

BAILMENT AGREEMENT -- USE OF VEHICLE FOR TESTING

**CITY CLERK
ORIGINAL**

**C-7753
08/09/2011**

This Agreement, to bind the parties for the period from 08/08/2011 to 08/15/2011 is entered into by and between Azure Dynamics Incorporated, a Delaware corporation having its principal place of business at 14925 West 11 Mile Rd., Oak Park, MI 48237 ("Bailor"), and the City of Glendale, an Arizona municipal corporation having its principal place of business at 6210 West Myrtle Avenue, Bldg S, Glendale, AZ 85301. ("Bailee"). In consideration of the promises hereinafter made to each other, the parties hereto agree as follows:

- 1) The bailed property consists of the following vehicle, referred to in this Agreement as "the Bailed Vehicle":

2011 Model Year Ford E450 Cutaway Shuttlebus, VIN 1FDFE4FL4BDA09585

- 2) Bailee may use the Bailed Vehicle during term without any rental, fee, or other charge to Bailee for the following purposes:
 - a. Evaluation of cabin and vehicle design for suitability;
 - b. Trial shuttlebus operations;
 - c. Evaluation of fuel economy in typical or designated drive-cycle; and
 - d. Evaluation of performance in typical or designated drive-cycle.

- 3) The parties designate the following representatives as their primary points of contact:

Bailor Representative:

Name: Tom Lincoln
Title: National Sales Manager
Contact Information: Azure Dynamics
14925 West 11 Mile Road
Oak Park, MI 48237
248-880-7589

Bailee Representative:

Name: Jeff Henry
Title: Transit Supervisor
Contact Information: 6210 W. Myrtle Ave, Bldg S
Glendale, AZ 85301
623-930-3516
jhenry@glendaleaz.com

- 4) Bailor shall be responsible for transporting the Bailed Vehicle to N/A , located at _____ on / / .
- 5) The Bailed Vehicle will be made available for pick-up by the Bailor on or before 8/17 /2011 at the Bailee's above-noted address. The Bailor will be responsible for return shipment of the vehicle upon the expiration or early termination of this Agreement.
- 6) This Agreement may be extended by written agreement of the Parties.
- 7) Shipment of the Bailed Vehicle between N/A testing and evaluation sites is the Bailee's responsibility. Shipment of the Bailed Vehicle from Bailee to Bailor is the Bailor's

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responsibility. Bailee will coordinate with Bailor regarding shipping details at least 3 days prior to any shipment of the Bailed Vehicle.

- 8) Title to the Bailed Vehicle shall remain with Bailor. The Bailor shall be responsible for Bailment Vehicle Title and Registration fees. Nothing in this Agreement shall constitute an offer by Bailor to sell, or by Bailee to buy, the Bailed Vehicle.
- 9) Subject to paragraph 10 hereof, the Bailed Vehicle shall be returned in its original condition, ordinary wear and tear excepted. Bailee shall, to the extent reasonably required, be responsible for normal maintenance of the Bailed Vehicle during the term of this Agreement.
- 10) Bailee is responsible for all damages to or loss of the Bailed Vehicle arising out of Bailee's use or possession of the Bailed Vehicle provided, however, that Bailee shall in no case be responsible for damages in excess of the value of the Bailed Vehicle. Bailor is responsible for all damages to or loss of the Bailed Vehicle during shipping. The parties agree that for purposes of this Agreement the value of each Bailed Vehicle shall be deemed to be \$100,000.00.
- 11) Bailee is responsible to provide liability insurance coverage of no less than \$1,000,000. and collision insurance to cover the value of the vehicle as listed in paragraph #10 for the Bailed Vehicle while it is in the Bailee's possession and provide proof of such insurance to Bailor.
- 12) Bailor reserves the right to make modifications or repairs during the term of this Agreement, or upon termination of this Agreement at Bailor's discretion and shall be responsible for any movement or shipping of the Bailed Vehicle necessary for Bailor to accomplish such modifications or repairs during the term of this Agreement.
- 13) Unless otherwise expressly authorized herein, or unless this Agreement is amended in writing, Bailee shall use the Bailed Vehicle only in the performance and for the purpose of this Agreement as set forth in paragraph 2, and shall operate, store and protect the Bailed Vehicle using the same care which it uses to operate, store, and protect its own vehicles, but not in any case less than a reasonable degree of care.
- 14) The Bailed Vehicle is the sole property of the Bailor. To the extent developed entirely at the Bailor's expense, accompanying technical data pertaining to the Bailed Vehicle are the sole property of the Bailor and neither the Bailee nor any of its employees or agents shall have the right to use, modify, reproduce, release, perform, display, or disclose such technical data without the prior written consent of Bailor unless the Bailee has acquired such rights under separate agreement between Bailor and Bailee. Bailor realizes that the Bailed Vehicle will be operated on public roads and property and, as such, recognition of their particular nature or characteristic by the general public and more specifically by competitors of Bailor cannot be avoided.
- 15) Bailee represents and agrees that:
 - a. the Bailed Vehicle will not be utilized illegally, improperly, or in any manner for any political purpose whatsoever;
 - b. the Bailed Vehicle shall be driven in a safe and prudent manner by licensed drivers who are officers, directors, employees, agents or subcontractors of Bailee;
 - c. Bailee shall ensure that no one modifies, disconnects, or otherwise interferes with the operation of the odometer or emission control equipment;
 - d. Bailee will report all accidents involving the Bailed Vehicle to Bailor;
 - e. Bailee will not make any repairs or modifications to the Bailed Vehicle, other than normal maintenance (or as noted in Section 14e of this Agreement), without the explicit prior

