

CONTRACT FOR GOODS AND SERVICES

BY AND BETWEEN

METROPOLITAN AREA PLANNING COUNCIL

AND

AIR AUTOMOTIVE TRACKING, INC.

This AGREEMENT, dated February 6th 2020, is made and entered into by and between the **Metropolitan Area Planning Council** ["**MAPC**"], a public body politic and corporate, established by Chapter 40B, Sections 24 through 29 of the Massachusetts General Laws, with its principal office at 60 Temple Place, Boston, Massachusetts 02111, acting as the collective purchasing agent for all Commonwealth of Massachusetts Government Agencies and Authorities, and the municipalities of Ashland, Boston, Braintree, Brookline, Cambridge, Hanover, Hingham, Lexington, Milton, Natick, Newton, Norwell, Pembroke, Scituate, Somerville, Wakefield, Wellesley and Westwood, on behalf of the 101 municipalities of the MAPC Region and their municipal subdivisions ["**Buyers**"], pursuant to Chapter 7, Section 22B of the Massachusetts General Laws and without liability to **MAPC**, and **Air Automotive Tracking, Inc.** ["**Vendor**"], with its principal office at **Suite 1092, 1820 Avenue M, Brooklyn, NY 11230**.

Witnesseth that the parties AGREE as follows:

Article I

General Description of the Work

1. Pursuant to the Terms and Conditions of this AGREEMENT, including any Additional and Special Terms and Conditions listed in Exhibit C, the Request for Proposals ["**RFP**"] – **RFP No.** attached in Exhibit B; and the **Vendor's** Price Proposal and Technical Proposal attached in Exhibit F, **MAPC** hereby engages the **Vendor** to provide the following goods and/or services to the **AVL with GPS Systems, Equipment and Services**.

Article II

Services of the Vendor

2. The **Vendor** will provide the goods and/or services as described in the **RFP** cited in Article 1 (above).
3. The **Vendor** shall report, and be responsible, to **MAPC** or its designee as set forth on Exhibit A.
4. There shall be no amendment to this AGREEMENT without the written approval of **MAPC**. **MAPC** shall be under no obligation to pay for any goods provided or services performed by the **Vendor**.
5. The **Vendor** represents and warrants to **MAPC** as follows:

- i. That it and all its personnel (whether employees, agents or independent **Vendors**) are qualified and duly licensed as required by law and/or local municipal code to provide services and/or goods required by this AGREEMENT.
- ii. That it further agrees to perform services, including manufacturing, in a professional manner adhering to a reasonable standard of care and in accordance with all applicable State or Federal laws, rules and regulations.
- iii. That it will obtain any and all permits, bonds, insurances and other items required for the proper and legal performance of the work.
- iv. That it is not a party to any AGREEMENT, contract or understanding, which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this AGREEMENT.

Article III

Performance of the Vendor

6. In the performance of service under this AGREEMENT, the **Vendor** acts at all times as an independent contractor. There is no relationship of employment or agency between **MAPC**, on the one hand, and the **Vendor** on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this AGREEMENT which the parties view as consistent with their independent **Vendor** relationship.
7. The **Vendor** agrees to be responsible for and warrantee the work of its subcontractors listed in Exhibit D and to ensure their compliance with all legal, quality and performance requirements of the Request for Proposals ["RFP"] – RFP No. attached in Exhibit B; and the **Vendor's** Price Proposal and Technical Proposal attached in Exhibit F. The **Vendor** may not use subcontractors not named in Exhibit D without the prior written consent of **MAPC**, which will not unreasonably be withheld.

Article IV

Time of Performance

8. Time shall be of the essence in relation to **Vendor's** performance under this AGREEMENT. **Vendor** shall complete performance as promised in its quote that accompanies the **Buyer's** purchase order or other document confirming its authorization to the **Vendor** to proceed. Reasonable extensions shall be granted by the **Buyer** at the written request of the **Vendor**, provided the justifying circumstances are documented by and are beyond the reasonable control of **Vendor** and without fault of **Vendor**. In the event of such an extension, all other terms and conditions of this AGREEMENT, except the dates of commencement and completion of performance, shall remain in full force and effect between the parties unless modified in writing.
9. In the absence of such an extension, liquidated damages shall be due the **Buyer** in the amount of 0.1% (one-tenth of one percent) of the face value of the **Vendor's** quoted or modified purchase price for each day performance exceeds the promised date(s). Such liquidated damages may be acknowledged in **Vendor's** final invoice or taken by **Buyer** as a deduction to such final invoice.
10. Any dispute in the amount of liquidated damages shall be submitted to arbitration by either **Buyer** or **Vendor** through the American Arbitration Association within 10 (ten) business days of

written notice given by the party declaring impasse. **Vendor** and **Buyer** agree to fully comply with the arbitrator's decision within a reasonable time.

