

**PARTICIPATING ADDENDUM**  
**NASPO ValuePoint (formerly WSCA-NASPO)**  
**Public Safety Communication Support Equipment 05715**  
**Lead by the State of Washington (hereinafter "Lead State")**

PARTICIPATING ADDENDUM

**ErgoFlex Systems, Inc. dba Xybix Systems**  
(hereinafter "Contractor")

And

State of Montana  
(hereinafter "Participating State")

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1. Scope: This addendum covers the purchase of public safety communication equipment and is for use by state agencies and other entities located in the Participating **State/Entity** authorized by that state's statutes to utilize **Montana's** contracts with the prior approval of the state's chief procurement official.

Contractor has been awarded the following category/subcategory:

**Dispatch Console Furniture**

2. Participation: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **state/entity** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating State Modifications or Additions to Master Agreement:

**ACCESS AND RETENTION OF RECORDS**: Contractor shall provide the Participating State, Legislative Auditor, or their authorized agents access to any records for a period of eight years necessary to determine contract compliance. (18-1-118, MCA.)

**ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**: Contractor may not assign, transfer, or subcontract any portion of this contract without the Participating State's prior written consent. (18-4-141, MCA.)

**COMPLIANCE WITH LAWS**: Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or

religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

**CHOICE OF LAW AND VENUE:** Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (18-1-401, MCA.)

**HOLD HARMLESS/INDEMNIFICATION:** Contractor agrees to protect, defend, and save the Participating State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the Participating State, under this agreement.

**REDUCTION OF FUNDING:** The Participating State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the Participating State shall terminate this contract as required by law. The Participating State shall provide Contractor the date the Participating State's termination shall take effect. The Participating State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the Participating State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the Participating State's termination takes effect. This is Contractor's sole remedy. The Participating State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**REQUIRED REPORTING:**

Contractor shall submit quarterly reports to the Contracts Officer (CO) assigned by the Participating State to manage this contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter.

First Quarter: July 1 through September 30

Second Quarter: October 1 through December 31

Third Quarter: January 1 through March 31

Fourth Quarter: April 1 through June 30

**MONTANA ADMINISTRATIVE FEE:**

The Participating Entity assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this PA. The prices paid to Contractor must include the 1.5% Administrative Fee. The Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described above. The Administrative Fee must be submitted by ACH along with email notification to the CO.

4. Primary Contacts: The primary contact individuals for this participating addendum are as follows (or their named successors):

<u>Contractor</u>	
Name	Kenneth Carson
Address	82007 SouthPark Circle Littleton, CO 80120
Telephone	(303) 683-5656
Fax	(303) 683-5454
E-mail	kenc@xybix.com

<u>Participating Entity</u>	
Name	Rhonda R. Grandy
Address	125 N Roberts, Room 164 Mitchell Bldg., Helena, MT 59620
Telephone	406-444-3320
Fax	406-444-2529
E-mail	rhgrandy@mt.gov

5. Subcontractors:

All Contractor's dealers/resellers/distributors authorized in the State of Montana, as shown on the NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO Master Agreement. The Contractor's dealer's/resellers/distributors participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

6. Purchase Order Instructions:

All orders should contain the following (1) Mandatory Language "PO is subject to NASPO ValuePoint Contract # 05715 (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount. Please channel your PO through one of our authorized dealers/resellers/distributors so they can arrange for proper ordering and installation of your equipment. During Contract performance, Contractor shall identify and make available to Purchasers upon request a list of subcontractors, dealers, and distributors who will supply products or perform services in fulfillment of Contract requirements. Information shall include their name, the nature of services to be performed or products to be sold by product category/subcategory, address, telephone, facsimile, email, and federal tax identification number (TIN) (if the company is authorized to sell and invoice for products and services).

7. Price Agreement Number:

All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: 05715\_Xybix Systems and the Lead State master price agreement number: 05715.

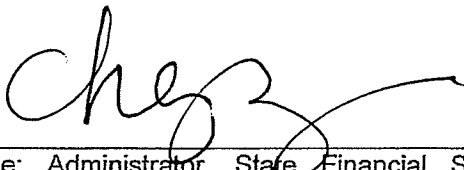
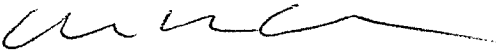
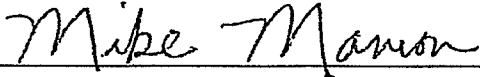
8. Individual Customer:

Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Participating Addendum and the Master Agreement number 05715 (administered by the State of Washington) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or

incorporated into this Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: Montana	Contractor: Xybix Systems
By: Cheryl Grey	By: Kenneth R Carson
Name: 	Name: 
Title: Administrator, State Financial Services Division	Title: Executive Vice President
Date: 2/7/17	Date: 2-3-17
Approved as to Legal Content 	
Date: 1-27-2017	

If you have questions about this Participating Addendum or the participation process, please contact:

NASPO ValuePoint COOPERATIVE PURCHASING ORGANIZATION	
Name	Ted Fosket, Cooperative Development Coordinator
Telephone	907-723-3360
E-mail	<a href="mailto:tfosket@naspovalupoint.org">tfosket@naspovalupoint.org</a>