the Chief Purchasing Officer has made a written determination that only Avail Technologies, Inc., can provide the required software and equipment support services to meet the County's ongoing need for transit related services; and

WHEREAS, the software and equipment are proprietary to the Contractor and Contractor alone, it has been determined that sole source procurement is authorized pursuant to Sections 31-104 and 31-144 of the Los Alamos County Code of Ordinances; and

WHEREAS, the County Council approved this Agreement at a public meeting held on August 8, 2023; and

WHEREAS, Contractor shall provide the Services, as described below, to County.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. DEFINITIONS: In addition to any other terms elsewhere defined in this Agreement, the following terms are defined for the purpose of this Agreement:

1. "Software" is dispatch, monitoring and a public facing software-program for bus schedules and locations, along with trip planning services and alerts.
2. "Hardware" shall mean an In-Vehicle Logic unit ("IVU") that stores and runs the written instructions provided by the software.
3. "*Documentation*" shall mean the documentation to which the Software must conform as set forth in the original Project Contract.
4. "*Error*" shall mean a material and reproducible failure of the Software to function in conformity with the Documentation.
5. "*Additional Services*" shall mean any service that is not covered by this Agreement.
6. "*Hosted Support*" shall mean Contractor will house, implement, maintain and backup the customer fixed-end system on Contractor owned (or leased) equipment for the duration of the term.
7. "Anniversary" shall mean the beginning date of the term and the annual occurrence of that date for the duration of the term.
8. "*Contract*" or "*Agreement*" shall mean the original Intelligent Transportation System Project Contract entered into between Contractor and County.
9. "*Bug Fixes*" shall mean any corrections or upgrades to the Software as development occurs over time.
10. "*Purchased Feature Enhancements*" shall mean any software features developed beyond the Documentation for the original Project Contract when this system was purchased by County.
11. "*New Feature Purchases*" are features above and beyond the scope of the original Project Contract that existed and were not purchased at that time OR new features developed after the completion of the original Project Contract.
12. "Self-Heal" means the ability of systems to detect and remediate issues without human intervention.
13. "System" shall mean the Software, Hardware, Hosting Services, and Support Services necessary to operate the ITS system provided by Contractor.

SECTION B. SERVICES:

1. The services to be provided under this Agreement are for software and hardware support services ("Support Services") for the System purchased, and licensed ITS Software and technologies, under prior County Agreement number AGR14-4014. The Compensation Rate Schedule is attached as Exhibit A, attached hereto and made a part hereof for all purposes. County has selected the level of support set forth in Exhibit B, Maintenance and Support Plan, attached hereto and made a part hereof for all purposes.
2. **Support Services.** During the Term of this Agreement, Contractor shall provide the following "Support Services", as follows:
 - a. **Standard Level of Support** (General Provisions):
 - (1) Telephone hot line access;
 - (2) Ability to initiate support requests via e-mail to support@Availtec.com;

- (3) Ability to initiate support requests via Contractor Customer Support Portal by visiting <https://www.availtecportal.com>; and
 - (4) Contractor shall staff their Call Center during regular business hours as set forth in Exhibit B. If Contractor cannot answer the initial call, a voicemail service shall operate as a backup system. In case of a support request call, Contractor shall collect the pertinent information as soon as practical.
- b. **Routine Care.** The following are included in the Support Services as "Routine Care":
- (1) Contractor shall respond to support request calls as set forth in Exhibit B;
 - (2) The reported problem shall be entered into Contractor tracking system, by entering the caller's name, location and contact phone number;
 - (3) Contractor shall keep County advised of a plan for resolution of the error as soon as practical; and
 - (4) If the error occurs after Contractor business hours, County shall leave a voice message with the same information as listed above.
- c. **Urgent Care.** The following are considered Urgent Care Support Services:
- (1) Contractor shall respond to a support request call as stated in Exhibit B;
 - (2) Upon receipt of the call, Contractor's Support Team shall immediately begin to assess the error and begin the process of resolving the problem. A resolution shall be conveyed to County as soon as practical;
 - (3) The error shall be entered into Contractor's tracking system; and
 - (4) On-site response for requests for remedial support and diagnostic repair services in response to a problem submitted to Contractor shall be pursuant to Exhibit B.
- d. **System Self-Diagnostics and Self-Healing capabilities.** Contractor shall provide:
- (1) Through the use of Contractor's Software monitoring system, the system will automatically notify the operations staff of potential system degradation and will alert the on-call staff via email message twenty-four (24) hours / seven (7) days a week.
 - (2) The Software monitoring system has the capability to self-heal processes that have stalled or failed.
3. County shall give Contractor full cooperation to facilitate proper and prompt performance of the Support Services and any Additional Services that the Parties agree to. County shall provide:
- a. A key technical contact that shall be familiar with the System and/or Software to provide adequate information and feedback in order to facilitate Support Services problem reporting and resolution;
 - b. County shall conform to the requirements for afterhours support, as detailed in Exhibit B, when making a request for support, County shall:
 - (1) Promptly notify Contractor of any error in the System;
 - (2) Provide sufficient information for Contractor to effectively diagnose errors including a detailed description of the issue in text format, an explanation of what the user was doing when the issue occurred, any error messages that the system returned, screen shot images of the error, the current status of the system, a determination if the system is functional, and an information retrieval, if requested;
 - (3) Allow Contractor to take such reasonable steps as Contractor shall consider necessary to remedy any errors;
 - (4) Allow Contractor prompt and reasonable access to:

- i. The Software and Intelligent Transit System ("ITS") Server through a Virtual Private Network ("VPN") in case of primary server hardware failure and access to other 3rd party systems such as the communications network provider.
 - ii. County's physical sites as follows: 101 Camino Entrada, Los Alamos, New Mexico 87544.
- (5) County shall not permit any person other than authorized Contractor personnel to make corrections to or in any way modify the Software. Any unauthorized work or changes in the software allowed by the County, which results in additional work by the contractor to remedy, shall be considered Additional Services.

4. **Software Maintenance:**

- a. Contractor shall notify and make available to County all Purchased Feature Enhancements and Bug Fixes to the Software. The nature and extent of the elements to be included or covered in any Enhancement, or Bug Fix shall be determined solely by Contractor.
- b. Purchased Feature Enhancements and Bug Fixes shall be made available to County at no additional charge, unless the purchased feature enhancements and bug fixes require additional hardware, configuration, integration, testing, travel, lodging and per diem, provided that County is current in payment of fees. Any additional hardware, configuration, integration, testing, travel, lodging and per diem which County requires outside of the scope of this Agreement shall be procured through separate purchase and governed by all terms and provisions of a separate agreement and shall be at County's sole option.
- c. As soon as practical, Contractor shall provide County with information relating to any Software New Features during the term of this Agreement. New Feature Purchases shall be negotiated and agreed to in writing, between Contractor and County, prior to any work beginning on the requested task. All reasonable efforts shall be made by County to provide Contractor access to the purchased Software and server through the VPN process if reasonably possible. Any New Feature Purchases, Purchased Feature Enhancements and Bug Fixes provided shall be a separate purchase and governed by all term and provisions of a separate agreement and shall be at County's sole option. If such changes increase the costs of the Services beyond the not-to-exceed compensation amount provided herein, such an increase must be approved and authorized by an Amendment to this Agreement, pursuant to **SECTION G. MODIFICATION OF CONTRACT AND CHANGE ORDERS.**
- d. Upon notification of additional enhancements or Bug Fixes by Contractor, County shall have six (6) months from receipt of such notice to authorize Contractor to deliver the product, provided that County is current in payment for Support, Warranty and License Fees. All New Feature Purchases, Purchased Feature Enhancements, or Bug Fixes provided, shall be considered Software for purposes of this Agreement.
- e. Corrections - For a period of Twelve (12) months following the installation of Purchased Feature Enhancement upgrades, Contractor shall use reasonable efforts to support any previous Release. Contractor shall provide written notice to County as soon as practical, of the intention to discontinue support services of any version of Contractor Software currently in use by County. Contractor shall also maintain this requirement for the subcontractors they use for this Project.