Article V

Revisions in the Work to Be Performed

11. If during the **Vendor's** Time of Performance, **Buyer** requires revisions or other changes to be made in the scope or character of the work to be performed, **Buyer** will promptly notify **Vendor** in writing. For any changes to the scope of work, **Vendor** shall provide **Buyer** with a written quote of change in price and/or change in time of performance and shall proceed with such changes only upon written consent of **Buyer**, which shall be construed as a modification to **Buyer's** original purchase order.
12. **Buyer** will neither unreasonably request revisions nor unreasonably withhold final acceptance of delivered products.

Article VI

Term of Agreement

13. The term of this AGREEMENT shall commence upon execution and will continue until December 31, 2020, or until otherwise terminated as provided by this AGREEMENT or the **RFP**.
14. **MAPC** reserves the right at its sole discretion to extend the contract for up to two (2) additional one-year terms ending December 31, 2021 and December 31, 2022 respectively.
15. In the event new contracts have not been procured and awarded before the end of a 2nd contract extension, **MAPC** reserves the right at its sole discretion to extend the contract for an additional period of time until new contracts have been procured and awarded. However, in no instance shall any contract term, including extensions, exceed three (3) years in total.
16. The **Vendor** agrees to perform promptly upon execution of this AGREEMENT and will diligently and faithfully perform in accordance with the provisions hereof.

Article VII

Orders, Fees, Invoices, and Payments

17. Orders, fees, invoices, and payment shall be processed and paid as specified in Section 10.10 – Section 10.14 Terms & Conditions of the **RFP**.

Article VIII

Assignment

18. Neither party shall assign, transfer or otherwise dispose of this AGREEMENT or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party. Any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

Article IX

Indemnification

19. The **Vendor** agrees to indemnify and save **MAPC** and the **Buyers** harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by the **Vendor** (including all its employees or agents) in performing under this AGREEMENT, or any breach of the terms of this AGREEMENT, which constitute an obligation of the **Vendor**. The **Vendor** shall reimburse **MAPC** and the **Buyers** for any and all costs, damages, and expenses including reasonable attorney's fees which **MAPC** and the **Buyers** pays, or becomes obligated to pay, by reason of such activities or breach. The provisions of this Section shall be in addition to and shall not be construed as a limitation on any other legal rights of **MAPC** and the **Buyers** expressed or not expressed in the **RFP** and with respect to this AGREEMENT.

Article XI

Insurance

20. Before performing under this AGREEMENT, the **Vendor** shall obtain, and shall maintain throughout the term of this AGREEMENT, insurance at limits specified in the **RFP** and provide written documentation of such in the form specified in the **RFP**.
21. The **Vendor** shall give **MAPC** 20 days (twenty) written notice and copies of documentation in the event of any change or cancellation of coverage.

Article XII

Termination of Agreement

22. Either **MAPC** or the **Vendor** may terminate this AGREEMENT for cause upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill its material duties hereunder in a timely and satisfactory manner.
23. **MAPC** shall have the right to terminate this AGREEMENT for its convenience upon fourteen (14) calendar days of written notice.
24. Following termination of this AGREEMENT, the parties shall be relieved of all further obligations hereunder except that:
25. **MAPC** shall not be liable for payments for the services and/or expenses or lost profits of the **Vendor** in the event of termination.
26. The **Vendor** shall remain liable for any damages, expenses or liabilities arising under this AGREEMENT (including its indemnity obligations) with respect to work performed pursuant to the AGREEMENT.

Article XIII

Entirety of Agreement

27. This AGREEMENT, together with its Exhibits, the **RFP** referenced above and its Addenda, the required supplemental documents and any additional exhibits, constitute the entire

AGREEMENT between **MAPC** and the **Vendor** with respect to the matters set forth therein and may not be changed (amended, modified or terms waived) except by a writing signed by both parties. Any notices required or allowed shall be sent by receipt-verified mail, e-mail, fax or courier to the persons designated in Exhibit A.

