

ADDENDUM #1

**791 PURCHASING COOPERATIVE AND VENDOR
AGREEMENT**

Between LB Technology, Inc.
(Company Name)

with the principal place of business at

7005 Appling Farms Parkway, Suite 101, Memphis, TN 38133

and

**791 Purchasing Cooperative
For**

RFP #2021-03-009 Vehicle Fleet Management Services Issued: March 30, 2021

General Information

The Vendor Agreement (“Agreement”) made and entered into by and between 791 PURCHASING COOPERATIVE (hereinafter referred to as “791COOP”) a government cooperative purchasing program authorized by the Central Texas Council of Governments, having its principal place of business 612 Irene Street San Angelo, TX 76903 and LB Technology, Inc. (hereinafter referred to as “Vendor”) a provider having its principal place of business as listed at the top of page one. This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

The Vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the Solicitation (RFP, RCSP, RFQ) as posted, including any addenda and the awarded Vendor’s proposal.

The following pages will constitute the Agreement between the Vendor and 791COOP.

ADDENDUM #1

Terms and Conditions

1. Assignment of Vendor Agreement

No assignment of the Vendor Agreement may be made without the prior written approval of 791COOP. A simple change of name agreement will not change the Agreement obligations of awarded Vendor.

2. 791 PURCHASING COOPERATIVE Contract

The 791 PURCHASING COOPERATIVE Contract is the final negotiated version of the Vendor's contract that was submitted as part the **RFP #2021-03-009 Vehicle Fleet Management Services** which Vendor negotiated with 791COOP. The 791COOP Contract will govern all aspects of a sale for Products and/or Services between Vendor and a 791COOP Member. 791COOP recognizes that a 791COOP Member may, in agreement with Vendor, make modifications to the 791COOP Contract to reflect specific needs of the 791COOP Member. This modified form will still be referred to as the 791COOP Contract.

Vendor may only use the 791COOP Contract with 791COOP Members who have agreed to purchase Vehicle Fleet Management Services from Vendor through the 791COOP preferred supplier program. If a 791COOP Member solicits proposals for Products and/or Services under this Agreement from Vendor directly and has specifically provided notice that they will not be using 791COOP as their contract vehicle through the 791COOP preferred supplier program, Vendor cannot use the 791COOP Contract to serve the 791COOP Member. For the avoidance of doubt, if a Vendor and a 791COOP Member execute a 791COOP Contract to purchase Products and/or Services under this Agreement, Vendor will be obligated to pay 791COOP the Participation Fees outlined in Section 8 below.

To further clarify, vendor may sell to a 791COOP member or potential 791COOP members, which is any governmental or other public entity through the 791COOP preferred supplier program. If a potential customer is not currently a 791COOP member, they may join 791COOP by contacting 791COOP at admin@791COOP.org. Awarded vendors are not restricted from responding to any public or governmental entity that issued a Request for Proposals and has chosen not to use the 791COOP interlocal cooperative method of procurement.

If you identify a public or governmental entity that wants to make a purchase and use a cooperative or interlocal contract, and is not a current 791COOP Member, please contact 791COOP at the email address above so 791COOP may contact the entity to provide all applicable information.

791COOP will provide awarded vendors membership packets for this purpose upon request.

ANY AGREEMENT BETWEEN A 791COOP MEMBER AND VENDOR THAT REQUIRES THE 791COOP MEMBER TO INDEMNIFY ANY OTHER PARTY, EXCEPT TO THE EXTENT PERMITTED BY THE APPLICABLE CONSTITUTION, LAWS OR REGULATIONS OF THE JURISDICTION OF THE LOCATION OF THE 791COOP MEMBER OR THE LOCATION OF THE PERFORMANCE OF THE CONTRACT UNDER THIS AGREEMENT, IS NOT PERMITTED UNDER THIS AGREEMENT AND RENDERS THE INDEMNITY REQUIREMENT NULL AND VOID AS IT APPLIES TO THE 791COOP MEMBER'S RESPONSIBILITY TO INDEMNIFY ANY PARTY.

3. Disclosures

- a) Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.

ADDENDUM #1

- b) Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with 791COOP under a 791COOP Agreement if Vendor feels that such possible conflicts of interest exist. If you believe there is a conflict of interest as described in the form CIQ instruction sheet contained in this RFP, please complete and submit the form CIQ provided as instructed.
- c) The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

4. Renewal of Agreements

This Agreement between 791COOP and Vendor is for a three (3) year term with two (2), two (2) year extension options. Any extension of the initial term will be agreed to in writing between 791COOP and Vendor. Nothing herein shall require either party to agree to an extension of the initial term.

Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with 791COOP Members Resulting from the Solicitation and with the Vendor Named in this Agreement.

