

## MASTER EQUIPMENT, SOFTWARE LICENSE, AND SERVICES AGREEMENT

This Agreement (this “**Agreement**”) is made and entered into as of the [REDACTED]th day of [REDACTED], 2020 (the “**Effective Date**”) by and between the Ventura County Transportation Commission (“**COMMISSION**” or “**Recipient**” or “**VCTC**”) and Delerrok Inc., a California corporation and a wholly-owned subsidiary of Cubic Transportation Systems, Inc. with its principal place of business at 221 Main Street, Suite 200, Vista, CA 92084 (“**Delerrok**” or “**Contractor**”) (each herein referred to individually as a “**Party**,” or collectively as the “**Parties**”).

WHEREAS, COMMISSION desires to retain Delerrok as an independent contractor to provide electronic fare collection system equipment and services, as defined herein, to COMMISSION and transit agencies operating fixed route services in Ventura County (“**Transit Partners**”), and Delerrok is willing to provide such equipment and services, on the terms described below, in consideration of the mutual promises contained herein, the Parties agree as follows:

NOW, THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, the Parties, intending to be legally bound, mutually agree as follows:

### 1. DEFINITIONS

In addition to the definitions in exhibits to this Agreement, the following definitions apply:

1.1 “Automatic Vehicle Location (AVL) System” means a system consisting of a global positioning system (GPS) receiver used for vehicle tracking.

1.2 “Documentation” means the operating manuals; user manuals; guides; service descriptions; service specifications; training materials; technical manuals; and support materials; relating to the products and provided by or on behalf of Delerrok to COMMISSION.

1.3 “Equipment” means any tangible items such as Readers, computer equipment, hardware, accessories, parts, replacement parts and upgrades, including any embedded software, and their published Documentation, provided by Delerrok hereunder, regardless of manufacturer.

1.3 “Implementation Period” means the time frame set forth in Exhibit A for Delerrok to perform services and provide equipment and software to COMMISSION.

1.4 “Permitted Units” means the sum of the Equipment in use under this Agreement as provided in Exhibit A, attached hereto and incorporated herein.

1.5 “Price” means the prices listed in Exhibit A.

1.6 “Project” means the Mobile Ticketing and Advanced Fare Collection System, described in COMMISSION’s Request for Proposals No. 20-710.

1.7 “Services” means support services as provided in Exhibit A.

1.8 “Specifications” means the technical and functional features of the Equipment as specified in the product specifications as provided in Exhibit D, attached hereto and incorporated herein.

1.9 “Statement of Work” or “SOW” means a document signed by the Parties, including the scope of work in Exhibit A, which details the TouchPass Hosted Services and Equipment to be provided and the timeline for delivery of such services and equipment.

1.10 “System” means the complete mobile ticketing and advanced fare collection system that includes the hardware, software and financial services required to meet the technical and operational requirements of the Scope of Work in Exhibit A, as may be amended by SOW.

1.11 “System Acceptance” means COMMISSION’s final acceptance of the Project shall be deemed to have occurred when Commission in its sole discretion, determines that Delerrok has complied with all of the completion requirements set forth for the Project in this Scope of Work for Implementation Period deliverables.

1.12 “TouchPass Hosted Services” means the services to be accessed by COMMISSION utilizing Delerrok software hosted at one or more Delerrok contracted cloud services facilities, including services as provided in Exhibit A.

1.13 “TouchPass System” means all the Delerrok hardware, whether owned by Delerrok or by a third party, and Delerrok software, whether hosted on Delerrok’s hardware or at one or more Delerrok contracted cloud services facilities, used to provide the TouchPass Hosted Services.

1.14 “Transit Partners” means the collection of transit providers seeking services through this Agreement that COMMISSION is acting on behalf of, including COMMISSION-operated systems VCTC Intercity and Valley Express; as well as, Gold Coast Transit District, Simi Valley, Thousand Oaks Transit, Moorpark City Transit, Ojai Trolley, Camarillo Area Transit / Trolley. The Transit Partners group may be added to, as certain Options are exercised.

## **2. EQUIPMENT, SOFTWARE and SERVICES**

2.1 Prime Contractor. Delerrok will be the sole point of contact for this Agreement. Delerrok will be completely responsible for all actions and work performed by its subcontractors. All terms, conditions, and requirements of this Agreement will apply without qualification to any services and work performed by any subcontractor of Delerrok.

2.2 Services License. Delerrok shall provide to COMMISSION the Services detailed in Exhibit A, attached hereto and incorporated herein. This shall include a non-exclusive, royalty-free, global right and license to access and use the TouchPass Hosted Services for the Term or, if longer, the term specified in any applicable SOW Form or SOW.

2.3 Equipment. Delerrok shall provide to COMMISSION the equipment and software detailed in Exhibit A. COMMISSION shall make payment for the Equipment as provided herein 30 days after receipt of an acceptable invoice, as specified in Exhibit A.

2.4 Restrictions. Except as specified otherwise, COMMISSION will not: (i) copy the TouchPass Hosted Services, any component or software thereof, or any Documentation; (ii) remove Delerrok’s proprietary rights notices; (iii) alter, decompile, reverse engineer, disassemble, or create derivative works from the TouchPass Hosted Services or Documentation; (iv) export the TouchPass Hosted Services or Documentation to any country where such export is prohibited by U.S. laws; or (v) use the TouchPass Hosted Services or Documentation as part of a hosted, leased or subscription service for the benefit of any third party. COMMISSION will not copy, translate, modify, decompile, disassemble, reverse engineer or adapt the TouchPass Hosted Services or Documentation except as specifically authorized under applicable law or by Delerrok in writing. All rights not specifically granted hereunder are reserved to Delerrok. Notwithstanding the foregoing, nothing herein is intended to restrict COMMISSION from using the Equipment, including Transit Data (as defined in Section 10.4 below), following termination of this Agreement.

2.5 Acquired Units. COMMISSION’s use of the Equipment, under this Agreement is limited to the number of Permitted Units. COMMISSION may increase the Permitted Units at any time by giving written notice to Delerrok of the required additional Equipment, providing an SOW, and paying for such additional Units. COMMISSION shall pay Delerrok for the additional TouchPass Hosted Services or Documentation in accordance with Exhibit A.

2.6 Equipment Components. If any components or equipment identified in Exhibit A become unavailable, obsolete, or unfavorable, Delerrok will make commercially reasonable efforts to source an equivalent unit. Delerrok will provide COMMISSION with reasonable notice prior to replacing any equipment with a new supplier.

## **3. DOCUMENTATION**

3.1 Delerrok will furnish to COMMISSION soft copies of Documentation as may be reasonably requested by COMMISSION, including all subsequent revisions thereto. COMMISSION will have the right to copy the

Documentation, at no additional charge, for the internal use of its employees or authorized contractors, provided all proprietary markings that had been affixed by Delerrok are retained on all copies.

3.2 Delerrok will be required to maintain accounting records and other evidence pertaining to the costs incurred for a period of three (3) years beyond expiration of this Agreement and if applicable, subsequent to each renewal period. Delerrok shall make the records available to COMMISSION at its office at all reasonable times.

#### **4. DELIVERY**

4.1 Delivery and Title. Delerrok will deliver the Equipment in good working order to COMMISSION as specified in Exhibit A, F.O.B. COMMISSION's facilities, on the date listed in Exhibit A. In the event Delerrok does not meet the delivery date listed in Exhibit A or future SOW, if applicable, Delerrok shall immediately advise COMMISSION of the problem and new delivery date. Title and acceptance to any tangible goods shall pass from Delerrok to COMMISSION upon Delerrok's delivery thereof.

4.2 Installation. Delerrok shall install the equipment in the manner and rates provided in Exhibit A, Scope of Work.

#### **5. INDEPENDENT CONTRACTOR**

The Parties are independent contractors and nothing in this Agreement or otherwise shall be deemed or construed to create any other relationship, including one of employment, joint venture or agency. Delerrok shall be solely responsible for any taxes of any type, including central, state or local tax, employment, withholding or reporting tax, social security taxes, workers' compensation taxes or costs, unemployment compensation taxes or costs, or any other taxes or charges, provident fund, gratuity, bonus, workmen's compensation, employee state insurance, other employment law deductions, or private insurance, related to Delerrok's or Delerrok's personnel's receipt of compensation and performance of Services under this Agreement.

#### **6. WARRANTY**

6.1 Delerrok represents and warrants that any services performed by it or its subcontractors, equipment, software, or Documentation provided under this Agreement, or any part of any of the foregoing, will not infringe or constitute a misappropriation of any right of any third party, including any copyrights, patent rights, trademark rights, trade secret rights, or confidentiality rights.

6.2 As provided in Exhibit A to this Agreement, Delerrok warrants that all installation work and all equipment and services it furnishes, including, but not limited to all services and equipment provided by sub-contractors, suppliers, or other manufacturers, shall be of good quality and free of any material defects or faulty materials and workmanship for a one-year warranty period, or, if shorter, the OEM warranty period in relation to any third party COTS equipment supplied. Delerrok also warrants that all installation work, equipment, software, and services shall perform according to the specifications for the one-year warranty period. If Delerrok upgrades its devices to ensure the continued and proper operation of the TouchPass System as configured for Project, Delerrok will assume all costs related to the hardware upgrade (there shall be no additional cost to the COMMISSION, excluding one-time fees for installation) and will warrant that the upgraded hardware performs according to the specifications for a one-year warranty period.

6.3 THE WARRANTIES IN THIS SECTION 6 AND EXHIBIT A ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED OR STATUTORY, TO COMMISSION, ITS CUSTOMERS OR ANY OTHER PARTY, FOR EQUIPMENT, TOUCHPASS HOSTED SERVICES, SOFTWARE AND THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES FOR NON-INFRINGEMENT, SATISFACTORY QUALITY, OR AGAINST LATENT DEFECTS. DELERROK SPECIFICALLY DENIES ANY IMPLIED OR EXPRESS REPRESENTATION THAT THE EQUIPMENT, SOFTWARE, TOUCHPASS HOSTED SERVICES AND THE SERVICES WILL OPERATE UNINTERRUPTED OR ERROR-FREE. COMMISSION AGREES THAT DELERROK AND ITS SUPPLIERS

WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM THE COMMISSION'S IMPROPER USE OF THE EQUIPMENT, SOFTWARE AND THE SERVICES IN SUCH APPLICATIONS.

## **7. COMMISSION RESPONSIBILITIES**

7.1 Support installation on buses of reader cabling and related mounting equipment by reviewing and providing approval of a Delerrok-provided Reader Installation Plan based on the Vehicle Survey performed by Delerrok, making COMMISSION vehicles available to Delerrok for installation, and approving Delerrok installation of equipment on buses.

7.2 As described in Exhibit A, Delerrok will train COMMISSION and Transit Partner staff to be "trainers" who will then be responsible for training Transit Partner and COMMISSION staff, including bus operators, in use of the TouchPass Hosted Services.

7.3 Procure Cards. COMMISSION will be responsible for purchase of TouchPass Cards from Delerrok (uniformly printed with Delerrok "TouchPass" graphics or any such successor acceptance mark) or from third-party vendors as described in Exhibit A.

7.4 Perform Card distribution.

7.5 Perform fare product sales through physical sales locations (e.g. COMMISSION intermodal terminal).

7.6 Provide general customer service for the TouchPass Hosted Services including pass redemption, refunds, and instruction on use and troubleshooting common problems. Notwithstanding the foregoing, issues related to the TouchPass Hosted Services requirements that cannot be reasonably resolved by COMMISSION shall remain the responsibility of Delerrok.

7.7 Provide basic maintenance such as daily cleaning of readers and protection of readers from damage and temperatures above or below reader tolerances specifications.

7.8 Permit Delerrok and its agents reasonable access to COMMISSION buses and to the premises in which COMMISSION conducts its business and furnish to Delerrok other information as Delerrok may reasonably request for execution of the Agreement.

7.9 Return malfunctioning readers to Delerrok for repair/replacement in accordance with the Reader Warranty per Exhibit A.

7.10 Encourage and promote use of the TouchPass Hosted Services through rider alerts, social media and demonstration events. COMMISSION will consider ways to incentivize the transition from cash to TouchPass Hosted Services use.

7.11 Establish and implement a phased rollout schedule for introduction of fare products and fare media, to be supplied by COMMISSION.

7.12 Make a good faith effort to transition its regionally accepted fare media to TouchPass Hosted Products using the TouchPass Hosted Service within one year from commencement of the Agreement for office and online sales.

7.13 Operate and maintain an AVL system capable of providing driver login and bus route and location information to the TouchPass Hosted Services except on certain vehicles, which shall be identified by COMMISSION, that not are not supported by COMMISSION's AVL system.

7.14 Merchant of Record. Delerrok shall act as "Merchant of Record" and take responsibility for bankcard payment transaction processing and submission to a merchant acquirer, flow and transmission of funds and related records, security compliance and receiving accounts. The Merchant of Record shall have primary responsibility for reconciliation of merchant acquirer transaction statements with funds received from the merchant acquirer, and other related services as further described in Exhibit A (Scope of Work), Section 2.b.vii. Delerrok responsibilities as Merchant of Record are subject to:

- i. COMMISSION shall provide all assistance and permissions reasonably required by Delerrok at no charge to Delerrok to enable Delerrok to establish itself and perform the applicable services as “Merchant of Record” including but not limited to and establishment of a merchant account with access to a payment gateway to accept payment, via the TouchPass Hosted Services, for all credit and debit card (“Bankcard”) payments.
- ii. COMMISSION and Delerrok shall mutually agree on the name that shall appear on customer statements.
- iii. COMMISSION remaining responsible for all management of end-user complaints and the resolution of disputes between consumers and the merchant facility
- iv. COMMISSION being responsible for payment of all merchant fees, including but not limited to payment processing fees, interchange fees, chargeback fee and the value of the chargebacks (“Merchant of Record Passthrough Fees”) that are passed through by Delerrok other than to the extent such fees are not deducted from revenues received. Such payments shall be in addition to, and separate from the Compensation identified in Exhibit A.
- v. COMMISSION having the right during the Term or any portion thereof, to assume the responsibilities as “Merchant of Record” by giving 90 days written notice to Delerrok. The minimum term that Delerrok shall act as “Merchant of Record” shall be twelve months following Effective Date. Delerrok and the COMMISSION shall agree a transition plan in respect of such services following such notification that is consistent with the terms of any applicable merchant agreement entered into by Delerrok, such transition plan may exceed the 90 days notice period..

7.15 Provide access to onboard modems compatible with the TouchPass System, complete configuration of modems in accordance with instructions to be provided by Delerrok including enabling remote access to each modem by Delerrok, if supported by the modem, and ensuring that the modem firmware is updated when new versions are made available by the manufacturer.

## 8. TERM AND TERMINATION

8.1 Agreement Term. This Agreement shall commence and be effective as of the Effective Date and shall continue through a period of five (5) years following the time of System Acceptance (“Term”), unless otherwise terminated under this Agreement. Irrespective of the foregoing, this Agreement shall commence on the Effective Date and shall expire six (6) years from the anniversary of the Effective Date, unless earlier terminated or otherwise extended pursuant to section 8 below.

Unless otherwise terminated as provided herein, the COMMISSION may extend this Agreement for up to five (5) additional terms of one (1) year each, or any combination of years for a maximum extension period of five (5) years.

8.2 Termination for Convenience. COMMISSION, by written notice, may terminate this Agreement or SOW, in whole or in part, when it is in the Government’s interest. If this Agreement is terminated, COMMISSION shall be liable only for payment under the payment provisions of this Agreement or SOW for services rendered and costs reasonably committed before the effective date of termination and any reasonable costs incurred by Delerrok related to the cessation of Services.

8.3 Termination for Default [Breach or Cause]. Subject to Section 8.4, if Delerrok does not deliver equipment, software, or supplies in accordance with this Agreement (Exhibit A) or other SOW, or fails to perform services in the manner called for in the Agreement (Exhibit A) or SOW, or if Delerrok fails to comply with any other provisions of the Agreement or SOW, COMMISSION may terminate the Agreement or SOW for default, in addition to all other rights and remedies of law or equity or otherwise. Termination shall be effected by serving a notice of termination on Delerrok setting forth the manner in which Delerrok is in default. Delerrok will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement or SOW, as applicable. If it is later determined by COMMISSION that Delerrok had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, COMMISSION, after setting up a new delivery of performance schedule, may allow Delerrok to continue work, or treat the termination as a termination for convenience.

8.4 Opportunity to Cure. COMMISSION shall, in the case of a termination for breach or default, allow Delerrok 10 days in which to cure the defect. The notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Delerrok fails to remedy to COMMISSION's satisfaction the breach or default or any of the terms, covenants, or conditions of this Agreement or within ten (10) days after receipt by Delerrok or written notice from COMMISSION setting forth the nature of said breach or default, COMMISSION shall have the right to terminate the Agreement without any further obligation to Delerrok. Any such termination for default shall not in any way operate to preclude COMMISSION from also pursuing all available remedies against Delerrok and its sureties for said breach or default.

8.5. If COMMISSION breaches or defaults on any of the provisions of this Agreement or any SOW, and such breach is not cured within thirty (30) days after COMMISSION receives written notice, then in addition to all other rights and remedies of law or equity or otherwise, then Delerrok shall have the right to terminate this agreement or any SOW(s) impacted by such breach without any charge or liability, at any time thereafter.

## **9. FEES, TAXES AND TERMS OF PAYMENT**

9.1 Payment. The terms of payment and prices to be paid by COMMISSION for the Services and Equipment are listed in Exhibit A.

9.2 Services Fees. Services will be provided for the fees provided in Exhibit A.

9.3 Taxes. COMMISSION is exempt from Federal Excise and Transportation Taxes. COMMISSION will furnish necessary exemption certificate upon request. Any sales tax, use tax, imposts, revenues, excise or other taxes, which are now or which may hereafter be imposed by Congress, by a state or any political subdivision hereof and applicable to the sale or the material delivered as a result of this Agreement and which, by the terms of the tax law, must be passed directly to the Commission, will be paid by the Commission.

9.4 Maximum Compensation. The contract amount for the Term of the Project shall not exceed One Million Eight Hundred and Sixty Thousand Dollars (\$1,860,000.00) for all services, equipment, materials and supplies, including all installation costs, warranties, and labor (Not To Exceed Amount). The Parties shall review the estimated contract amount at least monthly. In the event that total payments to Delerrok are projected to exceed the Not To Exceed Amount within one hundred twenty (120) days of the most recent review, Commission and Delerrok shall amend the Agreement to resolve such an eventuality.

## **10. CONFIDENTIAL INFORMATION/OWNERSHIP**

10.1 Confidentiality Obligations. From time to time, either Party (the "Disclosing Party") may disclose or make available to the other Party (the "Receiving Party"), whether orally or in physical form, confidential or proprietary information concerning the disclosing Party and/or its business or operations, including for Delerrok the TouchPass Hosted Services, Equipment, or Services in connection with this Agreement and for COMMISSION including data provided as part of the California Integrated Travel Project (together, "Confidential Information"). Each Party agrees that during the Term of this Agreement and thereafter: (a) it will use Confidential Information belonging to the Disclosing Party solely for the purpose(s) of this Agreement; and (b) it will not disclose Confidential Information belonging to the Disclosing Party to any third party (other than the Receiving Party's employees and/or professional advisors on a need-to-know basis who are bound by obligations of nondisclosure and limited use at least as stringent as those contained herein) without first obtaining the Disclosing Party's written consent. Upon request by the Disclosing Party, the Receiving Party will return all copies of any Confidential Information to the Disclosing Party. The Receiving Party will be responsible for any breach of this Section by its employees, representatives, and agents.

10.2 Exclusions. The term "Confidential Information" will not include any information that the Receiving Party can establish by written evidence: (a) was independently developed by the Receiving Party without use of or reference to any Confidential Information belonging to the Disclosing Party; (b) was acquired by the Receiving Party from a third party having the legal right to furnish same to the Receiving Party without disclosure restrictions; or (c) was at the time in question (whether at disclosure or thereafter) generally known by or available to the public (through no fault of the Receiving Party).

10.3 Required Disclosures. These confidentiality obligations will not restrict any disclosure required by Exhibit A or any SOW, or any order by a court or government agency, provided that in the case of a disclosure required by a court or government order, the Receiving Party gives prompt notice to the Disclosing Party of any such order and

reasonably cooperates with the Disclosing Party at the Disclosing Party's request and expense to resist such order or to obtain a protective order.

**10.4 Ownership by COMMISSION.** All data, procedures, descriptions, presentations, and recommendations provided by COMMISSION, including information provided by end users that is unique to end user's interaction with the COMMISSION's transportation system, to Delerrok under this Agreement will be owned by COMMISSION or its licensors. This includes exclusive right, title, interest and ownership in and to the transit data (including static and real time data and material arranged in a systematic or methodical way) collected or accessible by electronic or other means by or through the TouchPass System ("Transit Data"), no matter by whom such is created by as well as any patent, trademark or copyrights associated therewith. Delerrok may not release, distribute, or otherwise utilize any such data without the written approval of COMMISSION other than for the purposes of performing the Services, including acting as "Merchant of Record", and improving the TouchPass Hosted Services.

**10.5 Ownership by Delerrok.** Delerrok retains all exclusive right, title, interest and ownership in and to the TouchPass Hosted Services, components thereof, Documentation and all derivative works, modifications, and extensions thereto (including relating to Transit Data), as well as any patent, trademark or copyrights associated therewith ("Delerrok IP") whether such material existed prior to or is created after the Effective Date. No Services provided under this Agreement shall be designated "Works for Hire". Subject to the terms and conditions of Section 10.4, and except for personally identifiable information of transit users ("Transit User PII"), COMMISSION grants to Delerrok a worldwide, perpetual, royalty-free, non-exclusive, non-terminable license to use aggregated and anonymized Transit Data for purposes of benchmarking, publicity related to, fulfilling public reporting requirements and improving the TouchPass Services. These rights explicitly include commercial use. With respect to Transit User PII, Delerrok is hereby permitted to use such data only if it receives authorization from affected transit users and only for purposes for which it has received authorization. For purposes of this section, "use" means doing any act that is restricted by copyright or Database Rights whether in the original medium or any other; and includes without limitation distributing, copying, publicly performing, modifying, publicly displaying, and preparing derivative works of the Transit Data, provided that Delerrok has received authorization from affected transit users before any distribution, copying, public performance or display of Transit User PII.

**10.6 Injunctive Relief.** The Parties acknowledge and agree that the disclosure of Confidential Information may result in irreparable harm for which there is no adequate remedy at law. The Parties therefore agree that the Disclosing Party may be entitled to an injunction in the event the Receiving Party violates or threatens to violate the provisions of this Section 10, and that no bond will be required. This remedy will be in addition to any other remedy available at law or equity.

## **11. INDEMNIFICATION**

**11.1** Subject to 11.2, Delerrok shall indemnify, defend, keep and save harmless COMMISSION, its Transit Partners, governing body, agents, officials, and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs, and expenses, which may accrue against COMMISSION, its Transit Partners, governing body, agents, officials, or employees and arising out of or resulting from Delerrok's acts or omissions, including such acts or omissions of its employees, subcontractors, and agents. Such indemnification is subject to (1) COMMISSION notifying Delerrok promptly upon learning that the claim might be asserted, (2) Delerrok has primary control over the defense of the claim and any negotiation for its settlement or compromise, subject to agreement by COMMISSION on the terms of any settlement or compromise, and (3) COMMISSION takes no action that, in Delerrok's judgment, is contrary to Delerrok's interest.

**11.2 Alternative Remedy.** If a claim described in Section 11.1 relates to the assertion that there has been a breach of an intellectual property right, COMMISSION will permit Delerrok, at Delerrok's expense subject to the COMMISSION'S approval, to (1) procure the right to continue using the TouchPass Hosted Services, (2) replace or modify the TouchPass Hosted Services to eliminate the infringement while providing materially equivalent functionality, or (3) terminate the TouchPass Hosted Services and refund to COMMISSION an amount equal to the pro-rata portion of license price actually paid by COMMISSION over the period the TouchPass Hosted Services, as the case may be, could not be used.

## **12. LIMITATION ON LIABILITY**

NO CONSEQUENTIAL DAMAGES: IN NO EVENT WILL DELERROK OR ITS LICENSORS, RESELLERS, SUPPLIERS OR AGENTS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON COMMISSION'S CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, OR OTHERWISE, IN CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. OTHER THAN IN RESPECT OF DEATH OR INJURY TO PERSONS DUE TO GROSS NEGLIGENCE OR WILLFUL ACT, THIRD PARTY CLAIMS FOR A BREACH OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT, WILL THE AGGREGATE LIABILITY WHICH DELERROK OR ITS LICENSORS, RESELLERS, SUPPLIERS OR AGENTS MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE TOTAL OF 12 MONTHS' OF PAYMENTS PAID BY THE COMMISSION TO DELERROK IMMEDIATELY PRECEDING SAID CLAIMS AS DESCRIBED HEREIN. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY, DESPITE THE FOREGOING EXCLUSION AND LIMITATION

## **12. DELAYS**

12.1. Unavoidable Delays. If Equipment or Services under the contract should be unavoidably delayed, Delerrok may be entitled to an extension of time for completion of the contract for the number of days of excusable delay to the extent caused by such unavoidable delay. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Delerrok's performance, and was not caused directly or substantially by acts, omissions, negligence or mistakes of Delerrok, Delerrok's sub-contractors, or their agents, and was substantial and in fact caused Delerrok to miss delivery dates, and could not adequately have been guarded against by contractual or legal means. Delays beyond control of the Commission / Transit Partners or caused by the Commission / Transit Partners will be sufficient justification for delay of services, and Delerrok will be allowed a day for day extension.

