LOGISTICS MANAGEMENT SYSTEM AGREEMENT
between the CITY OF COLUMBIA
and
NATIVE ROCK, INC.

This Agreement ("Agreement") is made effective as of the date of signing by the party last executing this Agreement ("Effective Date") by and between **Native Rock, Inc.,** ("Native Rock"), and **The City of Columbia, Missouri (for Colt Transload),** Columbia, Missouri ("Licensee").

WHEREAS, Native Rock has developed certain proprietary software, documentation and related materials and services for a Warehouse Management system, and Electronic Data Interchange capabilities (referred to in this Agreement as the "Software", and described in Exhibit A);

WHEREAS, Licensee desires to access and use the Software, and further desires technical services related to such access and use;

WHEREAS, Native Rock agrees to permit Licensee and the legal entities operating the Sites listed in Exhibit A (each such entity, an "Affiliate"), to access and use the Software and to provide certain implementation, hosting, support and other technical services to Licensee and its Affiliates under the terms and conditions of this Agreement; and

WHEREAS, Native Rock and the Licensee agree that the license to access and use the Software granted by Native Rock under the terms and conditions of this Agreement is restricted to the Licensee and the Affiliates only as described in Exhibit A, and does not grant any rights to any assignee or other party.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements and promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Native Rock and Licensee each hereby agree as set forth in this Agreement.

1.   <u>License.</u>

A.   Grant. Native Rock hereby grants to Licensee, and Licensee hereby accepts from Native Rock, a limited, non-exclusive, royalty-free, nontransferable license authorizing Licensee through individual Users, to access and use the Hosted System (as defined in Exhibit A) from the Sites solely in connection with the operation of the business of Licensee. "Sites" means the particular physical locations designated by Licensee from time to time for its communications and hardware to be used to access the Software, as listed in Exhibit A. "User" means a person, or organization employed or engaged by Licensee who is issued an

1

individual user identification and password by Native Rock at the request of Licensee. A User's identification and password cannot be transferred. As used herein, "Services" means, collectively, Native Rock's hosting of the Hosted System and Software at Native Rock's data center, its performance of maintenance and support services, any installation or implementation or development services of Native Rock hereunder, the making available and accessible of the Hosted System to Licensee and the Users via the Internet, and any other tasks, activities, and services that Native Rock is to provide pursuant to the terms of this Agreement.

B.   Scope.   This Agreement will apply only to products specifically mentioned as part of this agreement. Native Rock does not grant Licensee the right to use its trademarks and service marks under the terms and conditions of this Agreement. However, the Licensee may use or otherwise refer to such trademarks and service marks or any other Native Rock-approved descriptive phrase which is similar to or a derivative of any such marks, to the extent appropriate to identify Licensee's product distribution as employing the Software; provided, that any use or reference is accompanied by language acknowledging that such marks are the sole and exclusive property of Native Rock. The scope and functionality of the Services to be provided by Native Rock to Licensee are described at Exhibit A.

C.   Implementation.   Beginning on the Effective Date, Native Rock shall install and configure the Software and all hardware within its data center used to provide the Services ("Equipment") in a timely manner, shall develop all required Hosted System-sided interfaces, and shall make the Hosted System available on the Internet, with all functionalities described in Exhibit A, ready for access and use by Users. Not in limitation of any Service Levels (as hereinafter defined) in effect hereunder, and subject to Sections 9.B and 10.B below, Native Rock shall use commercially reasonable efforts to ensure the Software remains fully functioning and operational twenty-four (24) hours per day, seven (7) days per week during the Term of the Agreement.

D.   Training.   Native Rock agrees to provide such technical services as described in Exhibit A, including, among other things, the training of employees of Licensee with respect to the use of the Software in connection with the operation of the business of Licensee, necessary to enable Licensee and the Affiliates as listed in Exhibit A to use the Software.

E.   Know-How License Grant.   Native Rock hereby grants to the Licensee and the Affiliates as listed in Exhibit A a non-exclusive, nontransferable, royalty-free license, for the Term of this Agreement, to use Native Rock "Know-How" solely in connection with the operation of the Software and solely for its own internal business use and the internal business use of its Affiliates. In this Agreement, the term "Know-How" means any confidential, proprietary or trade secret information, technology or other process, instructions, information, skills and expertise of Native Rock related to the Software and its use (hereinafter "Know-How") owned by or in the possession of Native Rock, other than the Software, relating to the business of

2

Native Rock, or to the organization, implementation and/or operation of its logistics management services business, in any form, including written and electronic documents.

2. Term. The term of this Agreement shall commence as of the Effective Date and shall continue for a period of one (1) year thereafter – unless earlier terminated pursuant to the terms of this Agreement (the "Initial Term"). Thereafter, the Initial Term will be extended automatically for additional one-year terms unless terminated according to termination specifics contained in Section 18 'Termination".

3. Fees.

A. Licensee shall pay Native Rock the fees as stipulated in Exhibit B.

B. Other Fees. Licensee shall pay Native Rock a fee in connection with the use of the Software as provided on Exhibit B. Licensee shall promptly reimburse Native Rock, upon written request therefore, for any and all sales, use, license or other taxes, fees and assessments not based on income which arise out of the execution and performance of this Agreement.

C. Except for amounts disputed by Licensee in good faith, all fees are due and payable in U.S. dollars, thirty (30) days from date of invoice, unless otherwise provided in Exhibit B.

