

CITY OF WILLIAMSPORT, PA RESOLUTION

RESOLUTION # 9126

DATE 3-31-21

TITLE

RESOLUTION AUTHORIZING THE AMENDMENT TO THE TIRE LEASE AGREEMENT WITH BRIDGESTONE AMERICAS TIRE OPERATIONS LLC

BE IT HEREBY RESOLVED, by the City Council of the City of Williamsport that it authorizes River Valley Transit to enter into an amendment agreement with Bridgestone Americas Tire Operations LLC for the lease of the Intellitire TPMS system. This project is funded through the River Valley Transit Operating Budget (COA) as supplied to PennDot.

BE IT FURTHER RESOLVED, that River Valley Transit's General Manager be authorized to execute the necessary papers, documents, etc to carry out the foregoing purchase.

ATTEST:

By:

James Frank
City Clerk

Approved

James M. Frank
City Clerk

Dorothy Allison
President

**AMENDMENT No. 1
TO
TIRE LEASE AGREEMENT**

This Amendment No. 1 (the “**Amendment**”) to the Tire Lease Agreement is entered into on October 1st, 2018 (the “**Effective Date**”), by and between Bridgestone Americas Tire Operations, LLC (“**Bridgestone**”) and **City of Williamsport / River Valley Transit** (“**Operator**”), and amends the Tire Lease Agreement between the parties made as of **March 15th, 2021** (together with any amendments, and exhibits or other attachments, the “**Agreement**”). Capitalized terms used but not defined in this Amendment will have the meanings given to those terms in the Agreement.

WHEREAS, the parties desire to amend the Agreement as set forth herein below;


NOW, THEREFORE, in consideration of the terms and conditions herein, the parties agree as follows:

1. The heading of **Section 1** of the Agreement, entitled “Tires.” is amended to read “Tires and Intellitire TPMS.”
2. The following paragraph is added to the end of **Section 1** of the Agreement: “Operator may lease Intellitire TPMS under this Agreement in accordance with terms included in **Exhibit A** attached hereto. The updated rates and termination payments for any tires equipped with Intellitire TPMS are reflected in the tables included in **Sections 2** and **11** of the Agreement.”
3. **Exhibit A** attached to this Amendment is now incorporated by reference into the Agreement.
4. The following sentence is added to the end of **Section 2** of the Agreement: “In addition to the per mile rate referenced above, Operator shall also pay Bridgestone \$882.00 per month to equip each vehicle in its vehicle fleet with Intellitire TPMS.”
5. The parties confirm that they have carefully read this Amendment, understand its contents, and sign the same of their own free will. If any dispute arises under this Amendment, the terms of this Amendment will not be construed against the drafter, but will be neutrally construed as though both parties were the drafter.
6. Except to the extent expressly amended by this Amendment, all terms and conditions of the Agreement shall remain in full force and effect. The Agreement as amended by this Amendment embodies the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, oral or written relative thereto.
7. This Amendment may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Each party agrees to accept an electronic image of this Amendment as an original, and that electronic copies of the signature will be treated as an original for all purposes.

The parties have caused this Amendment to be executed by the person duly empowered to bind each party.

Bridgestone Americas Tire Operations, LLC

City of Williamsport/ River Valley Transit

By:  _____ 5/15/2021

Printed Name: CJ MESSMER
Title: DIRECTOR – MILEAGE SALES

By: _____

Printed Name:
Title:

Exhibit A

Intellitire TPMS Standard Terms and Conditions

These Standard Terms and Conditions (the “**Terms**”) govern Operator’s receipt and use of Intellitire TPMS solution (collectively, the “**Products and Services**”) provided by Bridgestone, and constitute a part of the Agreement.