NO AGREEMENT FOR GOODS OR SERVICES WITH A 791COOP MEMBER BY THE AWARDED VENDOR NAMED IN THIS AGREEMENT THAT RESULTS FROM THE SOLICITATION AWARD NAMED IN THIS AGREEMENT MAY INCORPORATE AN AUTOMATIC RENEWAL CLAUSE WITH WHICH THE 791COOP MEMBER MUST COMPLY. ALL RENEWAL TERMS INCORPORATED IN AN AGREEMENT BETWEEN THE VENDOR AND THE 791COOP MEMBER SHALL ONLY BE VALID AND ENFORCEABLE WHEN THE VENDOR RECEIVES WRITTEN CONFIRMATION BY PURCHASE ORDER OR EXECUTED AGREEMENT ISSUED BY THE 791COOP MEMBER FOR ANY RENEWAL PERIOD. THE PURPOSE OF THIS CLAUSE IS TO AVOID A 791COOP MEMBER INADVERTENTLY RENEWING AN AGREEMENT DURING A PERIOD IN WHICH THE GOVERNING BODY OF THE 791COOP MEMBER HAS NOT PROPERLY APPROPRIATED AND BUDGETED THE FUNDS TO SATISFY THE AGREEMENT RENEWAL. THIS TERM IS NOT NEGOTIABLE AND ANY AGREEMENT BETWEEN A 791COOP MEMBER AND A 791COOP AWARDED VENDOR WITH AN AUTOMATIC RENEWAL CLAUSE THAT CONFLICTS WITH THESE TERMS IS RENDERED VOID AND UNENFORCEABLE AS TO THE AUTOMATIC RENEWAL CLAUSE.

5. Invoices

Vendor is responsible for the invoicing and collection of all funds due from a 791COOP Member to Vendor.

6. Member Payments

791COOP Members will make payments directly to the Vendor for all funds owed as provided for in the 791COOP Contract.

7. Pricing

The price Vendor will charge a 791COOP Member will be defined in the 791COOP Contract and determined at the time Vendor and a 791COOP Member makes purchases through this 791COOP Contract. The price Vendor charges a 791COOP Member will include the 791COOP annual participation fee.

At no time during the initial term or extension term of this Agreement shall the price charged to a 791COOP Member exceed the contracted price **RFP #2021-03-009 Vehicle Fleet Management Services** for the applicable equipment and/or services being provided.

ADDENDUM #1

Language similar to the following will be added to the Representations Section of the Vendor's 791 PURCHASING RFP #2021-03-009 Vehicle Fleet Management Services:

"Vendor represents that this Agreement, pursuant to the award to LB Technology, Inc. as a result of the 791 PURCHASING COOPERATIVE RFP #2021-03-009 Vehicle Fleet Management Services, complies with the terms and conditions contained in a separate Purchasing agreement between Vendor and 791 PURCHASING COOPERATIVE Members."

8. Participation Fee

Vendor agrees to pay 791COOP and Administrative Participation Fee.

- a) The fee is a 1.25% annual participation fee for all Agreement sales to 791COOP Members utilizing a 791COOP awarded contract. The participation fee will be the total dollars derived from 1.25% of total sales volume through this program to 791COOP members. The participation fee will be included in quotes and invoices between the awarded vendor and a 791COOP Members.
- b) The 791COOP participation fee will not be a provided as a separate line item to the 791COOP Member. Vendor will remit the participation fee to 791COOP within thirty (30) business days of receipt of the payment for Purchases made under this agreement, which includes the annual participation fee, from the 791COOP Member. Failure to pay the participation fee will result in termination of Agreement and 791COOP reserves the right to take any action under the law or equity for any breach of contract.
- c) Prior to delivering a quote to a 791COOP Member, the awarded vendor(s) will calculate the administrative fee for 791COOP to be included in the quote.

9. Administrative Participation Fee

791COOP establishes a fee for each solicitation for proposals that is in the best interest of 791COOP and its members.

10. Sales Reporting Procedures for Vendor

Vendor will report any sale under this contract that is made to a 791COOP Member with Vendor on a monthly basis. Thus, any order completed in a particular month shall report with thirty (30) business days of the 791COOP Member issuing a Purchase Order and completing a purchase from the Vendor under this contract.

11. Adoption of Agreement by State or Federal Agencies

Vendor may present this Agreement to 791 COOP Members or other government or public agencies for adoption by the agency. Vendor may agree to pay an additional fee to the agency. The Vendor shall continue to pay the Participation Fee to 791COOP and report these sales to 791COOP.

Furthermore, Vendor may present this Agreement to Federal Government Agencies who may adopt this Agreement. Participation fees shall continue to be paid and sales reported to 791COOP, even if a fee is paid the approving Federal Agency.

Failure for the Vendor to comply with this section of the Agreement will result the in Vendor being in breach of this Agreement and have their Agreement with 791COOP terminated for cause.