- f. Contractor shall have no obligation to correct problems that are traced to County errors, modifications, enhancements, software or hardware.
 - g. This Agreement includes the Software and Hardware listed below for the entire Term. If during the duration of this Agreement, any software or hardware were to become obsolete, Contractor agrees to provide a suitable replacement device and to ensure its compatibility with the deployed system.
5. **SYSTEM SUPPORT.** Contractor shall provide remote system support for the Term specified in this Agreement, for all software initially provided by Contractor for sustaining the accepted system configuration.
- a. Phone and Remote Diagnostic system Support. Contractor shall provide consultation to County's Key Technical Contact to:
 - (1) Facilitate remote troubleshooting and solution implementation;
 - (2) Acquire and review data logs for problem identification via remote access line;
 - (3) Provide problem analysis and possible resolution;
 - (4) County shall maintain remote access capability for Contractor to diagnose reported software and system problems. Remote access shall be via a VPN connection;
 - (5) Contractor shall, at County's request, assist in arranging for service and support of non-warranted components (i.e., LAN interface to the Communications system and Installation / Removal services). Contractor shall not be responsible for the service call or system repair costs. Such costs shall be billed to County.
 - b. Exceptions
 - (1) If it is determined by Contractor that a hardware or software problem was not due to a Contractor installed component, County shall be responsible for all engineering and technical support, time and material costs. All labor shall be charged at Contractor's prevailing rates; and
 - (2) On-site support is not included in the Agreement but is available on a time and material basis. However, Contractor shall provide remote support to County without additional charge.
6. **COMPONENTS REQUIRING MAINTENANCE and SUPPORT.** Contractor shall provide maintenance and support services for the following system components:
- a. **Software Licenses:**

Item – Description	Location
Operations <ul style="list-style-type: none"> • Communications • Decision Support • Detours • Dispatch • Pullout Management • Special Events • Yard Management • Vehicle Systems (VHM) • Business Intelligence • NTD Reporting 	Site
Planning & Scheduling <ul style="list-style-type: none"> • Build & Deploy • Geographic Tools • GTFS • Public Messages • Scheduling • Transit Planning • Business Intelligence • NTD Reporting 	Site
myAvail RTPI solution – Web, Mobile Web, SMS, iPhone App, Android App, Alerts, Subscription, Public Service Announcements, site license, internet application	Site
DataPoint	Site
myAvail IVR - Lite	Site
Pre-Trip	Site

b. Hosting Services and Licensing Support Services

Item – Description	Location
Hosting Services – Azure cloud-hosting for central system software	Site
Hosting Services – Azure cloud-hosting for VoIP	0

Changes in the fleet composition (quantity of connected devices across fleet, supervisors and other users) of County shall be assessed as devices/users are added/removed. Connected devices shall be evaluated semi-annually as the fleet is expanded by County and additional fees may be assessed by Contractor, but only with written agreement by the County.

- c. **HARDWARE.** The following Hardware items in County's inventory will be supported. Hardware deemed defective shall be repaired at no additional cost for parts, material and labor. Products shall be replaced, instead of repaired, at Contractor's discretion. IEB/IVU, Vector 9000, and Mackenzie DADS Annunciator Hardware is no longer covered by Warranty, effective December 31, 2022, however Contractor shall provide vehicle upgrade hardware support cost credits for a future replacement on any failed IEB/IVU, V9000 Hardware and Mackenzie DADS Annunciator.

(1) Covered Equipment

Item – Description	Qty
IIVU3/IVU2	12
10" display	10
RCU/CCM	29
PA Amplifier	29
Sunrise Next Stop Sign	29
InfoDev APC System	29
Bus-in-a-Box (BIB)	1

(2) Communications

Item – Description	Qty
Tier 1 Cellular Data – AVL Only	30
Tier 2 Cellular Data – AVL & VoIP <u>OR</u> Camera Live Look-in, Signs	3
Tier 3 Cellular Data – AVL, VoIP & Live Look-in, throttled Public Wi-Fi	0
Tier 4 Cellular Data – AVL, VoIP, Live Look-in, Public Wi-Fi	0

- (a) Contractor is responsible for providing all SIM cards for County devices.
- (b) Changes in the fleet composition (quantity of connected devices across fleet, supervisors and other users) of County shall be assessed as devices/users are added/removed. Connected devices shall be evaluated semi-annually as the fleet is expanded by County and additional fees may be assessed by Contractor.
- (c) Overages under 25% of the total planned data pool shall be supported by Contractor.
- (d) Overages over 25% shall be investigated by Contractor.
 - i. Once Contractor has determined the root cause of the overage, County shall be contacted and notified.
 - ii. The initial overage shall be supported by Contractor.
 - iii. If the overages over 25% continue, Contractor shall work with County to lower the data usage (throttling) OR adjust Support Contract price accordingly.

d. **THIRD-PARTY**

(1) Supported Third-Party Software

Item – Description	Qty
Stratagen Para Transit Software	Site

e. Items Not Covered Under Maintenance and Support

Item – Description	Qty
LED Signage – County shall purchase replacement parts or new sign should the sign fail	3

IEB/IVU1	17
MDT (V9000/mSlate)	19
Mackenzie Annunciators	20

f. System Maintenance

- (1) County is responsible for equipment replacement of existing Hardware on an as needed basis for all installed equipment including:
 - (a) In-vehicle equipment;
 - (b) Wireless modem;
 - (c) Wireless LAN; and
 - (d) Wayside Sign Component modules
- (2) System Maintenance includes removal of equipment, replacement with a spare, initial triage diagnostics and shipping to a designated repair point. Any item returned to Contractor must follow Contractor's Return Merchandise Authorization ("RMA") procedures, County is responsible for removal and shipment of equipment returned under the RMA procedures;
 - (a) County is responsible for shipping costs to Contractor or designated repair point. Contractor shall return ship at Contractor's expense.

g. Exceptions:

- (1) Non-technical hardware items such as batteries, racks, cables, connectors, mounts, handsets, speakers, antennas, sign audio buttons, KVM switches, network switches, memory storage media, panels and punch blocks are wear items and are not covered beyond the Vehicle Installation Support, and shall be the responsibility of the County beyond the Vehicle Installation Support period;
- (2) Contractor is not responsible for:
 - (a) Hardware and Software that are not used and serviced according to the training and instructions provided by Contractor;
 - (b) Products that have been altered, repaired or modified without prior consent from Contractor, including:
 - i. Products damaged by any third-party equipment or intervention, force of nature or other conditions not in Contractor's control;
 - ii. Products damaged due to negligence or abuse;
- (3) Contractor may evaluate the repairability or correctability of items not outlined under Maintenance and Support and a written cost assessment shall be provided to County. If County agrees to proceed with the repair or correction, County shall be charged for the labor to complete the evaluation, shipping, parts and materials used and repair labor. If County elects not to repair the item, only the labor required for the assessment shall be charged. All labor is charged at Contractor's prevailing rates for the required skill level.

h. Time and Material Charges for Non-Supported Hardware Repairs or Support

- (1) To maintain system support coverage, all systems hardware shall be returned to Contractor for repair or approved for repair by Contractor at a specified repair facility;

- (2) Any returned unit may be repaired or replaced at the sole discretion of Contractor;
- (3) Contractor shall charge a minimum of one (1) hour for each issue or return with subsequent increments billed at one-quarter (1/4) hour intervals at Contractor's prevailing rate charges.
- (4) Charges for non-supported repair / replacement or support shall include the prevailing Preferred Customer rates (subjected to periodic updates); any repair or support not covered by the not to exceed amount of this Agreement will require a separate procurement; and
- (5) Travel and associated travel labor costs for on-site work (if required) are not included and shall be invoiced to County. All travel costs shall be pursuant to **SECTION D. COMPENSATION. No. 3** of this Agreement. A written estimate of on-site costs shall be provided prior to any travel expenses being incurred.

- i. **Vehicle Installations.** Contractor warrants all vehicle installation provided by Contractor for ninety (90) days. Any issues found to stem from installation services will be rectified by Contractor with no cost to County. Any issues found to stem from errors unrelated to vehicle installation, such as lack of proper maintenance by County or misuse of equipment, shall be the responsibility of County. Any costs associated with diagnosing issues found to be the result of County abuse or misuse shall be billed to County.
- j. **System Maintenance Logging.** All system maintenance or repair information, whether Hardware or Software, is collected and recorded via Customer Relation Management ("CRM") system Case Logs entry, RMA Tracking for Hardware and configuration management tools for Software.
- k. **Limits of Maintenance & Support Plan.** The maintenance and support set forth in this Agreement is a limited maintenance and support plan. The hardware and software included under the initial installation, new feature purchases, purchased feature enhancements or bug fixes, are subject to the representations, warranties, indemnifications, limitations and disclaimers set forth in the Agreement.

7. **SOFTWARE – License to use Software**

- a. Description - In consideration of the licenses set forth in the Agreement, and subject to termination, Contractor grants to County a nonexclusive, nontransferable site license for authorized County employees ("Users") and vehicles (as provided in letter b. below) to use the Avail Enterprise Transit Management Software (ETMS).

THE SOFTWARE IS COPYRIGHTED AND LICENSED (NOT SOLD). CONTRACTOR DOES NOT SELL OR TRANSFER TITLE TO, OR ANY OWNERSHIP INTEREST IN, THE SOFTWARE OR DOCUMENTATION TO COUNTY. COUNTY'S LICENSE OF THE SOFTWARE SHALL NOT COMMENCE UNTIL COUNTY HAS EXECUTED THIS AGREEMENT AND AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR HAS RECEIVED, APPROVED AND EXECUTED A COPY.

- b. Scope of Permitted Use – Pursuant to **SECTION B. No. 6 COMPONENTS REQUIRING MAINTENANCE and SUPPORT**, County agrees that it may allow its designated employees or computers ("Users") access to the software and may manage all authorized vehicles in the Software.
- c. Scope of License Rights; Restrictions

- (1) The license granted to County under this Agreement entitles County to use, and County agrees to use, the Software and Documentation solely as set forth in this Section through (d), below:
 - (a) Store, install and access the Software, in machine readable form, through an internal network using those computers and software specified in the Agreement, or access the Software via the Internet, but in either case only for use by County's site authorized and designated Users and only for the purpose of serving the internal needs of the business of County;
 - (b) In support of County's authorized use of the Software, store the Software's machine-readable instructions or data in, transmit it through, and display it on machines associated with the computer(s) specified in this Agreement;
 - (c) Make two (2) copies of the Software in machine-readable, object code form, for nonproductive backup purposes only; and
 - (d) Use the Documentation solely to assist County with its authorized use of the Software.
- (2) The license granted to County under this Agreement does not grant to County the right to;
 - (a) Copy (except as expressly permitted in c.(1)(a) and c.(1)(c) above), change, disassemble, decompile, reverse engineer, sublicense, assign, timeshare, sell, give away, loan, rent, lease, transfer (electronically or otherwise), display, disclose, or provide any third party with access to or use of, the Software; directly or indirectly create or attempt to create software that emulates the Software; prepare derivative works of the Software; or separate the components of the Software;
 - (b) Copy or provide any third party with access to or use of any of the Documentation without the prior written consent of Contractor;
 - (c) Transfer any of County's rights or obligations under this Agreement without the express, advance, written consent of an officer of Contractor, and then only if:
 - i. County keeps no copies of the Software or Documentation;
 - ii. County transfers County's entire rights and obligations under this Agreement in or to the Software and Documentation; and
 - iii. The transferee agrees in writing to the terms and conditions of this Agreement, after which time County shall no longer have the right to use the Software. Any attempted transfer or assignment of any of County's rights or obligations under this Agreement shall be null and void unless it is in full compliance with (2)(b), above;
 - (d) Remove any proprietary or copyright legend from any material contained in or on the Software or the Documentation;
 - (e) Publish or disclose to any third party any reports or the results of any benchmark tests run on the Software or its components; or
 - (f) Use any trademarks or service marks of Contractor.
- d. Limited Warranty and Limitation of Warranties
 - (1) Subject to the conditions and limitations set forth herein, Contractor warrants for a period set forth in **SECTION C. TERM**, immediately following the System Acceptance of the Software (the "Term") that the Software will substantially conform in all material respects to the documentation set forth in the Project Contract. Subject to the provisions and limitations set forth herein, Contractor will correct any such

nonconforming Software if County has notified Contractor of such nonconformity in writing within the Term. Contractor shall not be obligated to correct, cure or otherwise remedy any such nonconformity in the Software if County has not reported to Contractor the existence and nature of such nonconformity within the Term, and such nonconformity cannot be verified.

- (2) The limited warranty set forth in Section 7(d), above does not apply to any Software that has been repaired or modified by persons other than Contractor or its authorized agents, or that has been installed by County or any of its independent contractors other than Contractor. The foregoing warranty is conditioned upon the proper use of the Software in accordance with the terms and conditions of this Agreement and with Contractor's User Manual and any other written instructions provided by Contractor to County, and in an operating environment in compliance with the documentation and requirements as set forth in this Agreement. Contractor makes no warranty that the operation of the Software will be uninterrupted or error free, or that all Software defects will be corrected.
- (3) Contractor makes no warranty that the Software will operate with all applications, utilities, or other memory resident programs. If County wants to make a change to desktop computers that run myAvail, County is advised to contact Avail before any updates are made so Avail can verify the software will work with the updated OS.
- (4) Contractor shall not be responsible for any obsolescence of the Software for any reason. Furthermore, Contractor assumes no responsibility for the use of superseded, outdated or uncorrected versions of the Software.

e. Proprietary Protection and Restrictions

- (1) Contractor claims that the Software and Documentation is the sole property of Contractor and contains copyrighted, confidential and trade secret information, and that as between Contractor and County, Contractor shall have the sole and exclusive ownership of all right, title and interest in and to the Software and Documentation, (including ownership of all trade secrets, confidential information and copyrights pertaining thereto), subject only to the rights and privileges expressly granted to County herein by Contractor. County shall keep the Software and Documentation free and clear of all claims, liens and encumbrances of any nature whatsoever. County shall keep the Software and Documentation in confidence and shall take all reasonable measures necessary to protect and maintain the confidential and proprietary character of the Software and Documentation. Furthermore, County shall indemnify and hold Contractor harmless from and against all losses and damages resulting from any unauthorized or improper disclosure, dissemination or use of the Software as a result, in whole or in part, of County's action or inaction.
- (2) County hereby authorizes Contractor to enter County's premises in order to inspect the Software in any reasonable manner during regular business hours to verify County's compliance with the terms of this Agreement. County shall cooperate fully with Contractor and promptly provide Contractor and its agents with full access to its facilities, and shall engage in no acts or omissions to hinder or delay Contractor's access to County's premises and computers or the inspection thereof.

f. Agreement Services provided by Contractor include:

- (1) Traditional and Warranty and Support Plan to Ensure System Reliability
 - a. Includes standard phone, email, and remote debugging support; and
 - b. Access to training documents and video library.

(2) Software Updates. To keep County software current with the latest features:

- a. Includes software updates to latest release; and
- b. Includes training on new features and reports.

(3) Follow-up Adoption Support Training ("FAST").

To ensure Software is being adopted for maximum return on County's technology investment, Contractor shall provide the following:

- a. Include invitation to Contractor's Webinars
- b. Include annual onsite assessments; and
- c. Include invitation to Annual FAST user conference.

SECTION C. TERM: The term of this Agreement shall commence August 9, 2023 and shall continue through August 8, 2027 unless sooner terminated, as provided herein.

SECTION D. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for maintenance and support in a total not-to-exceed amount for the term of this Agreement in the amount of THREE HUNDRED SEVENTY-THREE THOUSAND FOUR HUNDRED SEVENTY-ONE AND 22/100 DOLLARS (\$373,471.22) which amount does not include applicable New Mexico gross receipts taxes ("NMGRT") or reimbursable travel expenses. County shall pay the maintenance and support fees annually in advance, beginning on the Effective Date of this Agreement and shall continue on the one (1) year anniversary and thereafter on each subsequent anniversary, unless terminated in writing by County at least ten (10) days in advance of the end of the then-current term. Maintenance and support fees through year five (5) are set forth in Exhibit A.
2. **Invoices.** Contractor shall submit itemized invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.
3. **Travel and Reimbursable Expenses.** County shall reimburse Contractor for any pre-approved reasonable out-of-pocket expenses deemed appropriate and as approved in writing by County's staff assigned to this project, including airfare, travel to and from County's site, lodging, meals and shipping, as may be necessary in connection with the duties performed under this Agreement by Contractor. Contractor shall quote travel expenses and County shall provide written approval prior to travel commencing. Appropriate expenses shall be limited to those incurred on site visits associated with the performance of this Agreement and as set forth in Exhibit A. Contractor shall submit requests for reimbursement to County. Such requests shall be accompanied by documentation substantiating the expense. Invoices for these expenses shall be presented to County by Contractor within fifteen (15) days of the end of the month. County shall pay these charges within thirty (30) days of the date of the invoice.

SECTION E. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION F. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents, or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position

title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty, or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely, and reliable manner.

SECTION G. MODIFICATION OF CONTRACT AND CHANGE ORDERS: This Agreement shall be modified only by mutual written consent of the parties. County may at any time, as the need arises, order changes within the Services without invalidating this Agreement. If such changes increase or decrease the costs of the Services within the not-to-exceed compensation amount provided herein, or the time required for completion of the Services, then an equitable adjustment to the amount of compensation due and/or times for completion of the Services shall be authorized by the *Change Order* as mutually agreed to by County and Contractor. Only the County Manager shall have authority to authorize such Change Orders on behalf of the County under this Agreement. If such changes increase the costs of the Services beyond the not-to-exceed compensation amount provided herein, such an increase must be approved and authorized by an Amendment to this Agreement, which shall require approval by County Council

SECTION H. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and shall maintain the personnel, experience, and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION I. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables, or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent, or other property right, and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

SECTION J. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary, or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend, and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION K. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services, and Contractor shall not provide any Services under this

Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance, or other evidence acceptable to County, stating that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
4. **Professional Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00). Professional Liability Insurance shall provide coverage for Services provided hereunder during the term of this Agreement and for a period of at least five (5) years thereafter.
5. **Cyber Insurance:** In addition to insurance required under the Agreement, Contractor shall, at its sole cost and expense, procure and maintain through the term of the Agreement and for two (2) years following the termination or expiration of the Agreement, cyber/network privacy insurance with limits of THREE MILLION DOLLARS (\$3,000,000) per claim/in aggregate. Such policy shall provide coverage for disclosures and/or breaches of County Data arising out of or relating to Contractor's Services. Such policy shall also include coverage for the costs associated with restoring lost or damaged County Data, sending breach notifications to affected individuals, public relations expenses, fines, and penalties. Such policy shall not contain exclusions for the acts or omissions of either Contractor, County, or their respective employees, agents, subcontractors, or volunteers, whether intentional or unintentional, resulting in or relating to any use of County Data not expressly permitted by this Agreement. Contractor must notify County at least thirty (30) days prior to the cancellation or modification of such policy.

SECTION L. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION M. DUTY TO ABIDE: Contractor shall abide by all applicable federal, state, and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement.

SECTION N. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability, or veteran status.

SECTION O. CHOICE OF LAW: The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

SECTION P: VENUE, FORUM NON-CONVENIENS, EXCLUSIVE STATE JURISDICTION: County and Contractor knowingly, voluntarily, intentionally, and irrevocably agree that any and all legal proceedings related to this Agreement, or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated, filed, tried, and maintained in the First Judicial Circuit of the State of New Mexico. County and Contractor each expressly and irrevocably waive any right otherwise provided by any applicable law to remove the matter to any other state or federal venue, consents to the jurisdiction of the First Judicial Circuit of the State of New Mexico in any such legal proceeding, waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. County and Contractor also agree that this term is a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this term with legal counsel.