1. Definitions.

- a. “**Bridgestone Software**” means all computer software proprietary to Bridgestone or its affiliates that is included in or delivered or made available to Operator as part of the Products and Services.
 - b. “**Effective Date**” means the effective date set forth in the Amendment.
 - c. “**Feedback**” means any communications or materials Operator or any of its employees or contractors provide to Bridgestone by mail, email, telephone, or otherwise, suggesting changes to the Products and Services, including, without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like.
 - d. “**Fees**” means all amounts payable pursuant to the Agreement or as otherwise set forth herein, together with any taxes accruing with respect thereto for which Operator is responsible, pursuant to the terms of the Agreement.
 - e. “**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs. Malicious Code does not include the ability of Bridgestone to remotely access, monitor, update, suspend operation of or disable any System or Software.
 - f. “**Operator Data**” means (a) all data, information and content or materials, regardless of the form or media in which such items are held collected, downloaded or otherwise received directly or indirectly from Operator or a user by or through the Products and Services; and (b) any related output as a result of and/or as part of the Products and Services. Personal Data is a subset of Operator Data.
 - g. “**Personal Data**” means all information relating to identified or identifiable individuals received from Operator or a user or otherwise obtained by Bridgestone in connection with this Agreement or to which Bridgestone has access while providing the Products and Services under this Agreement.
 - h. “**System**” means, as the context may dictate, an individual computer, mobile device or other component of hardware, equipment or technology, together, as may be applicable, with any related peripherals, provided to Operator as part of the Products and Services, and whether purchased by Operator or leased or loaned to Operator by Bridgestone.
 - i. “**Third Party Materials**” means any hardware, software or other materials not proprietary to Bridgestone that constitute a part of or are incorporated in any part of the Products and Services.
2. **Products and Services.** Bridgestone will provide the Products and Services to Operator in accordance with the terms of this Agreement and the applicable Product and Service Descriptions and Additional Terms, if any (collectively, as applicable, the “**Product and Service Descriptions**”).
3. **Term and Termination.**
- a. **Renewal.** See Section 16 of the Agreement.
 - b. **Termination.** See Section 11 of the Agreement.
 - c. **Effect of Termination.** Accrued payment obligations, in addition to any other amounts to be paid, reimbursed or otherwise retained by Bridgestone pursuant to the Agreement, together with any provisions which by their nature should survive, will survive any termination or expiration of the Agreement. Termination or expiration of the Agreement for any reason shall not release either party from any liability which has already accrued as of the effective date of such termination or expiration, and shall not constitute a waiver or release of, or otherwise be

deemed to prejudice or adversely affect, any remedies or claims, whether for damages or otherwise, which a party may have hereunder, at law, equity or otherwise or which may arise out of or in connection with such termination or expiration. Upon the termination or expiration of the Agreement, Operator will cease all use of any Bridgestone Software and will remove all such Bridgestone Software from any systems owned or controlled by Bridgestone, and Operator will return, at its cost, and in accordance with Bridgestone's instructions, all hardware, equipment and other materials in its possession that are the property of Bridgestone (if any).

4. **Fees and Payment Terms.**

a. **Fees.** Operator will pay the Fees set forth in the Agreement.

b. **Payment Terms.** See Section 2 of the Agreement.

c. **Title to Hardware and Equipment.**

i. Subject to clause ii. below, title to hardware and equipment purchased from Bridgestone will pass to Operator once final payment for such hardware and equipment has been received by Bridgestone. This does not apply to the extent any hardware or equipment which is leased or that per the terms of the Agreement is to remain the property of Bridgestone. In the event of any failure on the part of Operator to pay any amount due to Bridgestone with respect thereto, then Bridgestone or its agent may enter onto Operator's property during normal business hours and take possession of such hardware and equipment for the purposes of selling same. Any such sale will be conducted reasonably. To the extent the proceeds of any such sale, after deducting Bridgestone's reasonable cost of recovering, holding and selling such hardware and equipment, exceed the amounts owed by Operator to Bridgestone under this and each other agreement between the parties, such excess will be paid to Operator promptly after conclusion of the sale.

ii. The provisions of clause i. above are not intended to grant Bridgestone any greater rights in respect of the hardware or equipment that is the subject of clause i. above than would be available to a secured party under Article 9 of the Uniform Commercial Code holding a perfected purchase money security interest in such hardware and equipment (provided, for the avoidance of doubt, it shall not be a requirement of exercising any such rights that Bridgestone shall have perfected a purchase money security interest in such hardware or equipment in accordance with Article 9 of the Uniform Commercial Code).

iii. Once purchased, hardware and equipment may not be returned for a refund.

d. **Insurance.** Operator will at all times, and at its own expense, maintain insurance covering all Systems that are owned by Bridgestone for any loss or damage, designating Bridgestone as an additional insured and as a loss payee, and shall notify Bridgestone in the event any such coverage is cancelled or expires without replacement. Such coverage will be in an amount not less than the retail value of such Systems. All insurance of Operator shall be primary to any insurance carried by Bridgestone.

5. **Maintenance and Support Services.** Maintenance and support for the Products and Services will be provided by Bridgestone to Operator in accordance with the terms of applicable Product and Service Descriptions.

6. **LIMITED WARRANTIES AND DISCLAIMERS.**

a. Operator understands and acknowledges that Bridgestone is not the manufacturer, supplier or publisher of any Third Party Materials offered under this Agreement, and to the extent it is providing any such Third Party Materials as part of the Products and Services, it is doing so in a reseller or similar capacity. As such, Bridgestone will pass through to Operator, to the extent available, any such manufacturer's, supplier's or publisher's warranties associated with the Third Party Materials purchased or acquired from or through Bridgestone, but Bridgestone does not provide any additional warranties with respect to such Third Party Materials. Except for any such warranties that may be passed through by Bridgestone from such manufacturers, suppliers or publishers, ALL SUCH THIRD PARTY MATERIALS ARE PROVIDED ON AN

“AS-IS, AS-AVAILABLE” BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND BY BRIDGESTONE, EXPRESS OR IMPLIED.