12.2. Notification of Delays. Delerrok shall notify the Executive Director of such event as soon as reasonably practical following the date on which Delerrok has, or should have had if Delerrok had been acting in accordance with good industry practice, knowledge that an event has occurred which will delay delivery or installation of the System. Within ten (10) calendar days, Delerrok shall confirm such notice in writing, furnishing as much detail as available related to the event and the impact of the event on the delivery of Services.

12.3. Request for Extension. Delerrok agrees to supply, as soon as such data are available, any reasonable proofs that are required by COMMISSION's Executive Director or designee to demonstrate its entitlement to an extension. COMMISSION's Executive Director or designee shall examine the request and any documents supplied by Delerrok and acting reasonably shall grant such extension. In the event that the COMMISSION's Executive Director or designee does not grant such extension that matter shall be resolved through the Disputes procedures set out in Exhibit B. Delerrok shall be entitled to damages or compensation and shall be reimbursed for losses reasonably incurred on account of delays resulting from any cause under this provision.

## **13 FORCE MAJEURE**

13.1 As used in this Agreement, a "Force Majeure Event" means an act of God, riot, civil disorder, or any other similar event beyond the reasonable control of a Party, provided that the event is not caused, directly or indirectly, by such Party. Notwithstanding the foregoing, no event will be considered a Force Majeure Event if and to the extent that the nonperforming Party could have (1) prevented the event (or any resulting defaults or delays in performance) by taking reasonable precautions, or (2) circumvented the event (or any resulting defaults or delays in performance) through the use of alternate sources, workaround plans or other means (in the case of Delerrok, including by meeting its obligations with respect to developing, maintaining and implementing an organizational resilience program as described in this Article or an applicable Statement of Work).

13.2 Subject to Section 13(a), and except for the obligation to pay Delerrok hereunder, payment in the case of a Force Majeure Event the nonperforming Party will be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance to whatever extent possible without delay. Any Party so delayed in its performance will promptly notify the Party to whom performance is due by telephone and in writing and will describe at a reasonable level of detail the circumstances causing such default or delay.



#### 14. FEDERAL CLAUSES

The parties shall comply with the requirements of Exhibit B.

#### 15. INSURANCE

During the performance of this Agreement, and at Delerrok's sole expense, Delerrok shall procure and maintain the following insurance and shall not of its own initiative cause such insurance to be cancelled or materially changed during the course of herein Agreement. Delerrok shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Delerrok, its agents, representatives, or employees.

**Minimum Scope and limit of Insurance – Coverage(s) shall be at least as broad as:**

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Delerrok has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 combined single limit for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
5. Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
6. Crime Policy, with limits not less than \$150,000 per occurrence. Coverage shall include claims involving employee theft and fraud.

If Delerrok maintains higher limits than the minimums shown above, COMMISSION shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to COMMISSION.

**Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

***Additional Insured Status***

**COMMISSION, the Transit Partners, and their officers, officials, employees, and volunteers are to be covered as additional insureds** on the required policies with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Delerrok; and on the CGL, Errors and Omissions, and Cyber Liability policies with respect to liability arising out of work or operations performed by or on behalf of Delerrok including materials, parts, software services, applications, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to Delerrok's insurance.

***Primary Coverage***

For any claims related to the contract, **Deleerok's insurance coverage shall be primary insurance** as respects COMMISSION, the Transit Partners, and their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COMMISSION, the Transit Partners, or their officers, officials, employees, or volunteers shall be excess of Deleerok's insurance and shall not contribute with it.

***Notice of Cancellation***

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the COMMISSION and Transit Partners.**

***Waiver of Subrogation***

Deleerok hereby grants to COMMISSION and Transit Partners a waiver of any right to subrogation which any insurer of said Deleerok may acquire against COMMISSION by virtue of the payment of any loss under such insurance. Deleerok agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COMMISSION and Transit Partners have received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Deleerok shall disclose to and obtain the approval of COMMISSION for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of the Agreement. Further, if the Deleerok's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by the contract so as to not prevent any of the parties to the contract from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to COMMISSION.

***Claims Made Policies***

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement of work, including work under a SOW.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Deleerok must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

***Subcontractors***

Deleerok shall require and verify that all subcontractors maintain insurance that is appropriate for the works being performed meeting all the requirements stated herein, and Deleerok shall ensure that Commission and Transit Partners are named as an additional insured on insurance required from subcontractors.

***Special Risks or Circumstances***

COMMISSION reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Proof of Insurance:**

Prior to COMMISSION's issuance of a contract, Deleerok must furnish to COMMISSION a Certificate of Insurance which shall certify Deleerok's insurance policy adequately covers the above listed requirements. However,

failure to obtain the required documents prior to the work beginning shall not waive Delerrok's obligation to provide them. Documents may be delivered or mailed to said office by the provider. Language on the certificate and applicable endorsements shall confirm the following: (1) The required parties are designated as an additional insured on the Insurance described hereinabove; (2) The coverage shall be primary as to any other insurance with respect to performance hereunder; and (3) Thirty (30) days written notice of cancellation or material change to COMMISSION (Except ten (10) days for non-payment premium).

## **16. BOND REQUIREMENTS**

16.1 Payment Bond. Delerrok shall obtain payment bonds with a penal amount equal to the subcontractors interest in this Project as stated by the subcontractors. Obligations deposited as the payment bond, shall be held for a period of one (1) year from the Effective Date for settlement of any valid subcontractor claims not settled promptly by Delerrok. The initial Payment Bond shall cover the base contract term only and for the avoidance of doubt shall be promptly returned one year after System Acceptance providing no claims have been made. Evidence of coverage will be provided to COMMISSION within 30 days of Notice-to-Proceed.

16.2 Fidelity Bond. During the period of time the Agreement shall be in effect, Delerrok shall cause its staff personnel to be covered under an appropriate bond protecting COMMISSION/Transit Partners from wrongful acts (such as theft, fraud, forgery, etc.) up to the minimum amount of one-hundred and fifty thousand dollars (\$150,000) with respect to any one occurrence by Delerrok employees. Evidence of coverage will be provided to COMMISSION within 30 days of Notice-to-Proceed. The COMMISSION will consider in good faith the Crime Policy described in Section 15 as a substitute to the Fidelity Bond.

## **17. MILESTONE RETAINAGE**

Retainage for Implementation Period Project Milestones has been set at 8% on Launch Services and 5% on all other implementation works as set out in the Milestones Payment Schedule provided in Exhibit F. Retainage will be released upon Final System Acceptance.

## **18. PROHIBITED INTEREST**

18.1 Prohibited Interest. The Parties hereto covenant and agree that, to their knowledge, no board member, officer, or employee of COMMISSION, during his tenure or for one (1) year thereafter has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than the COMMISSION, and that, if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other parties, even if such interest would not be considered a conflict of interest under Article 4 of Chapter 1 of Division 4 of Title 1 (commencing with Section 1090) or Article 1 of Chapter 7 of Title 9 (commencing with Section 87100) of the Government Code of the State of California.

18.2 Interest of Members of /or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share of or part of this contract or to any benefit arising therefrom.

## **19. INSPECTION AND APPROVAL OF WORK**

Delerrok will permit COMMISSION's Project Manager or a duly authorized representative to inspect and audit all work, material and other data and records connected with this Agreement.

## **20. TECHNICAL SPECIFICATIONS**

Notwithstanding the provision of drawings, technical specifications, or other data by COMMISSION, Delerrok shall have the responsibility of supplying all drawings and details required to make the Project complete and ready for service even though such details may not be specifically mentioned in the drawings and specifications. In the

event of any deviation between the description of the equipment in the Technical Specifications, attached hereto and incorporated herein as Exhibit D, and other parts of this Agreement, the Technical Specifications shall govern.

## **21. REPAIRS AFTER NON-ACCEPTANCE OF INSTALLATION WORKS**

In the event that Delerrok, or its designated representative fail to promptly perform any repairs after non-acceptance of any installation works or the work, COMMISSION may require rectification of defects in such installation works to be done by the COMMISSION's personnel with reimbursement by Delerrok.