12. Indemnity

ADDENDUM #1

Vendor agrees to indemnify and hold harmless and defend 791COOP, 791COOP officers and employees, from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance of this Agreement or sales made to 791COOP Members under this agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, invitees, unless such claims are based in whole upon the negligent acts or omissions of the 791COOP, 791COOP officers, employees, or agents. If based in part upon the negligent acts or omissions of the 791COOP, 791COOP officers, employees, or agents, Vendor shall be responsible for their proportional share of the claim.

13. State of Texas Franchise Tax

By signature hereon, Vendor hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

14. Miscellaneous:

Nothing in the Agreement or in any other communication between 791COOP and the Vendor may be construed as a guarantee that 791COOP Members will purchase items and services under this contract from Vendor at any time.

15. Termination:

Contract shall terminate at the end of the Agreement or at the end of any contract extensions. Either party may terminate for breach of contract which would include bankruptcy, or due to continued failure to perform the terms in this Agreement. Prior to exercising termination for breach, the non-breaching party must provide notice by certified mail to provide the other party 30 days to solve the stated problems. However, if this agreement is terminated prior to the end date of the initial term or the end date of an agreed to extension term, any 791COOP Purchase Contract entered into between Vendor and a 791COOP Member shall survive and will not be terminated. Upon termination of this agreement between 791COOP and the Vendor, this Agreement shall survive only insofar as to govern all surviving 791COOP Contracts between the Vendor and 791COOP Members. Termination for convenience is required under 2 CFR part 200.

16. Marketing

Vendor agrees to allow 791COOP to use their name and logo within the 791COOP website, marketing materials and advertisement. Vendor may use the 791COOP name and logo in marketing the 791COOP Contract to 791COOP Members or other government or public entities.

17. Legal obligations

It is the Vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in this RFP and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

18. Audit rights

Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by any 791COOP Member that utilizes this Agreement. 791COOP reserves the right to audit the accounting for a period of four (4) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of four (4) years from the effective date of termination. 791COOP shall have the ability to engage a mutually approved third-party auditing firm to conduct

ADDENDUM #1

the audit. In the event of an audit, the requested materials shall be provided in the format and at the location designated by 791COOP. 791COOP shall bear the cost of such audit requested by 791COOP, but all documents maintained by the vendor shall be produced and made available to 791COOP or its agents at no cost.

19. Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and cause of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. This Clause includes COVID-19 which is a Declared Pandemic and any future Declared Pandemics.

20. Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the 791COOP to a binding arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Agreement, except for those specifically waived under the terms of the Agreement, may be subject to mediation at the request of either party, subject to the terms in Section 23 below.

21. Choice of Law

This Agreement and any addenda or other additions and all contracts or awards resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

22. Jurisdiction (Venue) and Service of Process

Any Proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Tom Green County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world.

23. Alternative Dispute Resolution

Prior to filing of litigation, the parties may select non-binding mediation as a method of conflict resolution for issues arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction. The parties agree that if non-binding mediation is chosen as a resolution process, the parties must agree to the chosen mediator(s) and that all mediation venues shall be held at a mutually agreed upon location. The parties agree to share equally the cost of the mediation process and venue cost. Agreements reached in mediation shall be reduced to writing and signed shall thereafter be enforceable as provided by the laws of the State of Texas.

ADDENDUM #1

24. Acts or Omissions

The successful vendor will be expected to indemnify and hold harmless 791COOP, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by 791COOP and the vendor.

25. Contract Governance

Any contract made or entered into by 791COOP is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, Central Texas Council of Governments, as the Lead Agency for 791COOP, does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

26. Supplemental Agreements

The 791COOP Member entity participating in the 791COOP Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. 791COOP, its agents, 791COOP Members and employees shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a vendor submitting a Proposal requires 791COOP and/or 791COOP Member to sign an additional agreement, those agreements shall comply with the award made by 791COOP to the Vendor. 791COOP permits 791COOP Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's 791COOP Agreement.

27. Survival Clause

All applicable agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and 791COOP or the 791COOP Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by 791COOP or a 791COOP Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

28. Smoking

Persons working under Agreement shall adhere to the 791COOP Member's or local smoking statutes, codes or policies.

29. Novation

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

30. Licenses

Vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods

ADDENDUM #1

or services under the Agreement. 791COOP and its Members reserves the right to stop work and/or cancel Agreement of any awarded vendor whose license(s) expire, lapse, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

31. 791 PURCHASING COOPERATIVE Member Purchasing Procedures

Purchase orders or their equal are issued by participating 791COOP Member to the Vendor and should indicate on the order that the purchase is per the applicable 791COOP Agreement number. Orders are typically emailed to 791COOP at admin@791COOP.org

- a) Vendor delivers goods/services directly to the participating member.
- b) Vendor invoices the participating 791COOP Member directly.
- c) Vendor receives payment directly from the participating member.
- d) Vendor reports sales monthly to 791COOP (unless prior arrangements have been made with 791COOP for an alternative submission schedule).

32. Incorporation of Solicitation

The 791COOP Solicitation, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

33. Registered Felony Convictions and sex offender restrictions

For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the 791COOP Member. Awarded Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the 791COOP Member's discretion. Awarded Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

34. Safety measures

Awarded Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded Vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

35. Insurance Requirements

- a) **Vendor's Commercial General Liability Insurance**— Vendor shall purchase and maintain such insurance as will protect it from claims for damages because of bodily injury, sickness, or disease, or death of any person including claims insured by standard personal injury liability, and from claims for injury to or destruction of tangible property, including loss of use resulting there from, any or all of which may arise out of or result from Vendor's operations under the contract documents, whether such operations be by itself or anyone directly or indirectly employed by the Vendor or for whose acts they may be legally liable. This insurance shall include the types and specific coverages herein described and be written for not less than any limits of

ADDENDUM #1

liability specified in the Request for Solicitation or required by law, whichever is greater. Insurance must include coverage for independent contractors, products/completed operations, contractual liability, broad form property damage, and personal injury.

- b) Vendor's Automobile Liability Insurance**—Vendor shall purchase and maintain such insurance as will protect it from claims for damages because of bodily injury, sickness, disease or death of any person, including claims insured by standard personal injury coverage; and from claims for injury to or destruction of tangible property, including loss of use resulting there from, any or all of which may arise out of or result from the use of all owned, non-owned, or hired (as applicable) automobile, vehicles, and other equipment both on and off work, arising from or in any way related to or as the result of Vendor's operations under the Agreement, whether such operations be by the Vendor or anyone directly or indirectly employed by him or for whose acts any of them may be legally liable.
- c) Vendor's Workers' Compensation and Employer's Liability Coverage**—The Vendor shall comply with the provisions of the Workers' Compensation Act, the subsequent Injury Act, and Vendor shall procure and maintain during the life of this Contract Workers' Compensation and Employer's Liability Insurance. Such insurance shall include coverage permitted for safety devices. If the Vendor elects to be self-insured, it shall comply with the applicable requirements and laws of Texas. Region 15 ESC, its officers, or employees will not be responsible for any claims or actions occasioned by the failure of the Vendor to comply with the provisions of this paragraph.

If any class of employee is not protected under the Workers' Compensation Statute, the Vendor shall provide adequate employer's liability coverage as will protect him and the University against any claims resulting from injuries to and death of workers engaged in work under this contract.

- d) Coverage limits**—Insurance coverage limits required to be carried by the Vendor under this Section shall be as follows:
1. Commercial General Liability Insurance and Commercial Automobile Liability Insurance limits of coverage shall be the limits established by Texas Claims Act or a Combined Single Limit coverage of \$1,000,000.
 2. Vendor's Workers' Compensation - coverage shall be those established by applicable statutes. Employer's liability coverages shall be the limits established by the State of Texas or \$1,000,000.
 3. Umbrella Liability Insurance: Liability on a following form basis with a limit \$1,000,000 per occurrence in excess of all primary limits.
- e) All proposals shall include a valid Certificate of Liability Insurance showing REGION 15 ESC, 791 Purchasing Cooperative and individual 791COOP Members (if requested and if goods and/or services are provided to such Member) as a certificate holder.**
- f) To protect the 791COOP, 791COOP Members and their employees against liability, loss, or expense in the event of damage to property, injury, or death to any person or persons arising in any way out of or in connection with or resulting from the work provided hereunder, Vendor shall procure and maintain, at its sole expense and until acceptance of the work, insurance as**

ADDENDUM #1

hereinafter enumerated in policies which shall be subject to the 791COOP's approval as to form, amount and issuing company. Amounts listed are a minimum.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

ADDENDUM #1

791 PURCHASING COOPERATIVE and VENDOR AGREEMENT
Signature Form

RFP #2021-03-009 Vehicle Fleet Management Services

Vendor:

Company Name LB Technology, Inc.

Address 7005 Appling Farms Parkway, Suite 101


City Memphis State TN Zip 38111

Phone 901-480-8840 Fax _____

Name of Authorized Representative Ellen Fortas

Title SVP/CFO Date 8/2/2021

Email of Authorized Representative: efortas@btelematics.com

Signature of Authorized Representative  (Required)

791 PURCHASING COOPERATIVE:

Authorized Representative Signature: 

Name Jeffrey Shokrian

Title President

Email Jeff@791Coop.org

Address PO Box 592867

City San Antonio, TX 78261 State _____ Zip _____

Phone 832.752.5978 Fax _____

Date August 2, 2021