- b. SUBJECT TO SECTION 6.A ABOVE, BRIDGESTONE WARRANTS THAT THE PRODUCTS AND SERVICES SHALL BE PERFORMED AND SUPPLIED WITH REASONABLE CARE AND SKILL. EXCEPT AS SET FORTH IN THE FOREGOING SENTENCE, THE PRODUCTS AND SERVICES ARE PROVIDED ON AN “AS-IS, AS-AVAILABLE” BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED. BRIDGESTONE EXPRESSLY DISCLAIMS AND EXCLUDES ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, WHETHER WRITTEN OR ORAL, WITH RESPECT TO THE PRODUCTS AND SERVICES, AND HEREBY DISCLAIMS AND EXCLUDES ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING (BUT NOT LIMITED TO) ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, OR SATISFACTORY QUALITY, WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN TRADE, OR THAT THE PRODUCTS AND SERVICES WILL BE ERROR-FREE OR SECURE.
7. **LIMITATION OF LIABILITY.** See Section 15 of the Agreement.
8. **Confidentiality.**
- a. The parties expressly acknowledge that in the course of their performance, they may learn, view or have access to certain confidential and proprietary information of the other party (“**Confidential Information**”). Each party shall (i) not disclose, directly or indirectly to any third party any portion of the Confidential Information without the prior written consent of the disclosing party, (ii) not use or exploit the Confidential Information for any purpose other than as required in the performance of this Agreement, and (iii) take appropriate action to protect the confidentiality of the Confidential Information received hereunder, utilizing at least the same standard of care it uses to protect its own Confidential Information, but in no event less than a reasonable standard of care. A party's Confidential Information shall not include information that (A) is or becomes a part of the public domain through no act or omission of the receiving party, (B) was in the receiving party's lawful possession prior to the disclosure, or (C) is lawfully disclosed to the receiving party by a third party without restriction on disclosure. If the receiving party is required to disclose Confidential Information of the other party to satisfy any legal requirement, the receiving party may disclose the Confidential Information provided that the receiving party gives the disclosing party reasonable prior notice to contest such order (to the extent legally permitted to do so) and that the receiving party discloses only such portions of the Confidential Information as required by such legal requirement.
 - b. This Section 8 will not be deemed to prohibit Bridgestone from collecting anonymized, aggregate data relating to the Products and Services (“**Aggregate Data**”) and using and further distributing such usage Aggregate Data. Bridgestone reserves all rights, title and interest in and to the Aggregate Data. Aggregate Data will be collected in accordance with the privacy policies of Bridgestone or Bridgestone Canada Inc., as applicable. Those privacy policies are available at <https://www.bridgestoneamericas.com/en/privacy-policy> and <https://www.bridgestonetire.ca/about/privacy>, respectively.
 - c. Operator shall ensure that all Operator Data and Operator’s collection, transfer, and use thereof complies with applicable (i) export laws and regulations of the United States, and (ii) data privacy laws. To the extent the Products and Services involve the collection, receipt, processing, transfer, or other use of any Personal Data, additional terms may apply as set forth in the Product and Service Descriptions and/or a separate addendum.
9. **Security.**