### **A. Repairs by Delerrok:**

(1) If COMMISSION requires Delerrok to perform repairs after non-acceptance of the installation work, Delerrok's representative must begin work within five (5) working days after receiving written notification from COMMISSION of failure of acceptance tests. COMMISSION shall make the equipment available to complete repairs timely with Delerrok repair schedule.

(2) Delerrok shall provide, at its own expense, all spare parts, tools, and space required to complete the repairs.

### **B. Repairs by COMMISSION:**

(1) Parts Used: If COMMISSION decides to perform the repairs after non-acceptance of the equipment, it shall correct or repair the defect and any related defects using Delerrok-specified parts available from its own stock or those supplied by Delerrok specifically for this repair. Reports of all repairs covered by this procedure shall be submitted by COMMISSION to Delerrok for reimbursement or replacement of parts. Delerrok shall provide forms for these parts.

(2) Delerrok-Supplied Parts: If Delerrok supplies parts for repairs being performed by COMMISSION after non-acceptance of the equipment, these parts shall be shipped prepaid to COMMISSION from any source selected by Delerrok within 10 working days after receipt of the request for said parts.

(3) Return of Defective Components: Delerrok may request that parts covered by this provision be returned to the manufacturing plant. The total cost for this action shall be paid by Delerrok.

(4) Reimbursement for Labor: COMMISSION shall be reimbursed by Delerrok for labor. The amount shall be determined by multiplying the number of man-hours actually and reasonably required to correct the defect by a per hour, per technician straight wage rate.

(5) Reimbursement for Parts: COMMISSION shall be reimbursed by Delerrok for defective parts that must be replaced to correct the defect. The reimbursement shall include taxes where applicable and 25 percent handling costs.

## **22. NO EXCLUSIVITY**

Other than in respect of Equipment and Services that Delerrok is required to provide under this Agreement, Commission reserves the right to contract separately for services similar to those within the scope of this Project if in the best interest of Commission, for example, the COMMISSION or a Transit Partner may choose to separately procure other ticketing solutions to operate in parallel with the services and equipment procured under this Agreement.

## **23. MISCELLANEOUS**

23.1 Compliance With Laws: COMMISSION and Contractor shall each carry out the transactions contemplated hereby and shall otherwise deal with the TouchPass Hosted Services, Equipment and Services in conformity with all applicable laws, rules, and regulations of all governmental authorities, including, without limitation, the Export Administration Act, and COMMISSION shall obtain all permits and licenses required in connection with the license, installation, or use of the TouchPass Hosted Services, Equipment and Services.

23.2. Export Control. The TouchPass Hosted Services, Equipment and Services may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. COMMISSION acknowledges and agrees that the none of the underlying information, TouchPass Hosted Services, Equipment and Services or technology may be transferred or otherwise exported or re-exported to countries as to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial SOWs. The lists of Embargoed Countries and Designated Nationals are subject to change without notice. COMMISSION agrees to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Software or Services may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. COMMISSION shall only use the Equipment, Software and the Services in a manner that complies with all applicable laws.

23.3 Choice of Law; Venue. This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and governed by the laws of the State of California, including all matters of construction, validity, performance, and enforcement and without giving effect to the principles of conflict of laws. Any action brought by any party hereto shall be brought within the State of California, County of Ventura.

23.4. Non-Waiver. No waiver or failure to exercise any option, right, or privilege under the terms of this Agreement on any occasion or occasions shall be construed to be a waiver of the same or any other option, right or privilege on any other occasion.

23.5 Section Headings. The section headings used in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement.

23.6 Notices and Demands. Except as otherwise provided herein, any notices or demands required by law or under the terms of this Agreement shall be in writing and addressed as set forth below. COMMISSION or Delerrok shall deliver such notices or demands by hand or by certified or registered mail, and addressed as set forth below. All notices are effectively given on the date of delivery, whether that be by hand or by certified or registered mail, return receipt requested. The Parties may change their notice contact information at any time by giving thirty (30) days prior written notice to the other.

Notices to COMMISSION:

Ventura County Transportation Commission

Attn: Executive Director

751 E. Daily Drive, Suite 420

Camarillo, CA 93010

Notices to Delerrok:

Delerrok Inc.

Attn: Legal Department

c/o Cubic Transportation Systems Limited

23.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

23.8 Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining portions of the Agreement shall be construed as if not containing such provision, and all other rights and obligations of the Parties shall be construed and enforced accordingly.

23.9 Negotiated Terms. The provisions of this Agreement are the result of negotiations between the Parties and this Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement or based on a Party's undertaking of an obligation under this Agreement.

23.10 Entire Agreement. The complete Agreement between the Parties shall consist of the following component parts:

1. This Agreement
2. Exhibit A – Scope of Work
3. Exhibit B – Federal Clauses
4. Exhibit C – Request for Proposal RFP No. 20-710: Mobile Ticketing and Advanced Fare Collection System
5. Exhibit D – Technical Specifications
6. Exhibit E – Delerrok's Proposal
7. Exhibit F – Project Milestones Payment Schedule
8. Exhibit G – InComm Sales and Reload Network Terms and Conditions

The terms and conditions of the Exhibits and any SOW hereunder are integral parts of this Agreement and are fully incorporated herein by this reference. This Agreement (including its Exhibits), and any SOWs and SOWs placed hereunder, shall constitute the Contract Documents. In the event of a conflict between this Agreement and any provisions of the Contract Documents, this Agreement shall control.

23.11 **Modification.** Any amendment or modification to this Agreement or any duly executed SOW placed hereunder shall not be valid, enforceable, or binding on the Parties unless such amendment or modification (i) is a written instrument duly executed by the authorized representatives of both Parties and (ii) references this Agreement and any SOW, if applicable, and identifies the specific sections contained therein which are amended or modified. No amendment or modification shall adversely affect vested rights or causes of action that have accrued prior to the effective date of such amendment or modification. The terms and conditions of the Exhibits and any SOW hereunder are integral parts of this Agreement and are fully incorporated herein by this reference. Any exceptions expressly agreed upon in writing by COMMISSION and Delerrok under a particular SOW will apply only for purposes of that SOW, and will not be deemed to in any way amend, modify, cancel, or waive the provisions of this Agreement or any other SOW. Notwithstanding the foregoing, no SOW or any provision thereof will be effective to: (A) decrease any limitation of liability, reduce the scope of recoverable damages, or restrict or eliminate exceptions to the limitation of liability; (B) expand, eliminate, or restrict the scope of any indemnity obligations set forth in this Agreement or any Exhibit hereto; or (C) waive, settle, or resolve any claims or disputes between the Parties.

23.12 **E-Verify Certification.** At all times during performance of this Agreement, all Parties shall fully comply with Article 2.5 of Chapter 2 of Division 3 of the Labor Code of the 2019 California Code, and shall ensure compliance by any subcontractors utilized. All Parties shall execute an affidavit verifying such compliance upon request by COMMISSION.

23.13 **News Releases.** Unless agreed to in writing which shall not be unreasonably withheld, COMMISSION is the only entity authorized to issue news releases relating to this Agreement and performance there under.

**Signature Page Follows**

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall be deemed an original, effective as of the Effective Date.

**Ventura County Transportation Commission**

**DeLerrok Inc.**

By: \_\_\_\_\_  
(Authorized Signature)

By: \_\_\_\_\_  
(Authorized Signature)

Name: Darren M. Kettle  
(Print or Type)

Name: \_\_\_\_\_  
(Print or Type)

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A

**Scope of Work  
Equipment and Services**

1. **TouchPass Hosted Services.** The TouchPass Hosted Services is a cloud-based electronic fare collection service provided in accordance with the TouchPass Hosted Services Requirements outlined in Section 3 below (“TouchPass Hosted Services”). Delerrok shall make the TouchPass Hosted Services available to COMMISSION and Transit Partners within one hundred thirty-five (135) days from the Effective Date of the Agreement (the “Launch Date”).
2. **Equipment and Services.** Upon receipt of purchase orders from COMMISSION, Delerrok shall provide the following Equipment, AVL Integration and Services as part of the TouchPass Hosted Services. In addition, the COMMISSION may exercise certain options through change order which modify, remove, or add services or equipment.
  - a. **Equipment Supply.** Pursuant to the terms of this Agreement, Delerrok shall provide COMMISSION with the following Equipment within one hundred twenty (120) days from the effective date of the Agreement.
    - i. Reader, Card, Paper Token Supply, Driver Control Units, Cellular Modems, and Rooftop Antennas
      - A. One Hundred Seventy-Eight (178) onboard electronic validators (“Readers”) compliant with the attached TouchPass Reader Specification and capable of performing in accordance with the Requirements of this Exhibit A.
      - B. Twenty-six thousand (26,000) contactless smart cards pre-printed with Delerrok TouchPass card graphics and COMMISSION and Transit Partners’ logos and compatible with the TouchPass System and with the attached TouchPass Card and Graphics Specifications (“TouchPass Cards”).
      - C. One Hundred Forty-five Thousand (145,000) paper, QR code tickets, each pre-printed with COMMISSION and Transit Partners’ logos in black ink only and a unique QR code compatible with the TouchPass System (“Paper Tokens”).
      - D. Thirteen (13) Driver Control Units compliant with the TouchPass system specifications and capable of performing in accordance with the Requirements of this Exhibit A.
      - E. Thirteen (13) Cellular Modems compliant with the TouchPass system specifications and capable of performing in accordance with the Requirements of this Exhibit A.
      - Thirteen (13) Rooftop Antennas compliant with the TouchPass system specifications and capable of performing in accordance with the Requirements of this Exhibit A.
    - ii. Installation Kits
      - A. One Hundred Sixty-Three (162) Reader Installation Kits, each consisting of mounting equipment (RAM Mount components, including base X 2 plus extension arm, and any necessary mounting plates) for mounting Readers to bus dash (depending on bus configuration, Readers may be mounted to poles also) and Cables (power cable, Ethernet cable, crimping pins and power cable adapter).
      - B. Thirteen (13) Driver Control Units Installation Kits for non-AVL equipped buses, each consisting of mounting equipment (RAM Mount components, including base X 2 plus extension arm, and any necessary mounting plates) for mounting Driver Control Units to bus dash or safety rail) and cables (power cable, Ethernet cable, crimping pins and power cable adapter).
  - b. **Additional Services.** In addition to the services listed in section 2.c. (“Standard Services”), Delerrok shall perform the following one-time services prior to the Launch Date.
    - i. **Software Design, Support and Configuration Services.** Delerrok shall design, develop and deploy the TouchPass software needed to provide, support and maintain the TouchPass Hosted Services during the Term of the Agreement per the Standard Services listed in Section 2.c. below.



- ii. Launch Services. Delerrok shall provide certain configuration services, including initial system setup and configuration and associated on-site meetings. Delerrok shall work with COMMISSION to confirm and implement initial system configuration settings.
  - iii. Training. Delerrok shall provide a comprehensive training program that prepares Commission and Transit Partner staff for operation, financial administration, elementary troubleshooting, maintenance and administration of the TouchPass System components.
    - A. Delerrok's training program shall be led by knowledgeable staff and include formal and informal instruction, models, manuals, diagrams and component manuals and catalogs as required. Where practical and useful, training should be hands on and should use actual system software and screens on a workstation and actual equipment on the fleets.
    - B. Delerrok shall perform at least three (3) train-the-trainer training sessions of COMMISSION and/or Transit Partner Staff.
    - C. Training shall be focused on the following roles: Program Administrators, Back Office Staff, Front Office/Customer Service, Maintenance Team, and Bus Operators.
    - D. COMMISSION will make every attempt to furnish classroom facilities or meeting space for all trainings to be on-site. However, trainings may be conducted by video conference pursuant to local orders, or individual Transit Partner meeting policy/availability.
    - E. Electronic copies of all materials shall be provided. One physical set of training materials and manuals will be provided to the Commission.
  - iv. AVL Integration. The TouchPass System will utilize certain COMMISSION-provided information, including static General Transit Feed Specification ("GTFS") data and AVL route and stop information ("AVL Data") to calculate fares and append route and stop information to TouchPass fare transaction records and reports. COMMISSION shall be responsible for providing AVL Data to the TouchPass System on an ongoing basis. To facilitate TouchPass System receipt of AVL Data, the COMMISSION shall provide Delerrok with access to AVL system compatible with the TouchPass System, and, if the AVL system has not been previously integrated with the TouchPass System, Delerrok shall perform a one-time integration of the TouchPass System with that AVL system. COMMISSION shall be responsible for providing AVL Data to the TouchPass System on an ongoing basis.
  - v. Merchant of Record.
    - A. In the event that COMMISSION notifies Delerrok in accordance with Section 7.14(iv) that it shall assume the responsibilities as "Merchant of Record". COMMISSION shall be liable for all reasonable cost incurred by Delerrok that are required to support the transition of the Merchant of Record services to COMMISSION including but not limited any costs required to integrate with a payment gateway.
    - B. Delerrok monthly service fees for Merchant of Record services shall cease in the month following the month in which the final reconciliation of any transactions that occurred during the period in which Delerrok acted as Merchant Record is completed.
    - C. COMMISSION shall continue to be liable for any Merchant of Record Passthrough Fees that related to any transaction that occurred during the period in which Delerrok was Merchant of Record irrespective of when Delerrok is notified of such fees by any payment processor or payment card provider.
  - vi. Installation. Perform survey of vehicles, and installation of cabling, mounting equipment, Readers, Driver Control Units, modems and antennas, where required, on designated COMMISSION and Transit Partner vehicles.
- c. Standard Services
- i. TouchPass Support Services. Delerrok shall provide the following maintenance and support services beginning from the Launch Date:
    - A. Maintain the TouchPass System so that it operates in conformity, in all material respects, with the descriptions and specifications for the TouchPass Hosted Services set out in the Agreement, or as may be modified from time to time by Delerrok as a result of updates and upgrades;

- B. In the event that COMMISSION detects any errors or defects in the TouchPass Hosted Services, Delerrok will use its commercially reasonable efforts to provide support services through a telephone software support line from Monday to Friday, 8 am to 8 pm Pacific Time (excluding North American holidays).
  - C. Use commercially reasonable efforts to downgrade any major issues in the TouchPass Hosted Services to a minor issue within 24 hours. Major issues are defined as issues that prevent passengers from using the TouchPass Hosted Services or prevent COMMISSION from collecting revenue, that are not a Support Exclusion.
  - D. Use commercially reasonable efforts to resolve any minor issues in the TouchPass Hosted Services within 30 days. Minor issues are defined as issues that do not affect passengers or revenue collection but could affect COMMISSION's use of the TouchPass Hosted Services (e.g. data collection) that are not a Support Exclusion.
  - E. Provide COMMISSION with upgrades of the TouchPass Hosted Services as such become commercially available at no additional license fee charge during the term of the Agreement.
  - F. "Support Exclusions" are those items that Delerrok is not responsible for providing support hereunder for failures to the extent caused by: (a) COMMISSION or third party supplied infrastructure or internet, TouchPass Card communications or network failures; (b) modifications to the Equipment or the TouchPass Hosted Services not authorized in writing by Delerrok; (c) use of the Equipment or the TouchPass Hosted Services in combination with other products not intended to be so combined, or otherwise not specifically authorized in writing by Delerrok; (d) use in violation of the Agreement or its Exhibits; (e) Force Majeure events; or (h) use of the Equipment or the TouchPass Hosted Services in a manner inconsistent with the Documentation.
- ii. Equipment Support. Delerrok shall provide the following Equipment maintenance and support services:
- A. Reader Warranty. Delerrok will implement a Reader Return Authorization ("RRA") process enabling COMMISSION to receive authorization to ship failed or defective Readers to Delerrok for inspection. Delerrok will repair and/or replace any failed or defective Readers returned to Delerrok under the RRA process at no cost to COMMISSION for a period of one (1) year from the date of System Acceptance or, where applicable, the date on which additional Reader ordered by COMMISSION are shipped ("Reader Warranty Period"). The following additional provisions shall apply to the Reader Warranty:
    - a. Warranty is not applicable to Readers exhibiting damage outside of normal wear and tear, alteration, misuse or abuse
    - b. Delerrok responsibilities:
      - i. Provide RRA support via phone
      - ii. Provide return authorization to COMMISSION under the RRA process
      - iii. Ship repaired or replacement Readers to COMMISSION at Delerrok's expense
    - c. COMMISSION responsibilities:
      - i. Operate and maintain the Readers in accordance with Delerrok-provided instructions. (COMMISSION responsible to install readers following System Acceptance.)
      - ii. Complete troubleshooting procedures
      - iii. Complete RRA process
      - iv. Properly package returned Readers
      - v. Ship Readers to Delerrok, with completed RRA Form, at COMMISSION's expense
      - vi. Install repaired/replacement Readers
      - vii. Assign of Readers to vehicles using the AMS