SECTION Q: WAIVER OF JURY TRIAL: In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or, relating to this Agreement, or the transaction contemplated by this Agreement, County and Contractor KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL, and agree that a court shall determine and adjudicate all issues of law and fact with a jury trial being expressly waived. County and Contractor also agree that this waiver of a jury trial was a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this jury waiver with legal counsel.

SECTION R. INDEMNITY: Contractor shall indemnify, defend, and hold harmless County, its Council members, employees, agents, and representatives, from and against all liability, claims, demands, actions (legal or equitable), damages, losses, costs, or expenses, including attorney fees, of any kind or nature, to the extent that the liability, claims, demands, actions, damages, losses, costs, and expenses are caused by, or arise out of, the acts or omissions of the Contractor or Contractor's officers, employees, agents representatives, and subcontractors in the performance or breach of the Services under this Agreement.

If a third-party claims that the Software or Documentation infringes any patent, copyright, trade secret, or any similar intellectual property right, Contractor shall defend County against such claim at Contractor's expense and shall pay all damages that a court finally awards, provided that County promptly notifies Contractor in writing of the claim, cooperates fully with Contractor in the defense of any such claims, and allows Contractor to control the defense thereof and/or any related settlement negotiations. If such a claim is made or appears possible, Contractor shall, at its option and expense, either: (i) procure for County the right to continue using the Software and/or Documentation; (ii) replace or modify the Software or Documentation so that it becomes non-infringing; or, (iii) if it is not possible or in Contractor's sole discretion is not economically feasible for Contractor to so procure such right or so replace or modify the Software, require the return of the Software and upon such return repay to County the unused portion of the applicable license fee amortized over a 3 year period from the Effective Date and any annual technical support fees paid by County for the remainder of the then current Term for such technical support services. However, Contractor shall have no obligation for any claim based on County's modification of the Software or Documentation or its combination, operation or use with any product, data or apparatus not specified or provided by Contractor. THIS PARAGRAPH STATES CONTRACTOR'S ENTIRE OBLIGATION TO COUNTY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

Except with respect to the obligations of Contractor, in no event shall Contractor's liability for any reason and upon any cause of action under the software license Agreement exceed the maintenance and support fees paid by County to Contractor.

THE CUMULATIVE LIABILITY OF CONTRACTOR TO COUNTY FOR ALL CLAIMS RELATING TO THE SOFTWARE AND THIS AGREEMENT, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO CONTRACTOR HEREUNDER. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. CONTRACTOR SHALL HAVE NO LIABILITY FOR LOSS OF DATA OR DOCUMENTATION, IT BEING UNDERSTOOD THAT COUNTY IS RESPONSIBLE FOR REASONABLE BACKUP PRECAUTIONS.

IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY LOSS OF PROFITS; ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES; OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST COUNTY OR ANY THIRD PARTY, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

Contractor and County do not rely on and shall have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

SECTION S. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION T. NON-ASSIGNMENT: Neither party may assign this Agreement or any privileges or obligations herein, and shall not novate this Agreement to another without the prior written consent of the other party.

SECTION U. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION V. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept, or agree to accept, a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION W. TERMINATION:

1. **Generally.** The County Manager may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be

paid for Services completed to the satisfaction of County at the rate set out in Section D above. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.

2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.
3. All provisions relating to confidentiality, proprietary rights, nondisclosure, indemnity and limitations of liability shall survive the termination of this Agreement for a period of at least six years (statute of limitations for civil cases in New Mexico).
4. In the event of default by the Contractor, County shall be entitled to a prorated refund of the fees paid to Contractor under this Agreement because Contractor:
 - a. Materially breaches this Agreement and fails to cure such breach within thirty (30) days after notice from County;
 - b. Delivers a notice that the software has been declared obsolete or withdrawn from sale; and
 - c. Otherwise discontinues providing standard level of support for the myAvail software suite:
 - i. Contractor shall refund to County an amount equal to the aggregate support charges paid by County for the time during which the standard level of support services was not provided to County.

SECTION X. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:
Transit Manager
Incorporated County of Los Alamos
101 Camino Entrada, Building 1
Los Alamos, New Mexico 87544

Contractor:
Contracts
Avail Technologies, Inc.
1960 Old Gatesburg Road, Suite 200
State College, Pennsylvania 16803

With a copy to:
County Attorney's Office
1000 Central Avenue, Suite 350
Los Alamos, New Mexico 87544

SECTION Y. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein, and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both authorized representatives of County and Contractor. In the event of any conflict between the terms, conditions, and provisions of this Agreement, and the terms, conditions and provisions of any exhibits or attachments, the terms, conditions and provisions of this Agreement shall control and take precedence.

SECTION Z. NO IMPLIED WAIVERS: The failure of County to enforce any provision of this Agreement is not a waiver by County of the provisions, or of the right thereafter, to enforce any provision(s).

SECTION AA. SEVERABILITY: If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language and purpose of the Agreement enforceable; and (ii) all other provisions of this Agreement shall remain in effect so long as the substantive purpose of the Agreement is possible.

SECTION AB. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form is attached as Exhibit C. Contractor must submit this form with this Agreement, if applicable.

SECTION AC. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES: Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

SECTION AD. DUPLICATE ORIGINAL DOCUMENTS: This document may be executed in two (2) counterparts, each of which shall be deemed an original.

SECTION AE. CONFIDENTIAL INFORMATION: Any confidential information of one party that is provided to the other party during the term of this Agreement shall be kept confidential and shall not be made available to any individual or organization in accordance with the Confidential Information Disclosure Statement in Exhibit D. The Confidential Information Disclosure Statement shall be completed by Contractor as a condition precedent and submitted as part of this Agreement. Its terms shall govern as if fully set forth herein.

Confidentiality

- A. "Contractor Confidential Information" is hereby designated as "trade secrets" and is defined as the following:
- I. Any information or data in the form of specifications, technical information or otherwise furnished to County under this Agreement;
 - II. The business or technical information of Contractor, including but not limited to any information relating to Contractor's product plans, designs, costs, finances, marketing plans, business opportunities, personnel, research, development or know-how; and
 - III. Any other information reasonably and appropriately designated in writing by Contractor as "trade secret" which, under the circumstances taken as a whole, would reasonably be deemed to be confidential under applicable law.
- B. Contractor Confidential Information shall not include information that:
- I. Is in or enters the public domain without County's breach of the Agreement;
 - II. County receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or
 - III. County develops independently, which it can demonstrate was independently derived, with testimony or written evidence.
- C. County agrees to take all measures reasonably required to maintain the confidentiality of all Contractor Confidential Information in its possession or control, which will in no event be less than the measures County uses to maintain the confidentiality of its own information of equal importance. County shall only use Contractor Confidential Information disclosed in connection with this Agreement solely to exercise its rights and perform its obligations under

the Agreement.

- D. County shall inform its employees of their confidentiality obligations regarding the Licensed Program and any other Contractor Confidential Information. Further, County shall ensure that contract employees (including temporary employees) of County agree to confidentiality obligations similar to those of this Agreement.
- E. In the event of a third-party challenge to the Contractor Confidential Information, Contractor shall provide County with any evidence deemed necessary to successfully defend the legal challenge and establish that the Contractor Confidential Information meets the criteria.