4. Facilities and Assets Required.

A. Communication and Computer Hardware. Licensee shall provide computer hardware in accordance with clause (i) below, which Native Rock represents is sufficient for accessing and using the Software in an effective manner. Licensee shall contract with a communications provider for providing access to the Software. All costs and expenses associated with such communication hardware and installation services and use fees shall be borne by Licensee.

(i) Hardware Requirements. A client computer with processor operating speed of 2 GHz minimum and 3 GB RAM minimum is also required. The System will run on Internet connections with a minimum download speed of 1 MBps. Any hand-held barcode scanners and/or printers used to operate the warehouse will be provided by the Licensee.

B. License to Licensee Software. During the Term, Native Rock is granted a non-exclusive, nontransferable, royalty-free license to use Licensee owned software for the sole purpose of providing access to and use of the Software, and providing technical services related thereto. The Licensee software shall remain the property of the Licensee. Native Rock shall not use any Licensee software for the benefit of any person or entity other than the Licensee without the prior written consent of Licensee, which may be withheld at Licensee's sole discretion. Except as

otherwise requested or approved by Licensee, Native Rock shall cease all use of Licensee software upon the end of the Term.

5.   Personnel.

A.   Native Rock Personnel Are Not Licensee Employees. All Native Rock personnel shall be and remain at all times during their assignment to the Licensee account, employees of Native Rock, or associated subcontractor, and not of Licensee. Native Rock, not Licensee, has the right and duty to supervise and direct the activities of such personnel, and determine the time spent by such personnel on the Licensee's account.

B.   Subcontractors. Native Rock shall have the right to use subcontractors to perform its obligations set forth in this Agreement; provided that, Native Rock shall be and remain fully responsible and liable for fulfilling all of Native Rock's obligations under this Agreement and for all acts and omissions of its subcontractors, and their respective employees and agents, regardless of the time, place or whether such acts and omissions are within the scope of employment or engagement. Prior to performing any Services, each such subcontractor of Native Rock shall execute a written confidentiality agreement with Native Rock that imposes obligations with respect to Licensee Information (as hereinafter defined) that are at least as restrictive as those set forth in this Agreement.

C.   No Solicitation. Neither party shall solicit the employment of, nor hire, any of the other party's employees, or its associated subcontractors or its Affiliates' employees, or its associated subcontractors, with whom such party had contact by virtue of this Agreement, during the Term of this Agreement and for a period of twelve (12) months thereafter. It shall not be a violation of this Section 5.C to solicit or hire through the use of search firms or general advertisements not targeting the other party's employees, Affiliates, or subcontractors.

6.   Confidentiality.

A.   Native Rock Related Property.

(i)   The Licensee acknowledges and agrees that the Software, Know-How and all derivatives of the Software ("Proprietary Information") are the exclusive property of Native Rock (except to the extent otherwise agreed in writing by the parties in a statement of work or similar document), and that Native Rock retains all right, title and interest to the Native Rock products and any derivative products and all intellectual property rights in those products. The Licensee agrees that the Software is confidential and proprietary to Native Rock and agrees to promptly execute all documents and cooperate with Native Rock as is reasonably necessary, at Native Rock's expense, to protect Native Rock's ownership and intellectual property rights in the Software and Know-How.

(ii)   The Licensee further agrees that the Software and Know-How shall not be used by Licensee except as described in this Agreement and shall not be disclosed to others except for incidental disclosures resulting from use of the Software as contemplated by this Agreement.   The Licensee hereby expressly represents and agrees that:

(1)   it is acquiring the limited right to use the Software and Know-How for its internal business operations and its Affiliates' internal business operations, and will not disclose, assign, sublicense, transfer, sell, duplicate, reverse engineer, disassemble, attempt to download, hack, acquire, lease, or convey the Software to any third party;

(2)   it will not modify or attempt to modify in any way the Software except with the written agreement of Native Rock; and

(3)   it will not attempt to access any other software, information or data maintained by Native Rock except as made available by Native Rock in connection herewith.

B.   Licensee Related Property.   Native Rock agrees that it will keep in confidence all information and data, which is provided to it under the terms of this Agreement by or on behalf of Licensee or any of its Affiliates, or to which Native Rock otherwise gains access in connection with its performance hereunder, including, but not limited to, any rate information, customer information, or other business or financial information, and any other data disclosed by Licensee or its Affiliates through their use of the Software ("Licensee Information"), and will not disclose any Licensee Information to any employee of Native Rock or to any third party, except on a need-to-know basis, in accordance with the express terms and conditions of this Agreement, and only to those employees and third parties who are under a written duty of confidentiality.   The Propriety Information and Licensee Information are each hereinafter referred to as the "Confidential Information" of a party.

C.   No Obligation If Lawfully Public.   The confidentiality obligations shall not apply to any particular information which the receiving party can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, it is lawfully published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it; or (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it.   The receiving party shall not be considered to have breached its obligations for disclosing Confidential Information of the other party as required to satisfy any legal requirement of a competent government body or to enforce its rights under this Agreement.

7.   Security.

A.   Safeguarding. Each party shall use the Confidential Information of the other party solely to the extent necessary to carry out its obligations or exercise its rights hereunder. Each party shall maintain environmental, safety and facility procedures, data security procedures, and other reasonable safeguards against the destruction, loss or alteration of each party's Confidential Information as described in Section 6 above, and Licensee Information (as described below) including, but not limited to, the Licensee's data. Such efforts shall be no less rigorous than those maintained by the other party for its own information of a similar nature.

B.   Computer Breaches. Each party shall at all times use industry standard practices to prevent security breaches in Native Rock's server interaction with Licensee and security breaches in Native Rock's server interaction with resources or users outside of any firewall that may be built into Native Rock's server. Each party shall notify the other party immediately in writing of any actual or suspected security breach. Each party shall defend, indemnify, and hold the other party's Indemnitees (as defined in Section 13 below) harmless from and against any costs or expenses incurred, or any losses or damages suffered, as a result of any security breach caused by negligence or misconduct, or that could have prevented by implementing appropriate operational, electronic, administrative and physical safeguards.

C.   Backup. Native Rock will use industry standard efforts to establish a backup security for Licensee Information in accordance with Exhibit C.

8.   Ownership of Software, Know-How and Licensee Information and Other.

A.   Software and Know-How. This Agreement does not convey to Licensee any proprietary or other ownership interest or other right in and to the Software, or any copyrights or other intellectual property rights therein or in the Know-How. Licensee acknowledges and agrees that the Software, Know-How and all related intellectual property rights are and shall remain the sole and exclusive property of Native Rock. Native Rock shall at all times during the Term, and thereafter, retain the full and unlimited rights, including copyrights to and ownership in and of, the Software, Know-How and all related intellectual property rights as made available to Licensee, and as modified, upgraded or enhanced throughout the Term except to the extent otherwise agreed in writing by the parties in a statement of work or similar document.

B.   Licensee Information.

(i)   Licensee Information shall be and shall remain the exclusive property of Licensee, and Licensee shall at all times retain all rights, title and

interest thereto. To the extent that Licensee shall request, at the end of any Term, Native Rock shall promptly return in an industry-standard format or destroy all copies of the Licensee Information in Native Rock's possession or under Native Rock control. Licensee Information shall not be utilized by Native Rock for any purpose other than as set forth under this Agreement. Licensee Information, in any form, shall not be sold, assigned, leased, or otherwise transferred to third parties by Native Rock or commercially exploited by or on behalf of Native Rock, without Licensee's prior consent.

9.   Maintenance and Support. Provided Licensee has paid to Native Rock all fees and expenses due and payable pursuant to the terms of this Agreement except for any amounts pursuant to Section 3.C, Native Rock shall correct failure of the Hosted System or the Software to perform without material error, and shall make available reasonable telephone support to resolve any difficulties in the operation of the Software. In consideration for the payment by Licensee to Native Rock of the monthly fee described in Exhibit B, Native Rock shall provide Licensee with Software support in accordance with Native Rock's support policy, of which a current version is outlined in Exhibit C (and which is subject to reasonable revision provided that any such revision does not result in a material decrease in Licensee's quality or level of support).

A.   Updates. Native Rock shall make available to Licensee, as part of the maintenance and support services, all new releases or new versions of, and all bug fixes and software patches to, the Software that are made generally available by Native Rock to its customers from time to time (collectively, "Updates"), without additional charge or fee to Licensee. Native Rock maintains the right to implement updates to the software at their own discretion and timeline. Native Rock will be solely responsible for the installation and configuration of all Updates. Native Rock will use commercially reasonable efforts to make these as transparent as possible to Licensee, its Affiliates and their Users, and will consult with Licensee regarding the best time to schedule any such Updates.

10.   Connectivity.

A.   Reasonable Steps.   Native Rock shall maintain a continuously available communications link with Native Rock servers and the Internet for Licensee access to the Software in accordance with the Service Level Agreement (Exhibit C). Licensee communications link from their computers and Users to the Internet is responsibility of Licensee. The parties nevertheless expressly recognize that such communications links are dependent on third parties and as such, are subject to failure and that the server, including internet servers and links, are susceptible to crashes and downtime.

B.   Suspension.   Native Rock may, at its own discretion, temporarily suspend all Services to Licensee for the purpose of repair, maintenance or improvement of any Native Rock systems. Native Rock shall, however, provide

prior notice except where such notice is impossible to give under the circumstances and Native Rock shall restore the Services as reasonably practicable. In addition, should the Software be unavailable for more than 24 consecutive hours in any month, Licensee shall be entitled to a refund equal to $350 per day, for the duration of each such occurrence. The total amount of the refund for any month shall not exceed the total amount of Native Rock's billable charges for service for that month.

11. Restrictions and Covenants of Licensee.

    A.   Licensee agrees that it will not:

    (i)   sell, lease, license, transfer, sublicense, encumber or otherwise deal with any portion of the Software or Know-How other than in accordance with the terms and conditions of this Agreement;

    (ii)   decompile, disassemble or reverse engineer, hack or flame any portion of the Software;

    (iii)   write or develop, or arrange to have any other person or entity write or develop, any software derivative of the Software or having the look and feel or function of the Software without prior written consent of Native Rock; or

    (iv)   provide, disclose, divulge or make available to or permit use of the Software, Know-How or any Confidential Information of Native Rock to or by persons other than Licensee's employees or Licensee's contractors or agents or its Affiliates' employees or its Affiliates' contractors or agents without the prior written consent of Native Rock.

    B.   Each party agrees that it will:

    (i)   advise those employees, contractors and agents (including, without limitation, subcontractors) of such party who are provided access to the Software, Confidential Information or Know-How of the other party of their respective obligations with respect thereto and take reasonable steps to assure compliance by said employees and agents with terms of this Agreement; and

    (ii)   with respect to Licensee, only copy the Documentation relative to the Software for its own internal use and only upon written consent of Native Rock, and then, in any event, ensure that all reproductions thereof contain all trademark symbols, copyright symbols and legends, and other proprietary markings as Native Rock may from time to time require.

12. Representations and Warranties.

    A.   Work Standards. Native Rock represents and warrants that the Services provided hereunder shall be rendered with promptness and diligence and shall be executed in a professional and workmanlike manner by qualified and

appropriately experienced personnel, in compliance with all applicable laws and regulations, and in accordance with industry standard practices and the provisions and requirements of this Agreement.

B.   Software.   Native Rock warrants and covenants that the Hosted System and the Software will operate without material or frequent error and in accordance with the Documentation. In the event of any breach of this warranty or any other warranty expressed herein, Native Rock shall promptly work to correct such error in accordance with its support obligations hereunder. Except as expressly provided in this Agreement, Native Rock MAKES NO OTHER WARRANTY OF ANY KIND WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, and THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

C.   Non-Infringement.   Native Rock represents and warrants that the Software and the performance of the Services under this Agreement does not and will not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other proprietary rights of any third party.

D.   Service Levels.   Native Rock warrants and covenants that, beginning upon acceptance of the Hosted System at each Site, Native Rock shall, with respect to such Site and throughout the Term of this Agreement, meet each of the minimum acceptable levels of Service provided hereunder and described in Exhibit C (collectively, the "Service Levels").

E.   LIMITATION OF DAMAGES.   Native Rock AND LICENSEE EACH HEREBY EXPRESSLY WAIVE ANY AND ALL CLAIMS EITHER MAY HAVE AGAINST THE OTHER, AND NO PARTY HERETO WILL BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF SALES, LOSS OF USE, LOSS OF DATA OR LICENSEE INFORMATION OR LOSS OF ANTICIPATED PROFITS FOR ANY REASON WHATSOEVER, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, INCLUDING THE DELIVERY, FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE, KNOW-HOW OR TECHNICAL SERVICES BY Native Rock.

F.   Harmful Code.   Native Rock represents and warrants that it shall use industry standard efforts to prevent the introduction and proliferation of any virus or similar item in the Software or systems used to provide the Services.

13. <u>Infringement.</u>

   A.   Native Rock shall, at its expense, defend, indemnify, and hold harmless Licensee, any of its Affiliates, and its and their directors, officers, managers, employees, agents, successors and assigns (collectively, "Licensee's Indemnitees") against any claim, action or allegation that the Hosted System, Software, Services, or the results of any Services, infringe, misappropriate, or otherwise violate any third party's intellectual property or other proprietary right. Licensee shall promptly notify Native Rock in writing of any such claim, action or allegation, and gives Native Rock the authority to proceed as contemplated in this paragraph; provided, however, that Licensee's failure to so promptly notify Native Rock shall excuse Native Rock from its obligations under this Section 13 only to the extent Native Rock is prejudiced thereby. Native Rock shall have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion and expense, provided that any settlement involving a remedy other than payment by Native Rock shall be subject to Licensee's prior written consent. Licensee may not settle or compromise any such claim, action or allegation, except with the prior written consent of Native Rock. Licensee shall, at Native Rock's expense, give assistance and information as Native Rock may reasonably require in connection with Native Rock's defense or settlement of any such claim, action or allegation.

   B.   If an infringement claim, action or allegation is instituted or threatened; Native Rock may, in the sole discretion and at its own expense:

      (i)   procure for Licensee the right to continue use of the Software or alleged infringing part thereof; or

      (ii)   modify or amend the Software or alleged infringing part thereof (without any material loss of functionality), or replace the Software or alleged infringing part thereof with other software having substantially the same or better capabilities.

   C.   This paragraph regarding infringement states Native Rock's entire liability with respect to infringement of any copyright, patent, or other intellectual property right.

14.   <u>Insurance and Risk of Loss.</u> Each party shall be responsible for the risk of loss of, and damage to, all materials in its possession or under its control. Native Rock shall be deemed to possess and control the Software. Native Rock and Licensee shall each agree to indemnify, defend and hold harmless the other and its affiliates, officers, directors, employees, agents, successors, and assigns from any and all losses and threatened losses to the extent that they derive from or in connection with any of the following:

A. the death or bodily injury of any agent, employee, customer, business invitee or business visitor or other person caused by the negligence or other tortuous conduct of the indemnitor;

B. the damage, loss or destruction of any real or tangible property caused by the negligence or other tortuous conduct of the indemnitor; and

C. any claim, demand, charge, action, cause of action or other proceeding asserted against indemnitee by or resulting from an act or omission of the indemnitor in its capacity as an employer or potential employer of a person.

15. Rights and Remedies.

A. Each party acknowledges and agrees that the covenants, agreements and obligations set forth in Paragraphs 6, 7, 8, 11 and 12 herein are reasonable in all respects and are required for the legitimate business protection of the other party. Each party further acknowledges and agrees that a breach or default in any covenant, agreement or obligation of either party set forth herein will cause substantial and irreparable injury to the other party and that such injury would not be readily susceptible to measurement and compensation in monetary damages. Accordingly, each party covenants and agrees that if it breaches or defaults in the performance of any of its covenants, agreements or obligations as set forth herein, the non-breaching party will have, in addition to all other rights and remedies available to it, at law or in equity, the right to seek appropriate injunctive relief, including without limitation, the right to obtain a temporary restraining order, preliminary injunction or permanent injunction against the breaching party, without the requirement of posting any bond or security therefore, and in connection therewith, each party waives and relinquishes, and will not raise or suggest, the claim or defense that the other party has an adequate remedy at law or is not being irreparably injured.

B. If either party defaults under the terms of this Agreement, (default is defined as failing to perform any of the covenants, agreements, or obligations as set forth in the Agreement), the party shall be liable for, and shall promptly pay to the other party upon written demand, all of the costs and expenses which the other party incurs as a result of or arising from such breach or default,

C. Each party acknowledges and agrees that all of the rights and remedies of the other party as set forth in this Agreement are cumulative and are in addition to all other rights and remedies available to such other party, at law, or in equity or otherwise.

16. Reserved.

17. Termination.

A.   Either party may elect to terminate the Term immediately upon written notice of termination to the other party, if such other party has breached a material term, covenant or agreement of this Agreement, such breach has been communicated in writing to such other party, and the breach has not been cured within thirty (30) days.

B.   At any time during the Term, Native Rockand Licensee may mutually agree to terminate this Agreement. Licensee shall have the right to terminate this Agreement prior to initial startup of the system no later than thirty (30) days after the execution of this Agreement, provided Licensee has paid the non-refundable Implementation Fee (Exhibit B) in full. In addition, both Native Rock and Licensee shall have the right to terminate this Agreement for its convenience any time after the first anniversary of the Effective Date by delivering to the other party a written notice of termination at least sixty (60) days before its intended date of termination.

C.   Upon termination by Native Rock, Licensee will promptly return all documentation and related materials, including training manuals and written Know-How and Confidential Information of Native Rock, and upon termination by Licensee, Native Rock will promptly return to Licensee all Confidential Information of Licensee at Licensee's expense.

D.   Upon any termination or expiration of this Agreement, Native Rock shall promptly cooperate with Licensee and its designated third party service providers, and shall make good faith, reasonable efforts to provide to Licensee and its designated third party service providers all relevant information and necessary assistance reasonably requested by Licensee to accomplish, in a timely manner, the prompt, smooth transition of the responsibility for provision of the Services from Native Rock to Licensee, or to any replacement provider designated by Licensee, such that any reasonably competent third party service provider could readily and fully assume such responsibilities and the provision of such services. The parties agree that such transition assistance will be provided by Native Rock to Licensee at Native Rock's then-current hourly rate.

E.   Notwithstanding anything to the contrary contained elsewhere herein, in no event nor for any reason shall Native Rock suspend, interrupt, or terminate the provision of the Services or the making available of the Hosted System hereunder, or perform any other action that prevents, impedes, or reduces in any way the provision of the Services or Licensee's ability to conduct its normal business operations (other than minimal, routine interruptions necessary in order for Native Rock to provide the Services), unless: (i) authority to do so is granted by Licensee or conferred by a court of competent jurisdiction; (ii) this Agreement has been terminated or has expired in accordance with the provisions hereof; or (iii) Licensee fails to pay any past-due, outstanding, invoiced amounts hereunder not otherwise disputed in good faith by Licensee in accordance herewith, within thirty (30) days after its receipt of written notice thereof from Native Rock.

18.   Jurisdictional Disputes. The agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of *forum non conveniens*

19.   Nonexclusively. The Licensee acknowledges and agrees that the services of Native Rock provided to the Licensee under the terms and conditions of this Agreement are not exclusive and that Native Rock may provide the same services to others.

20.   Relationship. The Licensee and Native Rock agree that the other is acting as an independent contractor, not as an agent or joint venture partner, for the other party under the terms and conditions of this Agreement, that neither party shall have the right to bind or obligate the other party, and that the terms and conditions of this Agreement do not establish a partnership or joint venture between the parties.

21.   Force Majeure. Neither party will be responsible for delays or failures in performance resulting from acts beyond the reasonable control of such party (each, a "Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God, riots, acts of war, epidemics, fire, earthquakes, and other disasters.

22.   Waiver and Modification. The waiver or repeated waiver by any party hereto of compliance by the other party with any provision of this Agreement will not be deemed a waiver of compliance with such provision on a subsequent occasion, nor will any such waiver imply the waiver of any other provision of this Agreement. No provision of this Agreement may be waived, nor may this Agreement be amended or modified, except by an instrument in writing duly executed by the parties to be charged with such waiver, amendment or modification.

23.   Headings. The headings and captions contained in this Agreement are for reference purposes only and not intended to affect the meaning or interpretation of this Agreement.

24.   Severability. If any one or more of the provisions of this Agreement will be held invalid, illegal or unenforceable, the validity or legality or enforceability of the remaining provisions of this Agreement will not be affected thereby.

25.   Entire Agreement. This Agreement and the Exhibits attached hereto set forth the entire agreement between the parties hereto regarding the subject matter hereof and supersedes any and all prior agreements, negotiations and understandings.

26.   Notices. All notices and other communications required or desired to be given pursuant to this Agreement must be given in writing and will be deemed duly

given: (i) upon personal delivery; (ii) on the third day after mailing if sent by registered or certified mail, postage prepaid, return receipt requested; (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; or (iv) upon receipt of confirmed transmission if sent by e-mail transmission, and in each case if addressed as follows:

A.   If to Native Rock, then to:
>Andrew Britt
>President
>Native Rock, Inc
>4109 Stranaver Pl
>Raliegh, NC 27612

>With a copy to:
>Lucas, Holcomb & Medrea, LLP
>Attn: Mark Lucas
>300 East 90th Avenue
>Merrilville, IN 46410
>e-mail: mlucas@lhmlaw.com

B.   If to Licensee, then to:
>City of Columbia Missouri
>701 E. Broadway
>PO Box 6015
>Columbia, Missouri 65205
>Attention: Director of Utilities

>With a copy to:
>Colt Transload
>6501 N Brown Station Rd
>Columbia, MO, 65202
>Attention: David Dick

or to such other person, entity, address or facsimile number as Native Rock or Licensee may respectively designate in like manner, from time to time.

28.   Transferability. This Agreement may be assigned or transferred by either party with written consent of the other party, which will not be unreasonably withheld, and all other terms shall be binding upon successors, assigns, or transferees.

29.   Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be demed to have the same legal effect as original signatures on this Agreement.

30.   Insolvency/Bankruptcy. In the event that either party becomes insolvent or is liquidated, the other party may terminate this Agreement immediately with notice to the other party. In the event either party becomes subject to bankruptcy under the laws of the United States, such party or its representatives agree not to object to any motion filed by the other party requesting any trustee in bankruptcy or administration to promptly accept or reject this Agreement.

31.   No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

32.   Contract Documents. This Agreement includes the following Exhibits, which are incorporated herein by reference:

        a. Exhibit A   Scope of Service
        b. Exhibit B   Pricing/Fees
        c. Exhibit C   Service Level Agreement

33.   Entire Agreement. This Contract represents the entire and integrated Contract between the Parties relative to the Project herein. All previous or contemporaneous contracts, representations, promises and conditions relating to Contractor's services on a designated Project described herein are superseded.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment by their duly authorized representatives as of the date of the last signatory hereto.

CITY OF COLUMBIA, MISSOURI

By: _____ *DAS*
    De'Carlon Seewood
    City Manager
Date: _____

ATTESTED BY:

_____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

_____
Nancy Thompson, City Counselor/mc

CERTIFICATION: I hereby certify that the above expenditure is within the purpose of the appropriation to which it is charged, Account No. 50407910-504960, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: _____
    Director of Finance

Native Rock, Inc.

By: _____
Name: *Andy Britt*
Title: *President*
Date: *8/24/2023*

ATTEST:

By: _____
Name: _____

EXHIBIT A

1. System

The hosted system will consist of a Linux-based Warehouse Management (WMS) system and a Linux-based messaging system "2Integrate".

The system will be provided as a web-based application. The web application is accessible via the internet using contemporary, major internet browsers such as Google Chrome major release 100.0 (or greater), or any other technically equivalent browser. Colt Transload is responsible for configuration and maintenance of their own computers, browsers, printers, scanners and internet connection.

2. Software

The WMS software will provide all major information-system functions required to operate a steel warehouse, including the following:

Warehousing Functions:
- Receiving
- Relocation functions to move material within a warehouse
- Shipping operations based on Customer Releases.
- Location Identity of material tied to the physical warehouse
- Scanner Interface for reading inventory barcode tags
- Customer Visibility into their material via web portal
- Processing of Customer Material Releases

Rates Database:
- Rates Database covering all warehousing functions, including Receiving, Storage, and Shipping.
- Flexible Rates that can be applied on a piece basis, weight basis, etc., and can be unique for specific Customers.
- Rates are applied to calculate Customer invoices on a periodic basis.

Invoicing:
- Electronic download of invoice data for City of Columbia's accounting system.
- Invoice data can be generated based on a specific time period for a customer (weekly, bi-monthly, monthly, etc.).

3. Services

Native Rock shall provide the following services for the Licensee:
- Systems Analysis of Requirements
- Hosted System and Software
- Programming support for the software

- Training

4. Licensee Locations (Affiliates)

The WMS software will be utilized by the Licensee at the following primary locations:

Warehouse/Office:
Colt Transload
6501 N Brown Station Rd
Columbia, MO, 65202

Secondary locations include access to the web-portal by Licensee customers.

EXHIBIT B

Fees

1. Implementation Fees. Total implementation and licensing fees are used to implement the scope ("System" and "Software") as described in Exhibit A. With the execution of this Agreement, Licensee agrees to pay Native Rock according to the following payment schedule:
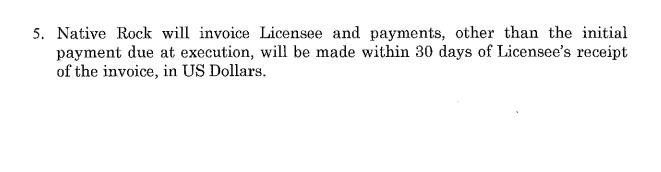
Item#	Payment	Payment conditions
1	$0	Initial payment (non-refundable), to be made upon execution of this agreement.

2. Monthly Maintenance and Support Fees. Beginning on the first day of the first calendar month following Licensee's acceptance of the implementation for each module listed below, Licensee will pay Native Rock monthly fees according to the following payment schedule:

Item#	Monthly Fee	Software Module
1	$1,950	WMS hosted system (required).
2	$1,000	EDI messaging (optional).

Native Rock will invoice Licensee in advance for the monthly payment on the first of each month.

3. The Exhibit A functionality ("Software") will be provided and be the functionality to be installed for Licensee. The installation amount in item 1 above does not recognize custom programming and support for specific needs or requests. In the event that custom programming is requested, Native Rock will provide that service at a rate of $150 per hour.

4. Native Rock will provide installation, initial training, maintenance and support to Licensee, provided Licensee has paid Native Rock for the services as outlined herein. Training and support during the installation will be by phone or Web conferencing. Training or support done at Licensee's request away from Native Rock offices will be provided at a rate of $1,200 per day, plus reasonable and customary travel expenses. Subsequent to initial installation and training, Native Rock will provide ongoing help desk services.

5. Native Rock will invoice Licensee and payments, other than the initial payment due at execution, will be made within 30 days of Licensee's receipt of the invoice, in US Dollars.

EXHIBIT C

Service Level Agreement

1. Business Objectives and Scope

This Service Level Agreement defines the necessary and desired services to be performed by Native Rock for Licensee. Native Rock will provide to Licensee the implementation, installation, hosting, testing and use and support of the Software (on Native Rock's data processing Equipment), Documentation and related database materials and Services for Licensee that Native Rock markets. Licensee anticipates employing Native Rock Software and Services (which, together with the Equipment and any related operating systems, databases, and facilities to be provided by Native Rock hereunder are collectively referred to as the "Hosted System") for its operations as generally defined in Exhibit A to this Agreement. This Exhibit C will detail the support services to be provided by Native Rock, responsibilities of Native Rock and Licensee, Hosted System performance and reliability levels, measurements to be used to evaluate performance and reliability, and fault prevention.

Native Rock will provide data center and outsourcing services to support the functionality of the Software.

1.0   General System Description

The Hosted System, which shall be continuously monitored by Native Rock is described as follows.

 i. 1.1. Operating Systems Supported

Ubuntu Linux Server

 ii. 1.2. Applications Supported

Warehouse Management System (WMS)

 iii. 1.3. Hardware Supported

PC quad-core (or greater) server

 iv. 1.4. Wide Area Network

Native Rock WAN to its firewall built on AT&T Network

CISCO PIX Firewall
TCP/IP Protocol

2.0   Specific Services

2.1.   Systems Administration

Native Rock will provide general systems administration for the Hosted System, including, but not limited to, hardware maintenance in accordance with Section 9.B of the Agreement. This includes adding/deleting users, modifying passwords, adjusting user preferences, etc. Licensee is responsible for maintaining user accounts on all local level equipment (equipment that is not housed in the Native Rock data center).

2.2.   Application and Database Administration

Native Rock will provide application administration for the Hosted System and its included modules. This administration will include performance tuning, making required/requested application parameter changes, and providing general troubleshooting analysis. Native Rock will provide assistance remotely to Licensee's administrators, but Licensee assumes all responsibility for desktop level support of its Users. Native Rock shall provide a qualified database administrator to install and configure Licensee's database, perform routine tasks that ensure the integrity of the databases, manage available space on the database server, and make frequent, regular backups of the database.

2.3.   Upgrade and Patching

Upgrades and patches that are required to maintain the Hosted System will be tested and applied by Native Rock in conjunction with Licensee in accordance with this Agreement. The decision to provide an Update or patch, and the timing of the installation, will be made jointly between Native Rock and Licensee. If the required Update or patch to be provided by Native Rock in response to a Licensee request requires that Licensee acquire additional equipment or incur additional licensing costs, Native Rock must advise Licensee of these additional costs prior to proceeding with the required Update or patch.

2.4.   Wide Area Network Monitoring

Native Rock will provide monitoring and reporting for its Wide Area Network. The specific metrics that will be monitored, and the

corresponding reports are documented in Section 4 below. The Wide Area Network will support the TCP/IP protocol.

2.5. Systems, Application and Database Monitoring

Native Rock will provide monitoring and reporting for the Hosted System, including all applications and databases covered in this Agreement. The specific metrics that will be monitored, and the corresponding reports are documented in Section 4 below.

In the event that the Hosted System, an application or a database that comprises part of the Hosted System, becomes unavailable or exceeds a defined threshold, Native Rock personnel will be assigned to resolve the problem.

2.6. Remote Access

Remote access by to the Hosted System will be provided by Native Rock to Licensee personnel and its participating carrier base through Licensee LAN or Internet access. Native Rock will have remote access to Licensee's environment for troubleshooting and support purposes.

2.7. Quality of Service

To ensure that a consistently high quality of service is delivered, Native Rock will provide protocol prioritization on its Wide Area Network links covered under this Agreement. Licensee's interactive activity will receive the highest priority. Lower priority will be given to the printing and e-mailing of data within the Hosted System. By providing this type of control, performance issues related to non-mission critical network usage should be kept to a minimum (if not completely eliminated).

2.8. Physical Security

Native Rock's Equipment, including Licensee's data will be kept in locked, secured rooms. In addition, the Native Rock Network Operations Center and Data Center will be locked and secured at all times. The Data Center and Network Operations Center will be protected by the latest foam-driven fire suppression system.