28. The provisions of the **RFP** and the **Vendor's** Proposal are incorporated herein by reference. In the event of any conflict among the Contract Documents, the documents shall be construed according to the following priorities:

Highest Priority:	Amendments to Contract (if any)
Second Priority:	Contract
Third Priority:	Addenda to the RFP (if any)
Fourth Priority:	RFP
Fifth Priority:	Vendor's Proposal

Article XIV

Severability

29. In the event any provision of this AGREEMENT is found by a court of appropriate jurisdiction to be unlawful or invalid, the remainder of the AGREEMENT shall remain and continue in full force and effect.

Article XV

Governing Law and Jurisdiction

30. This AGREEMENT shall be governed by, construed and enforced in accordance with laws of the Commonwealth of Massachusetts. **MAPC, Vendors, and Buyers** agree to submit their respective jurisdiction and venue to the state and federal courts in the Commonwealth of Massachusetts to resolve any disputes or disagreements that may arise under any provision of this AGREEMENT.

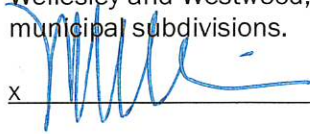
Article XVI

Notice

31. Except as otherwise expressly provided in this AGREEMENT, any decision or action by **MAPC** relating to this AGREEMENT, its operation, or termination, shall be made only by **MAPC** or its designated representative identified in Exhibit A.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their duly authorized officers on the date written below.

For **MAPC** by or on behalf of to all Commonwealth of Massachusetts Government Agencies and Authorities, and the municipalities of Ashland, Boston, Braintree, Brookline, Cambridge, Hanover, Hingham, Lexington, Milton, Natick, Newton, Norwell, Pembroke, Scituate, Somerville, Wakefield, Wellesley and Westwood, on behalf of the 101 municipalities of the MAPC Region and their municipal subdivisions.

x 

Signature

2/14/2020

Date

Marc Draisen

Name

Executive Director

Title

For the **VENDOR**:

x 

* Signature

General Manager

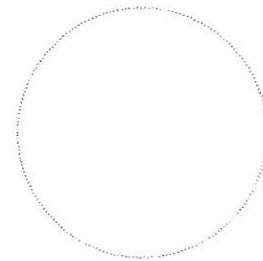
* Title

Martin Hupa

* Name

February 6th / 2020

* Date



* Affix Corporate Seal

(or mark "n/a")

EXHIBIT A

Notice Addressees

For **MAPC:**

Marc Draisen

Name

Executive Director

Title

MAPC

Organization

60 Temple Place

Street Address

Boston, MA 02111

City, State, ZIP

617.933.0700

Phone

617.482.7185

Fax

mdraisen@mapc.org

e-mail

For the **VENDOR:**

MARTIN HUPA.

* Name

GENERAL MANAGER.

* Title

AAT Inc.

* Organization

20 - 260 Edgeley Blvd.

* Street Address

Vaughan, ON., L4K 3Y4, CANADA.

* Street Address

905 761 3268.

* Phone

905 761 8455.

* Fax

martin.hupa@aatracking.com.

* e-mail

EXHIBIT B

Request for Proposals

RFP #MAPC 2019 AVL

RFP # MAPC 2019 AVL is hereby incorporated by reference. The original RFP shall be held at the MAPC office located at 60, Temple Place, Boston, MA 02111

EXHIBIT C

Special Terms & Conditions

1. None.

* * * * *

EXHIBIT D

Subcontractors

1.

EXHIBIT E

Other Documents:

1. Insurance Guarantee(s)__(to be provided prior to contract execution)

EXHIBIT F

Vendor Proposal:

1. **Vendor's Complete Technical Proposal**
2. **Vendor's Complete Price Proposal**

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Vendor's Technical Proposal and Price Proposal are hereby incorporated by reference. The original documentation is held at the office of MAPC located at 60 Temple Place, Boston, MA 02111

CSIO

CERTIFICATE OF LIABILITY INSURANCE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder and imposes no liability on the insurer. This certificate does not amend, extend or alter the coverage afforded by the policies below.

1. CERTIFICATE HOLDER - NAME AND MAILING ADDRESS		2. INSURED'S FULL NAME AND MAILING ADDRESS	
MAPC – Metropolitan Area Planning Council		Air Automotive Tracking Inc	
60 Temple Place, 6th Floor		21-260 Edgely Boulevard	
Boston	MA	POSTAL CODE 02111	Concord Ontario
			POSTAL CODE L4K 3Y4

3. DESCRIPTION OF OPERATIONS/LOCATIONS/AUTOMOBILES/SPECIAL ITEMS TO WHICH THIS CERTIFICATE APPLIES (but only with respect to the operations of the Named Insured)

Development, Installation, Monitoring and Service of Automotive Tracking Software

Working as a vendor for Metropolitan Area Planning Council

4. COVERAGES

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated notwithstanding any requirements, terms or conditions of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all terms, exclusions and conditions of such policies.

LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

TYPE OF INSURANCE	INSURANCE COMPANY AND POLICY NUMBER	EFFECTIVE DATE YYYY/MM/DD	EXPIRY DATE YYYY/MM/DD	LIMITS OF LIABILITY (Canadian dollars unless indicated otherwise)		
				COVERAGE	DED.	AMOUNT OF INSURANCE
COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE OR <input checked="" type="checkbox"/> OCCURRENCE <input checked="" type="checkbox"/> PRODUCTS AND / OR COMPLETED OPERATIONS <input type="checkbox"/> EMPLOYER'S LIABILITY <input checked="" type="checkbox"/> CROSS LIABILITY <input type="checkbox"/> WAIVER OF SUBROGATION <input checked="" type="checkbox"/> TENANTS LEGAL LIABILITY <input type="checkbox"/> POLLUTION LIABILITY EXTENSION <input type="checkbox"/> <input type="checkbox"/>	Berkley Insurance Canada - BC ON 100000972	2019/04/16	2020/04/16	COMMERCIAL GENERAL LIABILITY	\$1,000	\$2,000,000
				BODILY INJURY AND PROPERTY DAMAGE LIABILITY - GENERAL AGGREGATE		
				BODILY INJURY AND PROPERTY DAMAGE LIABILITY - EACH OCCURRENCE		\$2,000,000
				PRODUCTS AND COMPLETED OPERATIONS AGGREGATE		\$2,000,000
				<input type="checkbox"/> PERSONAL INJURY LIABILITY OR		
				<input checked="" type="checkbox"/> PERSONAL AND ADVERTISING INJURY LIABILITY		\$2,000,000
				MEDICAL PAYMENTS		\$25,000
				TENANTS LEGAL LIABILITY	\$1,000	\$500,000
				POLLUTION LIABILITY EXTENSION		
<input checked="" type="checkbox"/> NON-OWNED AUTOMOBILES	Berkley Insurance Canada - BC ON	2019/04/16	2020/04/16	NON-OWNED AUTOMOBILES		\$2,000,000
<input checked="" type="checkbox"/> HIRED AUTOMOBILES	Berkley Insurance Canada - BC ON	2019/04/16	2020/04/16	HIRED AUTOMOBILES		
AUTOMOBILE LIABILITY <input type="checkbox"/> DESCRIBED AUTOMOBILES <input type="checkbox"/> ALL OWNED AUTOMOBILES <input type="checkbox"/> LEASED AUTOMOBILES ** ** ALL AUTOMOBILES LEASED IN EXCESS OF 30 DAYS WHERE THE INSURED IS REQUIRED TO PROVIDE INSURANCE				BODILY INJURY AND PROPERTY DAMAGE COMBINED		
				BODILY INJURY (PER PERSON)		
				BODILY INJURY (PER ACCIDENT)		
				PROPERTY DAMAGE		
				EACH OCCURRENCE		
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/>				AGGREGATE		
OTHER LIABILITY (SPECIFY) <input type="checkbox"/> <input type="checkbox"/>						

5. CANCELLATION

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavour to mail 30 days written notice to the certificate holder named above, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

6. BROKERAGE/AGENCY FULL NAME AND MAILING ADDRESS		7. ADDITIONAL INSURED NAME AND MAILING ADDRESS <small>(Commercial General Liability- but only with respect to the operations of the Named Insured)</small>	
KRG Ins. Brkrs., div. of RRJ Ins. Group 2450 Victoria Park Avenue Suite 700		MAPC – Metropolitan Area Planning Council 60 Temple Place, 6th Floor	
Toronto	ON	POSTAL CODE M2J 4A2	
BROKER CLIENT ID: AIRAU-1		Boston	MA
			POSTAL CODE 02111

8. CERTIFICATE AUTHORIZATION

ISSUER KRG Ins. Brkrs., div. of RRJ Ins. Group	CONTACT NUMBER(S) TYPE Main NO. (416) 636-4544 TYPE Fax NO. (416) 636-5555 TYPE NO. TYPE NO.
AUTHORIZED REPRESENTATIVE Jacob Bleau	
SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE February 10, 2020 EMAIL ADDRESS jacob@krg.com