SECTION AF. EXPORT AND GOVERNMENT USE RESTRICTIONS: This Agreement is subject to Exhibit E, Federal Clauses and Federal Certifications. County shall not export or re-export the Software or any part thereof, (the foregoing is referred to as the "Restricted Components"), to any country, person or entity subject to United States export restrictions. Furthermore, County shall comply with all of the export and re-export restrictions and regulations imposed by the governments of the United States and/or any country to which the Software is shipped. Use, duplication or disclosure by the government is subject to restrictions as set forth in DFARS 252.227-7013 or the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19. The terms of this Section shall survive the termination or expiration of this Agreement.

SECTION AG. INCORPORATION OF OTHER SOFTWARE: The Software may incorporate material or components which are owned by third parties, and which are used by Agreement between Contractor and such third parties.

SECTION AH. NO THIRD-PARTY RIGHTS: Except as otherwise expressly provided herein, the representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

SECTION AI. DATA OWNERSHIP: County shall use reasonable efforts with respect to the accuracy and quality of County data provided to Contractor in the creation of County's account. With respect to County's obligation to the changing and updating of data, County is required to use reasonable efforts.

County shall retain full ownership of County Data and the resulting output of any processing of such data in Contractor's system. Contractor is required to provide County with access to its data at any time notwithstanding the existence of any dispute that may arise under this Agreement.

Contractor is obligated to protect the security and confidentiality of County's data and is prohibited from accessing this data except for the express purpose of reasonably performing the requirements of this Agreement. Contractor shall implement and maintain appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access, disclosure, or theft of County Data.

County retains the right to access and retrieve this data stored in a usable format on Contractor's system at its sole discretion.

Regardless of the reason(s) for the termination of this Agreement, upon termination, Contractor shall securely deliver all County Data to County in a mutually agreed upon format. Contractor shall (at its sole cost) return, delete, or destroy all of the County Data then in its possession or under its control no later than thirty (30) days after the termination of this Agreement. Contractor shall notify County when all of the County Data has been returned, deleted or destroyed. This

provision shall not apply to County Data which is a part of the public domain or Contractor is required to maintain by law, but only for the time period required.

SECTION AJ. DATA BREACH NOTIFICATIONS: Contractor shall comply with all applicable laws governing the notification of individuals in the event of an unauthorized release of County Data. In the event of a data breach, Contractor shall notify County in writing within twenty-four (24) hours after Contractor's discovery of any unauthorized access of County Data or Contractor becomes reasonably certain that such unauthorized access has occurred, and to coordinate with County to inform all effected individuals in accordance with applicable laws.

SECTION AK. NEGOTIATED TERMS: This Agreement reflects negotiated terms between the parties, and each party has participated in the preparation of this Agreement with the opportunity to be represented by counsel, such that neither party shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
STEVEN LYNNE **DATE**
COUNTY MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

AVAIL TECHNOLOGIES, INC. A PENNSYLVANIA
CORPORATION

BY: _____
NAME: _____ **DATE**
TITLE: _____

Exhibit A
Compensation Rate Schedule
AGR23-921

The following table outlines the costs for each plan and savings being offered in each plan. Please make your election below by checking one of the plans that the County will be moving forward with.

Period of Support	Annual Price w/ Five-Year Contract
Year 1 Support	\$ 69,859.29
Year 2 Support	\$ 72,304.37
Year 3 Support	\$ 74,835.02
Year 4 Support	\$ 77,080.07
Year 5 Support	\$ 79,392.47
Total Price	\$373,471.22
Savings Compared to Annual Contract	\$ 12,545.46
Discount	3%

Travel Reimbursement:

Contractor's travel expenses shall be charged at actual cost. Copies of all travel expenses must accompany invoices submitted to County and shall only include the following:

1. The most economical means of transportation shall be used, commercial airlines coach fare rates;
2. Business-related tolls and parking fees;
3. Rental car, taxi service or shuttle services;
4. Mileage shall be reimbursed at the standard mileage rate for business miles driven as established from time to time by the Internal Revenue Service;
5. Hotel or motel lodging;
6. Meals, per Los Alamos County Travel Policy, currently \$60.00 per diem daily;
7. Internet connectivity charges; and
8. Any other reasonable costs directly associated with conducting business with County.
9. If reimbursement for lodging or airfare is sought and no receipt is furnished by Contractor showing the actual cost, the travel expense shall be deemed unreasonable and unreimbursable.

Travel Expenses not allowed are as follows:

1. Entertainment; in-room movies, games, etc. and
2. Alcoholic beverages, mini bar refreshments or tobacco products.

Exhibit B
Maintenance and Support Plan
AGR23-921

Plan	Description
Standard Business and Extended Hours <input checked="" type="checkbox"/>	<ul style="list-style-type: none"> • Routine Care and Urgent Care are provided during standard business hours. • If needed for a non-covered item, Time and Material charge mechanism must be in place <u>before</u> work will commence • Urgent Care response 24/7 access to the AVAIL Support Team which includes Standard Business Hours Support and all NON-business hours of coverage to support Urgent Care needs. • A customer support line to contact the on-duty support engineer at AVAIL. • The continuation of Urgent Care resolution after Standard Business Hours.
Hosted System <input checked="" type="checkbox"/>	<ul style="list-style-type: none"> • Includes all features of Standard Business Hour Support and Extended Hours Support • AVAIL operates and maintains the fixed end computer system in our dedicated data center operation • AVAIL connects to your high-speed communications interface provider • AVAIL maintains system backup services and operational system redundancy • Includes system hardware maintenance and software release maintenance and upgrades • AVAIL provides the staff for operation and maintenance of the computer system at the hosted location

PROBLEM RESOLUTION STANDARDS

PRIORITY	DEFINITION
Low	A nuisance issue which is not causing a significant impact on system performance or interfering with the work of the customer.
Medium	A support ticket that does not have a significant impact on system performance or interfering with the work of the customer.
High	A support ticket that has a significant impact on the system performance and/or which has a significant impact on the customer and/or is public facing.
Critical	System outage

Priority Level	Normal Business Hours		Outside Business Hours	
	Response Time	Resolution Time	Response Time	Resolution Time
Critical	15 minutes	2 hours	1 hour	4 hours
High	2 hours	1 business day	4 hours	1 business day
Medium	1 business day	5 business days	1 business day	5 business days
Low	1 business day	10 business days	1 business day	10 business days

****These resolution standards do not include RMA's or product enhancement requests**

Reporting Process:

1. Critical or Urgent issues such as an outage should be reported via phone:
 - 814-234-3394 ext.1050
2. Outside normal business hours (7 am to 8 pm Eastern Time)
 - 814-234-3394 x1050, then press 1
3. RMA Requests, Low/Medium priority issues can be submitted via customer portal, email or phone as follows:
 - i. Portal – <https://www.availtecportal.com>
 - ii. Email – support@availtec.com
 - iii. Phone 814-234-3394 ext. 1050
4. If no answer at the Call Center, be sure to leave caller name, property name and contact phone number, description of problem.

Standard Business Hours

Monday through Friday - 7:30 a.m. to 7:30 p.m. EST

The following National Holidays are excluded:

New Years Day

President's Day

Memorial Day

July 4th

Labor Day

Thanksgiving Day and Day after

Christmas Day

Note: If the Holiday falls on a Saturday, Contractor is closed on the preceding Friday.

If a Holiday falls on a Sunday, Contractor is closed on the following Monday.

Workflow

Upon receipt of an issue, Contractor support staff shall begin documentation of the issue. The documentation shall record all pertinent information that has been received either by telephone or email. Following completion of the gathering of information regarding the problem, Contractor's support staff shall categorize the issue and communicate the target action back to County.

Once a problem has been identified, Contractor's support staff shall work with Contractor or third-party engineering staff to determine an appropriate solution timeframe. Once the solution has been tested and proven viable, Contractor's support staff will contact County to make arrangements for implementation. In the event the solution cannot be tested and implemented within the timeframe that was initially communicated to County, Contractor's support staff will attempt to implement a workaround for County while pursuing resolution. In all cases, Contractor shall attempt to minimize the amount of time necessary to resolve the issue.

If Contractor's personnel cannot recreate the problem in the lab configuration, additional information may be required from County. This may include but is not limited to screen shots in .bmp or .jpg format and/or retrieval of files from the affected software.

Contractor shall endeavor to resolve any system problems remotely through use of a Virtual Private Network (VPN). If Contractor and County deem it necessary to travel to County's premises to resolve the problem, the on- site engineering /technical support services are included in this Agreement. The cost for the travel and living expenses shall be agreed upon in advance between Contractor and County. The engineering / technical support services rendered shall be billed to County if it is determined while on site that the problem resolution was not due to Contractor's inability to re-create and resolve the problem remotely.

Exhibit C
CAMPAIGN CONTRIBUTION DISCLOSURE FORM
AGR23-921

Any prospective contractor seeking to enter into a contract with the Incorporated County of Los Alamos must file this form disclosing whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official during the two (2) years prior to the date on which prospective contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date prospective contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds TWO HUNDRED FIFTY DOLLARS (\$250.00) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other things of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family member” means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:
(a) a prospective contractor, if the prospective contractor is a natural person; or
(b) an owner of a prospective contractor.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a ☐ member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS: (Report any applicable contributions made to the following - COUNTY COUNCILORS: Theresa Cull; Denise Derkacs; Melanee Hand; Susie Havemann; Keith Lepsch; David Reagor; and Randal Ryti.)

Contribution Made By:			
Relation to Prospective Contractor:			
Name of Applicable Public Official:			
Contribution(s) Date(s)	Contribution Amount(s):	Nature of Contribution(s):	Purpose of Contribution(s):
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Please check the box next to the applicable statement.

<input type="checkbox"/>	CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, a family member or representative, and I have disclosed those contributions.
<input type="checkbox"/>	NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (position)

Exhibit D
Confidential Information Disclosure Statement
AGR23-921

The Incorporated County of Los Alamos is a governmental entity subject to certain disclosure laws including, but not limited to, the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1, et seq. Nothing in this Agreement is intended to diminish or expand the application of any applicable disclosure laws to any proprietary or confidential information.

This Confidential Information Disclosure Statement ("Statement") defines obligations and waivers related to Confidential Information disclosed pursuant to the above referenced Agreement between County and Contractor. County and Contractor agree to the following:

1. Statement Coordinator – Each party designates the following person as its Statement Coordinator for coordinating the disclosure or receipt of Confidential Information:

Contractor: Avail Technologies, Inc.
Nathan Byrd,
1960 Old Gatesburg Road, Suite 200
State College, Pennsylvania 16803
Email: nbryd@availtec.com

County: Transit Manager
101 Camino Entrada, Building 1
Los Alamos, New Mexico 87544

2. Definitions:

- a) **Confidential Information** - any form of information, in any format, disclosed by the Discloser to the Recipient and identified in writing as confidential.
- b) **Discloser** - the party disclosing Confidential Information.
- c) **Exception** – An exception is satisfied if the Confidential Information disclosed: (i) was in Recipient's possession prior to receipt from Discloser, (ii) is publicly known or readily ascertainable by legal means, (iii) is lawfully received by Recipient from a third party without a duty of confidentiality, (iv) is disclosed by Discloser to a third party without a duty of confidentiality on the third party, (v) is independently developed or learned by Recipient, or (vi) is disclosed by Recipient with Discloser's prior written approval.
- d) **Recipient** – the party receiving Confidential Information.

3. Obligations – Recipient shall protect and ensure its participating subcontractors, agents, or associates shall protect all Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Recipient uses to protect its own information of a like nature. If any person or entity requests or demands, by subpoena or otherwise, all or any portion of the Confidential Information provided by one party to another, the party receiving such request shall immediately notify the Discloser of such request or demand. The party receiving the request or demand shall independently determine whether the information sought is subject to disclosure under applicable law including the New Mexico Inspection of Public Records Act. If the party receiving the request or demand determines that the information is subject to disclosure, it shall notify the Discloser of its intent to permit the disclosure with sufficient time to permit the Discloser to invoke the jurisdiction of an appropriate court or administrative body to raise any legitimate objections or defenses it may have to the disclosure. In the absence of an appropriate order prohibiting the disclosure, the party receiving the request or demand shall permit and proceed with the disclosure without incurring any duty, obligation or liability to the Discloser.

Exhibit E
FEDERAL CLAUSES
AGR23-921

PROJECT NO: 2023 AVAIL WARRANTY AND MAINTENANCE AGREEMENT

Federal Transit Administration Required Clauses
(where applicable)

If an item on the following table is marked “**All**,” it is a required clause for any purchases exceeding the federal micro-purchase threshold. If applicable, the corresponding certification must be completed and submitted with the bid or proposal in order to be determined “responsive.” **Please check items that apply and are included.**

√	Sec.	Contract Clause	Applicability to Type of Contract
√	1.	No Government Obligation to Third Party	Value > \$10K
√	2.	Program Fraud and False or Fraudulent Statements or Related Acts	Value > \$10K
√	3.	Access to Records	Value > \$10K
√	4.	Federal Changes	Value > \$10K
√	5.	Civil Rights (includes EEO requirements for construction projects)	Value > \$10K
√	6.	Disadvantaged Business Enterprise (DBE)	Value > \$10K
√	7.	Incorporation of FTA Terms	Value > \$10K
√	8.	Energy Conservation	Value > \$10K
√	9.	Termination	Value > \$10K
	10.	Seat Belt Use	Value > \$10,000
	11.	Distracted Driving	Value > \$10,000
√	12.	Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment	Value > \$10K for telecommunications and video surveillance services or equipment
√	13.	Governmentwide Debarment and Suspension	Value > \$25K
√	14.	Notification Related to Fraud, Waste, Abuse or Other Legal Matters	Value > \$25K
√	15.	Lobbying Restrictions	Value > \$100K
√	16.	Buy America	Value > \$150 K for Construction, Iron, Steel, Manufactured Products, Rolling Stock