2.9. Data Security

Firewall technology will be used to separate the Hosted System from all other systems used by Native Rock for the benefit of other customers. The only traffic that will be allowed to pass through

Licensee's network to other Native Rock networks will be the minimum required for network monitoring and administration. All reasonable precautions and audits will occur to ensure that this secure environment remains in place for the duration of the Agreement.

2.10. Systems, Application, and Database Backup

The Hosted System, including all applications, and databases will be backed up on a nightly basis.

2.11. Off-Site Archival Storage

Copies of Licensee's archival data will be picked up daily in lock boxes and stored off-site in a fireproof, secured area.

3.0   *Performance Monitoring – Service Level Agreement*

3.1.   System Availability

Native Rock shall provide the Hosted System in accordance with the following levels of performance and availability.

3.1.1. Standard Hours for System Availability

The system will be available 24 hours/day, 7 days/week during the Term. The Hosted System will be unavailable for up to 3 hours each week for routine maintenance as described below.

3.1.2. Scheduled Downtime

The Hosted System is scheduled to be down one time per week for no more than three consecutive hours for routine maintenance from 11:59 p.m. EST Saturday until 3 a.m. EST Sunday (the "Scheduled Downtime Window"). Additional downtime during this period shall be with Licensee prior approval. This maintenance can be re-scheduled on an exception basis, with prior approval from both parties in writing.

3.1.3. Unscheduled Downtime

Unscheduled downtime can occur without any prior notice. Reasons for an unscheduled outage may include (but are not limited to) Native Rock's or Licensee's Wide Area Network Failure, Hosted System abends, database corruption, power outage, etc. In the event of an unscheduled outage, Native Rock

will make all reasonable efforts to resolve the outage based on severity levels as described in this Agreement.

3.1.4. Non-Standard Scheduled Downtime

In the event that major Hosted System renovations or Updates are required, additional Hosted System downtime may be scheduled by obtaining prior written approval from Licensee.

3.3 Problem Management - Helpdesk

Native Rock will provide live helpdesk support during business hours, 5 day/week basis for all Licensee computing issues including, but not limited to the following items:
- Application Issues
- Reporting Issues for standard reports
- User Administration Requests
- Database Issues
- WAN Communication Issues
- Data Center Operating Systems Issues
- Backup/Restore Requests
- Functionality of modules according to document procedures and customer-specified requirements.

3.4. Performance Monitoring

To ensure that service levels are consistently maintained, the following performance metrics will be used to monitor the service levels described in this Agreement.

3.4.1 Monitoring

Native Rock will monitor and maintain functionality to ensure that functionality is in accordance with its documented procedures.

3.4.2. Wide Area Network Monitoring

Native Rock will monitor and maintain its Wide Area Network connection covered in this Agreement. Native Rock will monitor the line for availability, reachability, and capacity. In the event that the Wide Area Network becomes unavailable, or exceeds the Severity Level 1 Response Time identified above, Native Rock personnel will immediately address the problem and

Native Rock shall work diligently, using all commercially reasonable efforts, to work with its telecommunications carrier to correct the problem. As defined in this Agreement, Native Rock is not responsible for downtime or errors committed by the telecommunications carrier. Native Rock will assume responsibility for reporting and tracking the problem until the issue is resolved.

3.4.3. Systems, Application and Database Monitoring

Native Rock will provide systems, application and database level monitoring for the Hosted System covered in this Agreement. Native Rock will monitor Hosted System availability, CPU usage, memory usage, and I/O usage.

4.0   Security Management

The integrity and privacy of Licensee data is a top priority for Native Rock. To protect Licensee's interests, Native Rock will implement security measures in accordance with the highest industry standards. The following include some of the steps that will be taken to protect Licensee's information continuously during the Term.

- Firewall. Packet level filtering and firewall services will be implemented to ensure that only the monitoring information required for Licensee's environment will be transmitted within the Native Rock Network Operations Center. Filters will be implemented to separate Licensee's monitoring information from other Native Rock Users.
- Remote Access. Remote access will be provided for Native Rock data center employees to provide technical assistance and maintenance for Licensee's environment. Remote access will be monitored to detect security violations.

In no event will Native Rock be liable for the security at any Licensee maintained locations, or for any security breaches created by Licensee.

5.0   Licensee Responsibilities

5.1.   Local Technical Support

Licensee assumes full responsibility for all desktop support related issues. Desktop refers to any Licensee operated computing device. This support includes (but is not limited to) operating system support, printing support, desktop hardware support, application support for all

desktop applications, etc. Licensee also assumes responsibility for all servers and applications residing on Licensee's premises. This includes (but is not limited to) Network Operating Systems, Server support, LAN support, telephone support, etc.

5.2. Training

Except where explicitly noted elsewhere, Licensee assumes all responsibility for User training.

5.3. Modifications of Software

Licensee shall use commercially reasonable efforts to coordinate any Updates, software modifications, etc. that interact with the Software, with Native Rock to ensure that these Updates do not adversely affect other Hosted System components. This communication is essential to ensure that one process does not cause degradation or failure in another component of the Hosted System.

5.4. Connecting Computers to the Network

Licensee assumes full responsibility for moves/add/changes of network equipment at the local Licensee sites. This includes (but is not limited) adding computers, printers, and other network devices; adding phones, moving people and equipment, etc.

5.5 Other Responsibilities

Licensee agrees to perform user set-up for its local user.