- d. Any replaced or repaired reader shall be subject to the original Reader Warranty, including the original Reader Warranty Period, of the Reader replaced or repaired.
    - B. Out-of-Warranty Reader Replacement. Where failed Readers exhibit damage outside of normal wear and tear, making them ineligible for warranty repair or replacement, COMMISSION may elect to purchase a replacement for the price described below (“Out-of-Warranty Reader Replacement Fee”).
    - C. Phone Support. Beginning on the Launch Date, Delerrok shall provide technical support via phone to authorized COMMISSION callers to assist with troubleshooting of installation, configuration, and operational problems of covered Equipment Monday to Friday, from 9:00am to 6:00pm Pacific Time (excluding North American holidays).
  - iii. Transactional Reporting. The TouchPass Hosted Services shall provide COMMISSION with comprehensive transactional data in an open, granular format. Data provision shall occur in a web-based reporting application that provides viewing of real-time transactional data or by other methods, such as daily batch exports. Transactional records shall include the following fields:
    - A. Date/Timestamp
    - B. LAT/LON Coordinates
    - C. Route Number and Name
    - D. Transaction Type
  - iv. Financial Reporting.
    - A. Revenue. All funds paid by passengers for Fare Products shall be paid directly to COMMISSION’s bank account. COMMISSION shall be entitled to retain “breakage”, defined as payments for Fare Products purchased but not used.
    - B. Financial Reporting. Delerrok must provide COMMISSION a sales summary report that will:
      - a. Show the amount and type of Fare Products purchased and the total value of those Fare Products;
      - b. Distinguish between purchases via those made via the Merchant Portal and those made via the Passenger Portal.
- d. Optional Services and Equipment.
  - i. GOVCBus App Integration. Delerrok shall provide a software development kit (SDK) to GMV Syncromatics, COMMISSION’s current provider of the GOVCBus App, a smartphone mobile application used for trip-planning and bus arrival time predictions, to facilitate integration of the SDK to the GOVCBus App. Delerrok shall also contract with GMV Syncromatics to perform such integration.
  - ii. DELETED
  - iii. Open Payments. Facilitate the implementation and ongoing acceptance of contactless bankcards and mobile wallets representing bankcards (“Open Payments”), subject to COMMISSION exercising this Open Payments option and purchasing and installing the equipment required to enable such acceptance.
  - iv. Transit Partner Expansion. COMMISSION may elect to expand the number of Transit Partner agencies participating in the Project, including but not limited to Kanan Shuttle, the Transit Partner ADA Paratransit fleets, microtransit, or mobility services, and to neighboring transit agencies within the region.
  - v. Extended Reader Warranty. COMMISSION may elect to purchase an Extended Warranty per Reader as described below prior to delivery, to extend the Reader Warranty Period to a period of five (5) years from the date of System Acceptance.
  - vi. Handheld Validator (Option)
    - A. Handheld device capable of providing network connectivity. Each device includes a set of components.
      - Samsung Galaxy S9 unlocked smartphone, or equivalent
      - Grabba Barcode and NFC Sled Scanner, or equivalent and AC adaptor
      - Ruggedized smartphone case

All components are COTS devices. Standard manufacturer warranties are applicable.

Commission shall supply a suitable cellular data plan for each handheld device or it may contract with Delerrok to provide a data plan, subject to Section 2.d.iv.

- vii. Open Payments. Facilitate the implementation and ongoing acceptance of contactless bankcards and mobile wallets representing bankcards (“Open Payments”), subject to COMMISSION exercising this Open Payments option and purchasing and installing the onboard equipment required to enable such acceptance.
- viii. Cellular Data Plans. At COMMISSION’S option, Delerrok may provide AT&T mobile data plans of 100 MB per month for each modem or Handheld Validator supplied by Delerrok. Cellular data plans are for use exclusively by Readers or Handheld Devices with the TouchPass Hosted Services.

### **3. TouchPass Hosted Services Requirements.**

#### **a. General Requirements. The TouchPass Hosted Services shall:**

- i. Enable purchase by passengers of the COMMISSION provided fare products listed in Section 3.a.v. of this Exhibit A (“Fare Products”) via internet-connected devices and use of electronic fare media (“Fare Media”) provided by COMMISSION or others, to validate those Fare Products on COMMISSION and Transit Partner buses.
- ii. Support secure web portals that allow passengers to purchase Fare Products via an online website using bankcards (“Passenger Portal”) and allow COMMISSION and its authorized agents to sell Fare Products to passengers at physical locations (“Merchant Portal”). These portals shall be hosted by Delerrok.
- iii. By the Launch Date, support mobile applications, to be made available for passenger download by Delerrok and the COMMISSION “GoVCBus App” by GMV Syncromatics, that will enable passengers to use compatible mobile devices to purchase and use Fare Products (“Mobile App”). At a minimum, the Mobile Apps will remain supported on the three most recent versions of the iOS and Android mobile operating systems in use at any point during the term of the Agreement.
- iv. Process electronic fare media, including contactless smart cards that are provided to customers by COMMISSION, which smart cards shall comply with the TouchPass Card and Graphics Specifications and encoded using the TouchPass Hosted Services (“TouchPass Cards”), the Mobile App and TouchPass Hosted System generated QR codes printed on paper tickets (collectively “TouchPass Fare Media”), presented onboard COMMISSION buses using TouchPass Readers or the TouchPass Mobile Reader Application on a compatible mobile device and the TouchPass Hosted Services.
- v. Support configuration and management of a variety of fare products including, but not limited to:
  - A. Time-, calendar- and trip-based passes
  - B. Closed-loop stored value
  - C. Transfer fares
  - D. Discounts for special fare programs
- vi. Support a ‘closed-loop’ system whereby all fare revenues derived from the sale of Fare Products are directly deposited into an COMMISSION account at the time of purchase, either by COMMISSION or its authorized agents directly in the case of sale via the Merchant Portal or, if such sale is made using bankcards via the Passenger Portal or Mobile Application, by processing of the sale transaction via TouchPass Hosted System interaction with COMMISSION’s designated bankcard payment acquirer (“Payment Gateway”) with Delerrok serving as Merchant of Record and subject to any credit card posting delays and charges resulting from the Payment Gateway. COMMISSION shall retain all such revenues and shall pay transaction fees to Delerrok subject to the provisions of Section 4 of this Agreement.
- vii. During the period of time in which Delerrok serves as the Merchant of Record, such services as chargeback processing, merchant acquirer statement reconciliation and periodic remittances to COMMISSION on a mutually approved schedule (e.g. daily).
- viii. In the event COMMISSION exercises the Open Payments option and purchases and installs onboard equipment certified for Open Payments, support acceptance of passenger-initiated payments on board COMMISSION vehicles using contactless bankcards and virtual bankcards used in supported mobile wallets.
- ix. Include preparation and submission to COMMISSION for approval of a Reader Installation Plan for each vehicle configuration type identified during the Vehicle Survey.

- x. Include performance of installation and testing of cabling, mounting components and equipment on designated COMMISSION vehicles.
  - xi. Support Delerrok, COMMISSION, Transit Partner and passenger online management of passenger accounts via the TouchPass Hosted Services.
  - b. Minimum Security Requirements. The TouchPass System shall employ industry standard security measures addressing fare evasion, fraud, revenue theft and data theft. Including the following security features:
    - i. Fare media authentication
      - A. The TouchPass System includes Positive List, an optional feature which enables the COMMISSION to upload lists of cards issued by third party organizations that can then be used by passengers as fare media to board COMMISSION vehicles by presenting the cards to the TouchPass Readers. The uploaded lists typically include only a unique identifier (UID) number which is stored in an unencrypted form in card memory and can be accessed by any device that sends the required commands to the card. This provides a convenient mechanism to enable acceptance of third party-issued cards but does not provide any means to authenticate those cards using standard encryption techniques. Without the use of authentication, the fraudulent creation and use of counterfeit cards is possible and could not be detected by the TouchPass System. In the event COMMISSION elects to use the Positive List feature, COMMISSION accepts this reduced security and will hold Delerrok harmless for acceptance of counterfeit cards and loss of revenue that may result from such acceptance.
    - ii. Message protections
    - iii. Sensitive data storage
    - iv. Encryption key management and storage
    - v. System monitoring and testing
    - vi. Procedures for handling breaches
  - c. Compliance with Standards. The TouchPass System shall be compliant with the following standards, which govern certain aspects of electronic fare payments. Any non-compliance with the following standards shall be stated in written form to COMMISSION prior to Agreement execution:
    - i. ISO/IEC 14443 – Contactless integrated circuit cards
    - ii. ISO/IEC 7816-1 – Physical characteristics of cards
    - iii. ISO/IEC 18092 – NFC, Interface and Protocol
- 4. Compensation.** COMMISSION shall pay the following to Delerrok as compensation for the Equipment and Services in accordance with the Project Milestones Payment Schedule (Exhibit F). COMMISSION may elect modify services or to purchase additional Optional Services and Equipment as identified below:
- a. Equipment. COMMISSION shall pay Delerrok for equipment 30 days after receipt of an Acceptable Invoice . Delerrok shall invoice COMMISSION upon delivery and acceptance, at the unit prices listed below:

Item	Quantity	Unit Price	Total Price
Reader	178	\$1,150.00	\$204,700.00
Reader Installation Kit	162	\$148.50	\$24,057.00
TouchPass Card	26,000	\$2.00	\$52,000.00
Paper Tokens <sup>14</sup>	145,000	\$0.02	\$2,900.00
Driver Control Unit (DCU)	13	\$1,500.00	\$19,500.00
DCU Installation Kit	13	\$148.50	\$1,930.50
Cellular Modem	13	\$500.00	\$6,500.00
Rooftop Antenna	13	\$250.00	\$3,250.00

b. Additional Services.