- a. **Malicious Code.** Where applicable and to the extent available, Bridgestone uses commercially available anti-malicious code software intended to keep the Products and Services, as delivered by Bridgestone, free of Malicious Code. Operator acknowledges that no such software is perfect, and in particular, it is difficult to protect against Malicious Code that has not yet been detected and countered by commercial anti-malicious code software providers. Other than using commercially reasonable efforts to keep such anti-malicious code software up to date on any applicable systems that remain under Bridgestone's control, Bridgestone assumes no obligation or liability whatsoever with respect to any Malicious Code.
 - b. **Remote System Updates.** Where applicable, Systems may be updated remotely by Bridgestone to deploy new software and update existing software. In the event that such remote deployment is ineffective or abnormally slowed, and Bridgestone reasonably determines that the cause is an issue with Operator's software or hardware, the age of Operators Systems including hardware and operating system components, the failure of Operator to update the operating systems and software with releases and other updates provided by the third party owner thereof, or other circumstances outside Bridgestone's control, then Bridgestone shall so notify Operator, and Bridgestone may discontinue the provision of support and maintenance services until such issues have been remedied by Operator.
10. **Intellectual Property.** Each System consists of both hardware and software, and Operator acknowledges that, notwithstanding any other provisions of this Agreement and/or references to any "transfer" or "assignment" of Systems in this Agreement, the title to, and ownership of, the Bridgestone Software will at all times remain with Bridgestone. Operator is hereby granted for the duration of the term of the Agreement a non-exclusive, non-transferrable, and non-sublicensable license to use the Bridgestone Software only as delivered by Bridgestone, and where such Bridgestone Software is installed on a System, solely on the System as delivered by Bridgestone. Software is licensed for the hardware on which it is originally installed and may not be transferred. Bridgestone retains all copyright, patent, trademark, trade secret and other intellectual property rights in and to the Bridgestone Software. Operator acknowledges that all copies of the Bridgestone Software, together with the Products and Services with which such Bridgestone Software has been or is provided, and any derivative works, compilations, and collective works thereof and any know-how and trade secrets related thereto, are the sole and exclusive property of Bridgestone and its licensors and contain Bridgestone's and such licensors' confidential and proprietary materials. Operator will not attempt to reverse engineer, disassemble, or decompile any portion of the Products and Services. Portions of the Products and Services may utilize or include Third Party Materials. Acknowledgements, licensing terms and disclaimers for such Third Party Materials will be contained in the documentation for the Systems or the Bridgestone Software, as applicable, or may otherwise accompany such material, and use of such material will be governed by their respective terms. Operator hereby assigns to Bridgestone on Operator's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Bridgestone is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose, although Bridgestone is not required to use any Feedback. As between Operator and Bridgestone, except as otherwise set forth in this Agreement, all right, title and interest in and to the Operator Data is owned exclusively by Operator.
11. **Miscellaneous.**
 - a. **Replacement Costs.** Operator agrees to be liable and responsible for any loss, damage or destruction of a System from the time it arrives at Operator's location and until such time as it is received by Bridgestone at its facility. It is agreed by Operator that should any such loss, damage or destruction occur at any time during the term of this Agreement, Operator shall bear all costs of replacement of the affected System(s). Cost of replacement shall be deemed to be the then current price for such hardware (or repair if repairable and less than the replacement cost) together with applicable round-trip shipping costs and taxes.

- b. **Provision of Utilities.** Where applicable, Operator shall provide necessary high-speed and/or wireless Internet access, electricity, and other necessary and/or appropriate utilities and fixtures for each System and agrees to be liable for any fault, malfunction, or loss of service due to any such utility or fixture. The absence or unavailability of any such items will not be deemed to excuse Operator from any of its obligations hereunder, including its obligation to pay the Fees as set forth herein.
- c. **Assignment.** See Section 14 of the Agreement.
- d. **Independent Contractor.** Bridgestone is an independent contractor and nothing contained in this Agreement will be construed to create the relationship of employer/employee, principal and agent, partnership or joint venture, or any other fiduciary relationship between Bridgestone and Operator.
- e. **Delivery and Acceptance.** Bridgestone shall use commercially reasonable efforts to deliver to Operator, as promptly as reasonably practicable after the Effective Date, the applicable Products and Services, in accordance with the terms of this Agreement. Such Products and Services will be deemed accepted by the Operator upon receipt.
- f. **Choice of Law & Venue.** See Section 17 of the Agreement.
- g. **Third Party Beneficiary.** The Agreement is solely between and for the benefit of Operator and Bridgestone, and no person or entity other than the parties themselves has any rights or remedies under this Agreement.
- h. **Force Majeure.** Bridgestone party shall not be responsible for any failure to perform, or delay in performing, any of its obligations under the Agreement where and to the extent such performance is rendered impossible or delayed due to causes outside the reasonable control of Bridgestone (“**Force Majeure**”). Such instances of Force Majeure may include, without limitation, Acts of God or of the public enemy, acts of the government, fires, floods, epidemics, quarantine restrictions, freight embargoes, civil commotions, strikes, labor disputes or the like.
- i. **Notice.** For purposes of the Agreement, any notice that may or must be delivered by one party to another shall be deemed sufficient if made in writing and sent by certified mail or overnight courier to, either party at the addresses indicated in the Agreement.
- j. **Headings.** The section headings contained in the Agreement are for reference purposes only and shall not affect the meaning or interpretation of the Agreement.
- k. **Waiver.** No waiver of any provision of this agreement will be effective unless it is in writing and signed by the party granting the waiver. No failure or delay in exercising any discretion or remedy under this agreement operates as a waiver of that discretion or remedy. A waiver granted on one occasion will not operate as a waiver on future occasions.

Signature:

Email: awinder@ridervt.com

Title:

Company: