

EnGraph Software, LLC
Contractor Agreement



ParaPlan Notify Upgrade

This Agreement (hereinafter "Agreement") is by and between the City of Columbia, Missouri, a municipal corporation (hereinafter "City of Columbia"), and EnGraph Software, LLC (hereinafter "Contractor"), a Kansas limited liability company with authority to transact business within the State of Missouri and is entered into on the date of the last signatory below (hereinafter "Effective Date"). City of Columbia and Contractor are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, City of Columbia is the owner and operator of a public transportation service, also known as GoCOMO, which offers paratransit services;

WHEREAS, Contractor owns, operates and maintains scheduling software to assist paratransit providers with organizing and booking rides for customers; and

WHEREAS, City of Columbia wishes to purchase, and Contractor wishes to provide, this software and related services pursuant to the terms and conditions stated in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged, City of Columbia and the Contractor agree as follows:

Article 1. Contract Service

The Contractor will install ParaPlan software for transportation services (hereinafter "Contract Service"), more specifically identified in Appendix I which is attached hereto and made a part of this Agreement.

Article 2. Time of Delivery

The initial milestone of on-demand outgoing calls for this Contract Service will be delivered for acceptance testing on or before April 1, 2019 (hereinafter "Delivery Date").

Article 3. Term

The initial term of this Agreement will be five (5) years beginning on the Delivery Date. Upon expiration of the initial five (5) year term, any software maintenance and cloud hosting services identified in Appendix I will automatically renew for one (1) year terms, unless either Party provides written notice of termination or nonrenewal not less than 30 days prior to the renewal.

Article 4. The Contract Price

(a) **License.** City of Columbia will pay to Contractor a one-time license fee for software pursuant to the pricing listed in Appendix I. This license payment is due within thirty (30) days of receipt of an invoice from Contractor. Contractor may invoice City of Columbia for this amount any time after the Effective Date.

(b) **Initial Term.** City of Columbia will pay the Contractor for the Contract Service a one-time payment for all upgrades and support services for the duration of the five (5) year term. The amount of this payment will be calculated pursuant to the pricing for services identified in Appendix I of this Agreement. This initial payment is due within thirty days of receipt of products and services from Contractor. Contractor may invoice City of Columbia for this amount any time after the Effective Date.

(c) **Renewal Term.** Upon expiration of the initial term, City of Columbia will make payments at the beginning of each one (1) year term pursuant to the pricing identified in Appendix I, and within thirty (30) days of receiving an invoice for this amount from Contractor.

Article 5. Other Provisions

1. **Amendment.** No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

2. Conflict of Interest. City of Columbia understands that the Contractor may be engaged by one or more other institution(s) for the Contractor's services. In this regard, the Contractor will not become a party to any agreement that conflicts with the Contractor's performance of the Contract Service. City of Columbia may terminate this Agreement if in its reasonable opinion, the performance of such services will conflict with its interests.

3. Data Privacy. City of Columbia wishes to maintain in confidence all information including data, technology, commercial and research strategies, trade secrets, inventions and know-how disclosed by City of Columbia to the Contractor, directly or indirectly, in written, oral or other tangible form, for the purpose of this Agreement or generated by the Contractor as a result of the performing the Contract Services (collectively, Confidential Information). In this regard, the Contractor will not disclose Confidential Information to others without the prior written consent of City of Columbia, except the Contractor will not be prevented from disclosing information that

(i) can be shown by contemporaneous documentation to have been in the Contractor's possession prior to the disclosure by City of Columbia;

(ii) at the time of the disclosure is, or thereafter becomes, through no fault of the Contractor, part of the public domain; or

(iii) is furnished to the Contractor by a third party after the time of the disclosure without the breach of any duty to City of Columbia.

In addition, the Contractor will keep separate and segregated from other work all documents, records, notebooks, correspondence and the like arising from the Contract Services. All right, title, and interest in Confidential Information, including that arising from the Contract Services, shall belong to City of Columbia and upon completion of the Contract Services or termination of this Agreement all tangible forms of Confidential Information, including copies thereof, whether prepared by the Contractor or other, will be delivered to City of Columbia.

The terms and obligations of this subsection shall survive and remain in full force and effect after termination of this Agreement, regardless of the cause of such termination.

4. NonDisclosure of 3rd Party Information. The Contractor will not disclose to City of Columbia any information of third parties that the Contractor does not have the right to disclose.

5. Termination and Notice. This Agreement may be terminated by either Party upon thirty (30) days written notice to the other Party. This Agreement may be terminated by a non-breaching party, in addition to any other remedy, for a breach of any term of the Agreement effective upon written notice to the breaching party; upon which event all rights of the breaching party shall terminate. If terminated by either party within 2 years of purchase, any reimbursement for material (physical) software items purchased will be negotiated at that time along with a pro-rata portion of the annual fee remaining (calculated on a month by month basis if purchased in advance). If terminated by either party more than 2 years after purchase, then a pro-rata portion of the annual fee remaining will be reimbursed (calculated on a month by month basis, if purchased in advance). In either event, notice shall be given by any recognized delivery service, prepaid and properly addressed as follows:

<u>If to City of Columbia:</u> City of Columbia - Go COMO 701 E Broadway, P.O. Box 6015, Columbia, MO 65205	<u>If to Contractor:</u> EnGraph Software, LLC 15621 W. 87TH ST PKWY #419 LENEXA, KS 66219
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Any such notice shall be deemed to have been given when received.

6. Entire Agreement. This Agreement is the entire agreement of the parties relating to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, correspondence, understandings, and agreements of the parties relating to the subject matter hereof.

7. Party Relationship. The Contractor is an independent contractor and is not an employee or agent of City of Columbia. The Contractor shall be entitled to no benefits or compensation from City of Columbia except as set forth in this Agreement and shall in no event be entitled to any fringe benefits payable to employees of City of Columbia. The Contractor shall be solely responsible for the payment of all taxes due on the income received for performing the Contract Services.

8. Nondisclosure and Data Ownership. Contractor ensures City of Columbia data will not be used for any purpose other than use with ParaPlan software. Contractor will destroy any sensitive data once it is no longer needed, and will not disclose any information to others without the prior written consent of the City of Columbia. If for any reason the contract is terminated by either party, City of Columbia owns said data in the 'system' and Contractor will deliver it in some agreed upon media.

9. Warranties. Contractor represents and warrants to City of Columbia: (i) Contractor has valid, binding and enforceable rights to use and sublicense such ParaPlan software and other Contract Services (in the manner contemplated under this Agreement), (ii) there are no interference, opposition or cancellation proceedings pending or, to the actual knowledge of Contractor, threatened against Contractor, (iii) Contractor's use of ParaPlan software and other Contract Services does not infringe upon the rights of any third party, and (iv) no claim, suit or action against Contractor or, to Contractor's actual knowledge, threatened alleging that is infringing upon the intellectual

property rights of others.

10. Indemnification. Contractor, shall defend, indemnify and hold harmless City of Columbia, its officers, directors, employees, shareholders, legal representatives, agents, successors and assigns, from and against any damages, liabilities, costs and expenses (including reasonable attorneys' and professionals' fees and court costs) arising out of (i) any third party claims, suits, or actions based upon or related to a claim that Contractor infringes any third party's U.S. patent, copyright, trademark or other proprietary right, or (ii) any other damages City of Columbia suffers as a result of Contractor's negligent or unlawful acts or omissions relating to the performance of this Agreement, or (iii) any breach by Contractor of this Agreement. The provisions of this section shall survive termination of this Agreement.

11. Governing Law and Venue. This 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 Agreement, 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.

12. Unauthorized Aliens Prohibited. Contractor shall comply with Missouri Revised Statute Section 285.530 in that Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement, Contractor shall by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Contractor shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. The form of the Work Authorization Affidavit is set forth in Appendix II attached hereto and made a part of this Agreement. Contractor shall require all subcontractors to observe the requirements of this section and shall obtain a Work Authorization Affidavit from each subcontractor performing any of the contracted services.

13. 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 constitution or laws.

14. General Laws. Contractor shall comply with all federal, state and local laws, rules, regulations and ordinances.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF COLUMBIA: City of Columbia, MO

~~Mike Matthes~~, City Manager

Date

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor *AK*

CERTIFICATION: I hereby certify that this Agreement is within the purpose of the appropriation to which it is to be charged, Account No. 55316188-604990, P1062, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

City Director of Finance

CONTRACTOR: Engraph Software, LLC

Signature: *KJA*

By: Kyle J. Archer

Title: Partner

Date: 11/21/2018

Appendix I

Payment for Services and Expenses

For consultation related to the design, production and installation of ParaPlan Notify, City of Columbia will pay for the product in installments upon completion of the requisite acceptance criteria listed below.

The costs are associated with the following quote:

EnGraph Software Quote #ENQ20150309A (March 9, 2015)

1. In-Office Software ParaPlan Notify Upgrade (Site License) \$4,000
2. Services Set-Up, Implementation & Remote Training INCLUDED
3. Hosting ParaPlan Cloud Annual Hosting Service INCLUDED
4. Maintenance Annual Tech Support & Updates (5 years) \$4,000

Total: \$8,000

NOTE: The City of Columbia must have an active Twilio account and grant access to EnGraph Software. Based on current 2015 call volume at Go COMO, the estimated Twilio costs are \$150/month, payable to Twilio.

Payment Terms

- \$4,000 - Due at contract signing (50%)
- \$4,000 - Due at delivery of products and services (50%)
- \$800 - annual upgrades and maintenance costs after initial five (5) year term, due at beginning of every one year term (see long term support)

Long-Term Support

- S1 - ParaPlan Notify Technical Support, Upgrades & Maintenance is \$800 per year for this package and will be billed at start of Year 6. This amount is subject to change by no more than 5% every 3 years or if product lines are modified/upgraded.

CITY OF COLUMBIA
WORK AUTHORIZATION AFFIDAVIT
PURSUANT TO 285.530 RSMo
(FOR ALL BIDS IN EXCESS OF \$5,000.00)

County of JOHNSON)
)SS.
State of KANSAS)

My name is Kyle J. Archer. I am an authorized agent of Engraph Software (Bidder). This business is enrolled and participates in a federal work authorization program for all employees working in connection with services provided to the City of Columbia. This business does not knowingly employ any person who is an unauthorized alien in connection with the services being provided.

Documentation of participation in a federal work authorization program must be attached to this affidavit if not currently on file with the City of Columbia.

Furthermore, all subcontractors working on this contract shall affirmatively state in writing in their contracts that they are not in violation of Section 285.530.1 RSMo and shall not thereafter be in violation. All subcontractors shall also submit a sworn affidavit under penalty of perjury that all employees are lawfully present in the United States.

[Signature]
Affiant

Kyle J. Archer
Printed Name

Subscribed and sworn to before me this 21 day of November, 2018.

[Signature]
Notary Public

SIMON HALE
Notary Public
State of Kansas
My Appointment Expires 07/17 | 2021