√	Sec.	Contract Clause	Applicability to Type of Contract
√	17.	Clean Air	Value > \$150K
√	18.	Clean Water	Value > \$150K
√	19.	Breaches and Disputes	Value > \$250K
	20.	Cargo Preference	Equipment, Material, Commodities Transported by Ocean Vessel
	21.	Fly America requirements	When Transportation Paid by FTA Funds for foreign transport or travel by air
	22.	Davis-Bacon and Copeland Anti-Kickback Acts	Construction > \$2,000
	23.	Contract Work Hours and Safety Standards Act	Involve employment of mechanics or laborers > \$100,000
	24.	Bonding Requirements	Construction > \$250K and at Discretion for Others
	25.	Veterans Preference	Construction
	26.	Seismic Safety	New Building Construction/Additions
	27.	Transit Employee Protective Arrangements	Transit Operations
	28.	Charter Bus and School Bus Requirements	Operational Service
	29.	Substance Abuse	Operational Service (safety sensitive)
	30.	Patent and Rights in Data	Research Projects only
	31.	Recycled Products	Value > \$10K in Fiscal Year
	32.	Accessibility	Revenue Rolling Stock or Facility Construction / Renovation Projects only
	33.	Bus Testing	Revenue Rolling Stock (Buses and Modified Vans)
	34.	Pre-Award and Post-Delivery Requirements	Revenue Rolling Stock

Federal Transit Administration Required Certifications

√	Certification	Applicability to Type of Contract
√	Lobbying	>\$100,000
√	Buy America Iron, Steel, Manufactured Products, including Construction	>\$150,000
	Buy America Rolling Stock	>\$150,000
	Disadvantaged Business Enterprise Transit Vehicle Manufacturer	Revenue Rolling Stock

FEDERAL CLAUSES

(where applicable)

1. No Government Obligation to Third Parties

a. PURCHASER and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to PURCHASER, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

b. 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 or Related Acts.

a. 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.

b. 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. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) or other applicable federal law on the CONTRACTOR, to the extent the Federal Government deems appropriate.

c. 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

The CONTRACTOR agrees to provide PURCHASER, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. In accordance with 2 CFR 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

4. Federal Changes

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 Department of Transportation, Federal Transit Administration, Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. The CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

5. Civil Rights

The following requirements apply to the underlying contract:

a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(i) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

(ii) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

(iii) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

c. 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. Disadvantaged Business Enterprises

a. It is the policy of the Department of Transportation and PURCHASER that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this contract. Consequently, the DBE requirement of 49 C.F.R. applies to this contract.

b. The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, natural 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 recipient deems appropriate.

c. The CONTRACTOR agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from PURCHASER. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the PURCHASER. This clause applies to both DBE and non-DBE subcontractors.

d. The CONTRACTOR or its subcontractors agrees to ensure that DBEs as defined in 49 C.F.R. have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or part with federal funds provided under this contract. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform under this contract. Contractors shall not discriminate on the basis of race, creed, color, age, sex or national origin in the award and performance of DOT-assisted contracts.

e. DBEs will be encouraged and afforded full opportunity to actively solicit information concerning this project and to submit bids and or proposals.

7. Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220, 2 CFR 200.318, and subsequent revisions 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 PURCHASER request, which would cause PURCHASER to be in violation of the FTA terms and conditions.

8. Energy Conservation

The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*

9. Termination

a. Termination for Convenience: PURCHASER may terminate this contract, in whole or in part, at any time by written notice to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to PURCHASER to be paid the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to PURCHASER, the CONTRACTOR will account for the same, and dispose of it in the manner PURCHASER directs.

b. Termination for Cause: If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, PURCHASER may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by PURCHASER that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or beyond the control of the CONTRACTOR, PURCHASER, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure: PURCHASER in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR ten (10) business days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the CONTRACTOR fails to remedy to PURCHASER's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by CONTRACTOR of written notice from PURCHASER setting forth the nature of said breach or default, PURCHASER shall have the right to terminate the Contract without any further obligation to the CONTRACTOR. Any such termination for default shall not in any way operate to preclude PURCHASER from also pursuing all available remedies against the CONTRACTOR and its sureties for said breach or default.

10. Seat Belt Use – Not Applicable

11. Safe Operation of Motor Vehicles – Not Applicable

12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

[Public Law 115-232](#), section 889, prohibits entering into a contract (or extending or renewing a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any

system. Covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

13. Governmentwide Debarment and Suspension

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

The certification in this clause is a material representation of fact relied upon by PURCHASER. If it is later determined that the bidder or offeror knowingly rendered an erroneous certification, in addition to remedies available to PURCHASER, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or offeror agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or offeror further agrees to include a provision requiring such compliance in its lower tier covered transactions.

14. Notification Related to Fraud, Waste, Abuse, or Other Legal Matters

If a current or prospective legal matter that may affect the Federal Government emerges, the CONTRACTOR must promptly notify PURCHASER so that it can notify the Federal Government. 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. 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.

The CONTRACTOR agrees to include a similar notification requirement in subcontracts exceeding \$25,000 financed in whole or in part with federal assistance provided by FTA and must require each subcontractor to include an equivalent provision in its federally assisted subcontracts exceeding \$25,000.

15. Lobbying Restrictions

The CONTRACTOR agrees to:

a. Refrain from using Federal assistance funds to support lobbying,

- b. Comply and assure the compliance of each SUBCONTRACTOR at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
- c. Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

16. Buy America

The CONTRACTOR agrees to comply with 49 U.S.C. §5323(j) and 49 C.F.R. Part 661 which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. §661.7, and includes microcomputer equipment, software, and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 70 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

17. Clean Air

- a. 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 through 7671q. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

18. Clean Water

- a. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§1251 through 1377. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

19. Breaches and Disputes

- a. Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of PURCHASER. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the CONTRACTOR mails or otherwise furnishes a written appeal to PURCHASER. 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 PURCHASER shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.

b. Performance During Dispute - Unless otherwise directed by PURCHASER, CONTRACTOR shall continue performance under this Contract while matters in dispute are being resolved.

c. 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 his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

d. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between PURCHASER and the CONTRACTOR arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of West Virginia or Ohio as applicable.

e. 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 PURCHASER, Architect 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.

FEDERAL CERTIFICATIONS

(where applicable)

Lobbying Certification

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 subcontracts. 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

**BUY AMERICA CERTIFICATION FOR COMPLIANCE WITH BUY AMERICA
REQUIREMENTS FOR STEEL, IRON, OR MANUFACTURED PRODUCTS**

The Bidder/Proposer hereby certifies that it will comply with the requirements of Title 49 USC § 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature of Authorized Official _____

Company _____

Name _____

Title _____

**BUY AMERICA CERTIFICATION FOR NON-COMPLIANCE WITH BUY AMERICA
REQUIREMENTS FOR STEEL, IRON, OR MANUFACTURED PRODUCTS**

The Bidder/Proposer hereby certifies that it cannot comply with the requirements of Title 49 USC § 5323(j), but it may qualify for an exception pursuant to Title 49 USC § 5323(j)(2) as amended and the applicable regulations in 49 CFR 661.7.

Date _____

Signature of Authorized Official _____

Company _____

Name _____

Title _____