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consent of Bailor. Bailee may install temporary items as required to test Bailed Vehicle in Bailee's daily business operations, providing that any such modifications are not permanent, and unit is returned in its original condition as per paragraph 9 and 10 of this Agreement;

- f. Bailee is responsible to pay for all gasoline and for all washing, parking, garage, highway road service, and tolls required or incurred in connection with the operation of the Bailed Vehicle;
 - g. Bailee shall be responsible for all applicable fines, forfeitures and penalties which Bailee incurs by reason of Bailee's use of the Bailed Vehicle; and
 - h. Bailee agrees to indemnify, defend and hold harmless Bailor from and against any third-party claims, losses, damages, liabilities and costs (including attorneys' fees) arising out of or resulting from the negligence or willful misconduct of Bailee or any of its agents or employees in connection with Bailee's possession or operation of the Bailed Vehicle.
- 16) Bailor understands and agrees that this Agreement in no manner entitles the Bailor to any subsequent contract award, purchase or participation in any subsequent procurement.
- 17) Bailor shall provide, at no expense to Bailee, any necessary training of personnel required to operate the Bailed Vehicle consistent with the purpose of this Agreement.
- 18) This Agreement may be terminated by either party upon 30 days written notice to the other party.
- 19) The parties agree that this Agreement and the attached Addendum contains all the terms and conditions of the bailment, and that there are no oral, written or other agreements, terms or conditions governing this bailment.
- 20) This Agreement shall be governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates indicated below.

Azure Dynamics Incorporated

Signature: [SIGNATURE TO APPEAR ON ATTACHED ADDENDUM]

Name Printed: Tom Lincoln

Title: National Sales Manager

Date: July 14, 2011

Signature: [SIGNATURE TO APPEAR ON ATTACHED ADDENDUM]

Name Printed: Jamsheed Mehta

Title: Transportation Director

Date: _____

**ADDENDUM TO AZURE DYNAMICS ("BAILOR") AND
CITY OF GLENDALE, ARIZONA ("BAILEE")
BAILMENT AGREEMENT**

Bailor further agrees as follows as of the Effective Date:

I. Immigration Law Compliance.

- A. Bailor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to its employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- B. Any breach of warranty under subsection (A) above is considered a material breach of this Agreement and is subject to penalties up to and including termination.
- C. Bailee retains the legal right to inspect the papers of Bailor or subcontractor employee who performs work under this Agreement to ensure that Bailor or any subcontractor is compliant with the warranty under subsection (A) above.
- D. Bailee may conduct random inspections, and upon request of the Bailee, Bailor shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Bailor agrees to keep papers and records available for inspection by the Bailee during normal business hours and will cooperate with Bailee in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section I.
- E. Bailor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of Bailee. Bailor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of Bailee.
- F. Bailor's warranty and obligations under this Section I to Bailee is continuing throughout the term of this Agreement or until such time as Bailee determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

II. Prohibitions. Bailor certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

III. Conflicts. This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

By signing on the following page, the Bailor and Bailee acknowledge and agree to the contents of this Addendum, and to the changes made in paragraphs 19 and 20 of the "Bailment Agreement," all as attached and incorporated herein.

Bailee:

CITY OF GLENDALE, an Arizona
municipal corporation



Jamsheed Mehta, Transportation Director

Date: Aug 8, 2011

ATTEST:



Pam Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Craig Tindall, City Attorney

Bailor:

AZURE DYNAMICS, INCORPORATED
a Delaware corporation



Printed Name: Tom Lincoln

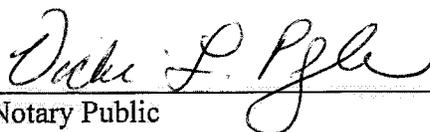
Its: Authorized Representative

Date: 8/4/2011

STATE OF MI)
County of Wayne) ss.

SUBSCRIBED AND SWORN TO before me this 4th day of August, 2011, by Tom Lincoln, the authorized representative of AZURE DYNAMICS, INCORPORATED, a Delaware corporation.

2-16-2018
Commission Expiration


Notary Public

VICKI L. PRINGLE
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF WAYNE
My Commission Expires Feb. 16, 2018
Acting in the County of