

**INTERAGENCY AGREEMENT BETWEEN
ADA COUNTY HIGHWAY DISTRICT AND CITY OF MERIDIAN
FOR CONNECTION OF OPTICOM CLOUD PLATFORM
TO TRAFFIC CONTROL SYSTEM**

This INTERAGENCY AGREEMENT BETWEEN ADA COUNTY HIGHWAY DISTRICT AND CITY OF MERIDIAN FOR CONNECTION OF OPTICOM CLOUD PLATFORM TO TRAFFIC CONTROL SYSTEM (“Agreement”) is made and entered into this _____ day of _____, 2024 (“Effective Date”) by and between the Ada County Highway District, a single county-wide highway district organized under the laws of the state of Idaho (“ACHD”), and the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”) (collectively, “Parties”).

WHEREAS, ACHD is a single county-wide highway district, a public entity, organized and existing pursuant to Idaho Code Title 40, Chapter 14, as amended and supplemented, with the exclusive jurisdiction and authority to maintain, improve, regulate and operate public rights-of-way in Ada County;

WHEREAS, City is a municipal corporation organized and operating pursuant to Idaho Code Title 50, as amended and supplemented with jurisdiction, authority and police power to regulate and control municipal activities within the City;

WHEREAS, Idaho Code § 67-2332 provides that one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform, provided that such contract is authorized by the governing body of each party and that such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties;

WHEREAS, Global Traffic Technologies, LLC, whose address is 7800 Third Street North, Building 100, Saint Paul, Minnesota (“GTT”) administers the Opticom Cloud Platform, cloud technology that can be used to allow fire trucks responding to an emergency to directly request from ACHD’s traffic control system an immediate green light from the traffic controller in the direction of the fire truck’s travel, and a red light in all opposing directions, thereby clearing each intersection of traffic by the time the emergency vehicle arrives;

WHEREAS, use of the Opticom Cloud Platform offers increased safety for motorists and public safety personnel, as well as increased response times for emergency vehicles;

WHEREAS, the Parties wish to undertake a cooperative effort to implement the Opticom Cloud Platform for this purpose, as described in *Exhibit A*;

WHEREAS, ACHD is willing to accommodate City’s request, subject to the terms, conditions and obligations set forth in this Agreement and so long as ACHD receives assurances from City that it will fully reimburse ACHD for all actual costs including, without limitation, any indirect costs and expenses that ACHD incurs as a result of the additional work attributable to this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises, mutual covenants and agreements herein contained, the parties hereto agree as follows:

I. ACHD RESPONSIBILITIES.

- A. **Connection to Opticom Cloud Platform.** ACHD agrees to collaborate with GTT to confirm that all traffic controllers are NTCIP 1202 compatible, and, if so, create a virtual private network (“VPN”) to connect ACHD’s traffic control system to the Opticom Cloud Platform.
- B. **Traffic control system programming.** ACHD agrees to work with GTT to connect the ACHD traffic control system to the Opticom Cloud Platform via VPN. This will require, without limitation, providing a reachable IP address and preemption port for each traffic controller, authorization of intersection traffic control system connectivity, and accurate phase and layout information for each applicable intersection.
- C. **VPN testing.** ACHD agrees to work with GTT to conduct on-site assessment to test the VPN between the traffic network and Opticom Cloud Platform, confirm communications with applicable traffic controllers, and authorize activation of cloud-based preemption system at each applicable intersection.
- D. **Work with GTT.** ACHD shall work directly with GTT to resolve any claims relating in any way to work or products addressed by this Agreement, and shall submit any and all such claims to City as well as to GTT. City shall indemnify, save harmless and defend, regardless of outcome, ACHD from expenses and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees caused by or arising out of any and all such claims regardless of the outcome of the City’s efforts to resolve said claims with GTT. This duty to indemnify, defend, and hold harmless is subject to the limitations of Idaho law, including Article VIII, Section 4, Idaho Constitution; Idaho Code Title 6, Chapter 9; and to any other limitations set forth in law or this Agreement.

II. CITY RESPONSIBILITIES.

- A. **Agreement with GTT.** City has entered into a written agreement with GTT, attached as *Exhibit B*. City shall comply with its responsibilities thereunder, and shall require GTT to uphold its obligations thereunder, particularly as it relates to data and system security, as set forth in that agreement. The Parties acknowledge that GTT is owned by and works closely with Miovision Technologies Incorporated, whose address is 137 Glasgow Street, Suite 110, Kitchener, Ontario ON N2G 4X8, Canada (“Miovision”), and further acknowledge that GTT brands its products and services using the Miovision name.
- B. **Costs.** City shall be liable to ACHD for the cost of any repairs necessitated by the work contemplated by this agreement, and shall be liable for and indemnify, defend and hold ACHD harmless for any and all costs, claims and damages resulting from such work. This duty to indemnify, defend, and hold harmless is subject to the limitations of Idaho law, including Article VIII, Section 4, Idaho Constitution; Idaho Code Title 6, Chapter 9; and to any other limitations set forth in law or this Agreement.

- C. **Payment.** City shall remit to ACHD, within thirty (30) calendar days after the date of invoice, payment for all costs for which City is responsible pursuant to this Agreement, to include mobilization, traffic control, flagging, detours and ACHD staff time necessary to fulfill ACHD's responsibilities as set forth herein.

III. General Provisions

- A. **Day-to-day communications.** Communication between ACHD and City regarding operational matters shall occur via e-mail or telephone. City shall provide ACHD the name, e-mail address, and telephone number of specific City personnel ("City Contact") who shall serve as the liaison between City and ACHD for day-to-day matters. ACHD shall provide City the name, e-mail address, and telephone number of specific ACHD personnel ("ACHD Contact") who shall serve as the liaison between ACHD and City for all operational matters.
- B. **Notices.** All other notices under this Agreement shall be addressed to the other party at its address set forth below, or to such other address that the receiving party may designate from time to time in a writing to the other party to the address set forth below or as modified. Unless otherwise agreed herein, all notices may be delivered to the respective address below by personal delivery, nationally recognized overnight courier, or U.S. Mail.
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|-----------------------|-----------------------------|
| If to City: | If to ACHD: |
| City of Meridian | Ada County Highway District |
| Attn: City Clerk | Attn: Bruce S. Wong |
| 33 E. Broadway Avenue | 3775 N Adams St, |
| Meridian, Idaho 83642 | Garden City, ID 83714 |
- C. **Term.** This Agreement shall be in effect from the date of the last signature to this Agreement, and shall continue until September 30, 2034, unless terminated as otherwise provided herein. Unless earlier terminated, upon expiration of this Agreement, it shall automatically renew on a year-to-year basis.
- D. **Indemnification.** City shall indemnify, save harmless and defend, regardless of outcome, ACHD from expenses and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees caused by or arising out of any negligent acts by City or City's officers, employees, agents or contractors while acting within the course and scope of their employment, which arise from or which are in any way connected to work or products addressed by this Agreement. Such indemnification hereunder by City shall in no event cause the liability of City for any negligent act to exceed the amount of loss, damages or expenses of attorney fees attributable to such negligent act, and shall not apply to loss, damages, expenses or attorney fees attributable to the negligence of ACHD. This duty to indemnify, defend, and hold harmless is subject to the limitations of Idaho law, including Article VIII, Section 4, Idaho Constitution; Idaho Code Title 6, Chapter 9; and to any other limitations set forth in law or this Agreement.

E. **Termination.**

1. **Termination for noncompliance.** Default occurs if a party fails to comply with its obligations under this Agreement, and the breaching party does not cure such noncompliance within ten (10) business days after receipt of written notice from the non-breaching party informing it of such noncompliance. If at the end of such cure period, the breaching party is still in default or noncompliance, then the non-breaching party may terminate this Agreement in writing, to be effective immediately upon personal delivery mailing. Upon such termination, the non-breaching party may pursue all legal, equitable, and other remedies available. The breaching party shall be liable for all expenses that are incurred by the non-breaching party as a result of the default, including, but not limited to, the costs of procuring substitute performance, legal fees, and losses incurred due to default.
2. **Termination for convenience.** City or ACHD, in either party's sole discretion, may terminate this Agreement for any reason by providing at least thirty (30) days' prior written notice to the other party.

F. Responsibility for damages.

1. **No warranty.** ACHD makes no warranty or representation to City of any kind, express or implied, regarding the suitability of or compliance with any applicable laws by ACHD's structures or systems, or any portion thereof, for any aspect or use described herein. City agrees that it and GTT will be using ACHD's structures and systems "as is," "where is," and "with any and all faults." City waives any claims against ACHD for defects in ACHD's structures or systems, including latent defects.
2. **Personal liability.** In no event will an agent of either party be personally liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, this Agreement, express or implied.
3. **Limitation of liability.** ACHD is not liable for consequential, indirect, incidental, special, exemplary, punitive, or enhanced damages, arising out of or relating to any breach of this Agreement, whether or not such damages were foreseeable or City was advised of the possibility of such damages, regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose. This limitation of ACHD's liability shall not apply to (i) liability resulting from ACHD's gross negligence or willful misconduct and (ii) death or bodily injury resulting from ACHD's acts or omissions. No action for breach of this Agreement or otherwise relating to this Agreement may be brought more than one year after the accrual of the cause of action.

- G. No joint entity established.** This Agreement envisions no joint establishment or maintenance of a budget. Each party shall appropriate or otherwise procure the funds necessary to fulfill its obligations under this Agreement. This Agreement does not create a separate legal entity to conduct the joint or cooperative undertaking envisioned herein. This Agreement envisions no joint acquiring, holding, or disposing of any property. Each party shall be responsible for its own property.

- H. Time of the essence.** Time shall be of the essence for all events and obligations to be performed under this Agreement.
- I. Legal obligations.** This Agreement does not relieve any party of any obligation or responsibility imposed upon it by law.
- J. Compliance with law.** The parties shall comply with all federal, state, city, and local laws, rules, and regulations. For any installation, maintenance, or other work necessary requiring licensure, City shall employ or contract with individuals carrying the requisite licenses and credentials.
- K. Force majeure.** For purposes of this Agreement, “force majeure event” means, with respect to a party, any event or circumstance, whether or not foreseeable, that was not caused by that party, and any consequences of that event or circumstance. If a force majeure event prevents a party from complying with any one or more obligations under this Agreement, that inability to comply will not constitute breach if: 1) that party uses reasonable efforts to perform those obligations; 2) that party’s inability to perform those obligations is not due to its failure to (a) take reasonable measures to protect itself against events or circumstances of the same type as that force majeure event or (b) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that force majeure event; and that party complies with its obligations under this section. If a force majeure event occurs, the noncomplying party shall promptly notify the other party of occurrence of that force majeure event, its effect on performance, and the expected duration of such effect. Thereafter the noncomplying party shall update that information as reasonably necessary. During a force majeure event, the noncomplying party shall use reasonable efforts to limit damages to the other party and resume its performance under this Agreement.
- L. Assignment.** Except with the prior written consent of the other party, neither party may transfer 1) any discretion granted under this Agreement, 2) any right to satisfy a condition under this Agreement, 3) any remedy under this Agreement, or 4) any obligation imposed under this Agreement. Any purported transfer in violation of this section will be void.
- M. Entire agreement.** This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. This Agreement may not be enlarged, modified, amended or altered except in writing signed by both of the parties hereto.
- N. Amendments.** No amendment to, or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement, and signed by the individuals having the positions of the signatories to this Agreement. Any amendment or modification shall become effective upon signature of all signatories to this Agreement.
- O. Severability.** This Agreement is intended to be as broad and inclusive as is permitted by applicable law, and if any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction for any reason, 1) the validity, legality, and enforceability

of the remaining provisions of this Agreement (including without limitation, all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) are not in any way be affected or impaired thereby, and 2) to the fullest extent possible, the unenforceable provision is to be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable provision and the Agreement is to be deemed amended accordingly.

- P. Nonwaiver.** No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party operates as, or is to be construed as, a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates as, or is to be construed as, a waiver thereof; nor does any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- Q. Non-Appropriation.** ACHD acknowledges that the validity of this Agreement is based upon the availability of public funding under the authority of City's statutory mandate. Notwithstanding anything in this Agreement to the contrary, City's obligations under this Agreement to provide payment to Contractor as described herein shall be subject to and dependent upon appropriations being made by City Council for such purpose. The officer or administrator charged with the responsibility of preparing the Fire Department's budget shall include in each fiscal year's proposed budget an amount necessary to fulfill the City's responsibilities under this Agreement. In the event that despite the best efforts of City, City determines that funds for any amounts under this Agreement will not be available or cannot be obtained during any succeeding fiscal period, City shall terminate this Agreement prior to the commencement of such succeeding fiscal period by giving written notice to ACHD and GTT of such determination at least 60 days prior to the first day of such succeeding period for which an appropriation has not been made by City.
- R. No third-party beneficiaries.** This Agreement benefits solely the parties who sign this Agreement and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, confers on any third party any legal or equitable right, benefit, or remedy under or by reason of this Agreement.
- S. Legal counsel.** All parties have been represented by legal counsel, and no party shall be deemed to be the drafter of this Agreement for purposes of interpreting an ambiguity against the drafter.
- T. Controlling law.** This Agreement is to be construed and enforced in accordance with the laws of the United States and of the state of Idaho without regard to its conflict of law provisions.
- U. Choice of forum.** No party may commence any action, litigation, or proceeding against the other party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, including equity, tort, fraud, and statutory claims, in any

forum other than the courts of the state of Idaho sitting in Ada County, and any appellate court from any thereof, or, if such court does not have subject-matter jurisdiction, the United States District Court for the District of Idaho. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and must bring any such action, litigation, or proceeding only in such courts. A final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

V. Exhibits. All exhibits to this Agreement are incorporated by reference and made a part of hereof as if the exhibits were set forth in their entirety herein.

W. Warranty of authority. Each person executing and signatory to this Agreement represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary action of each respective party; that such person is, at the time of execution, duly authorized by the respective Party's governing body to bind such Party in all respects; and acknowledges and agrees that this Agreement is and shall be a valid and binding obligation upon the Parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written above.

ADA COUNTY HIGHWAY DISTRICT:

ATTEST:

BY: _____
Alexis Pickering, President

Bruce S. Wong, Director

CITY OF MERIDIAN:

ATTEST:

BY: _____
Robert E. Simison, Mayor

Chris Johnson, City Clerk