**Implementation Period**

COMMISSION shall pay Delerrok a lump sum for each of the following services:

<b>Launch Services</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>
Launch Services	8	\$16,000.00	\$128,000.00
Training	8	\$0.00	\$0.00
Reader Installation Services	162	\$500.00	\$81,000.00
Driver Control Unit Installation	13	\$250.00	\$3,250.00
M2M Data Plan 13 buses	3	\$260.00	\$780.00

**Recurring Charges**

Commission shall pay Delerrok monthly for each of the following services:

<b>Service</b>	<b>Quantity</b>	<b>Unit Price Per Month</b>	<b>Total Price Per Month</b>
Merchant of Record Monthly Fee - Not including Pass-through Merchant fees	1	\$2,500.00	\$2,500.00
M2M Monthly Data Plan - Note: Subject to 5% escalation annually.	13	\$20.00	\$260.00

c. Transaction Fees. Upon commencement of revenue operation from the Launch Date, COMMISSION shall pay Delerrok fees per the table below ("Transaction Fees") for the remainder of the Term. COMMISSION shall pay Delerrok monthly for the Transaction Fees.

<b>Transaction (TXN) Fee Schedule (Year 1)</b>		
<b>Tier</b>	<b>Monthly TXN Volume</b>	<b>Fee per TXN*</b>
<b>1</b>	1 to 60,000	\$0.09
<b>2</b>	60,001 to 145,000	\$0.04
<b>3</b>	More than 145,000	\$0.00

<b>Transaction (TXN) Fee Schedule (Years 2-10)</b>		
<b>Tier</b>	<b>Monthly TXN Volume</b>	<b>Fee per TXN*</b>
<b>1</b>	1 to 60,000	\$0.09
<b>2</b>	60,001 to 250,000	\$0.04
<b>3</b>	More than 250,000	\$0.00

\* Fee per TXN applies to all TXNs within each corresponding tier in a calendar month.

- i. Year 1 Cap. Transaction Fees for the first year of operation, commencing with System Acceptance shall be capped at a maximum of \$8,800.00 and will be assessed based on the actual volume of Transactions processed per the Year 1 table above.

- ii. Year 2. Transaction Fees for years two through ten shall be assessed based on the actual volume of Transactions processed per the Years 2-10 table above.

In any calendar month during years two through five (or as otherwise extended), the first 60,000 TXNs will be charged at \$0.09/TXN and all TXNs from 60,001 to 250,000 TXNs will be charged at \$0.04/TXN and all TXNs above 250,000 will be charged at \$0.00/TXN. There is no rollover into the next calendar month. As an example, in a month with 300,000 total TXNs, the math is:  $(60,000 \times \$0.09) + (190,000 \times \$0.04) + (50,000 \times \$0.00) = (\$5,400.00 + \$7,600.00 + \$0.00) = \text{Total } \$13,000.00$  in Transaction Fees.

d. Payment Terms.

- i. Equipment. The lump sum payments for Equipment shall be due 30 days after receipt of an Acceptable Invoice, as provided in Exhibit F of the Agreement. Invoices shall be issued upon Equipment delivery.
- ii. Extended Reader Warranty Fees. If COMMISSION elects to purchase the Extended Reader Warranty, the lump sum payment for Extended Reader Warranty Fees shall be due upon System Acceptance.
- iii. Additional Services. Payment for Additional Services shall be due 30 days after receipt of an Acceptable Invoice. COMMISSION
  - a. Merchant of Record Fees. Delerrok shall submit to COMMISSION an invoice for the Merchant of Record fees for each calendar month within ten (10) business days after the end of the corresponding calendar month. Invoices will include the monthly Merchant of Record Fee as well as Merchant of Record Passthrough Fees. Pass through costs must be documented with proof of payment.
  - b. Installation Services. Delerrok shall submit an invoice for each calendar month within ten (10) business days after the end of the corresponding calendar month in which installation services were completed for any COMMISSION vehicles. During the Implementation period (prior to System Acceptance) payments shall be made in accordance with retainage provisions provided in Project Milestones Payment Schedule, Exhibit F.
  - c. Transaction Fees. Beginning from the Launch Date, Delerrok shall submit to COMMISSION an invoice with supporting documentation detailing Transaction Fees due for Delerrok Services for each calendar month within ten (10) business days after the end of the corresponding calendar month.
- iv. An Acceptable Invoice includes: (1) Proper and complete billing (including support) is received by COMMISSION; (2) if applicable, Acceptance by COMMISSION of the equipment, materials and / or services in accordance with Exhibit A or the SOW, as applicable; (3) Contractual agreements set forth between COMMISSION and Delerrok.
- v. Advance payments by the Commission are prohibited.
- vi. COMMISSION shall pay in full for any additional equipment procured from Delerrok during the Term of the Agreement. Such payment shall become due 30 days after receipt of an Acceptable Invoice. Invoices shall be issued upon delivery of the additional equipment from Delerrok to COMMISSION.
- vii. Delerrok agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than 30 days from receipt of each payment the prime contractor receives from COMMISSION where that payment relates to the acceptance of work performed by the applicable subcontractor, there is no dispute between that subcontractor and Delerrok in respect of such work and that subcontractor has submitted an undisputed invoice to Delerrok. Delerrok agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of COMMISSION.

f. Optional Equipment and Services.

Item	Quantity	Unit Price	Total Price
Extended Reader Five-Year Warranty Option (Fee per Reader)	178	\$600.00	\$106,800.00

Open Payments (Option) – Monthly Fee	1	\$2,500.00	\$2,500.00
Launch Services (Paratransit Expansion Option)	1	\$13,000.00	\$13,000.00
GOVCBus App Integration (Option)	1	\$95,000.00	\$95,000.00

## 5. Additional Equipment Prices.

### 5.1 Initial Term Pricing

- a. **Additional Readers.** COMMISSION may procure additional Readers from Delerrok for \$1,700.00 each. Readers must be procured in minimum quantities of five (5) units per order, and lead time shall be ninety (90) days from placement of order to shipping by Delerrok. Delerrok may at its discretion offer newer-model and/or upgraded Readers that may differ from original Readers supplied under the Agreement, so long as such Readers are compatible with past Readers and the TouchPass Hosted System.
- b. **Out-of-Warranty Reader Replacement Fee.** The price for Out-of-Warranty Reader Replacement per Section 2.c.ii.C. above shall be \$amount per Reader.
- c. **Additional TouchPass Cards.** COMMISSION may procure additional TouchPass Cards either from Delerrok for \$2.00 each or from a third-party supplier. All orders shall be subject to a lead time of 60 days from the time of purchase order. In the event COMMISSION purchases cards directly from other suppliers, cards must be shipped to Delerrok for encoding. In such case, Delerrok will not charge COMMISSION for card encoding but COMMISSION must bear all card shipping costs.
- d. **Paper Tokens.** COMMISSION may procure paper, QR code tickets, each pre-printed with COMMISSION's logo and a unique QR code compatible with the TouchPass System ("Paper Tokens") from Delerrok for \$0.02 each, excluding non-standard, optional features and subject to a minimum order of 5,000 units and a lead time of 30 days from time of purchase order.
- e. **Reader Installation Kits.** COMMISSION may procure additional Reader Installation Kits from Delerrok for \$148.50 each. Kits must be procured in minimum quantities of five (5) kits per order, and lead time shall be sixty (60) days from placement of order to shipping by Delerrok.
- f. **Cellular Modem.** COMMISSION may procure Cellular Modems from Delerrok for \$500.00 each. Modems must be procured in minimum quantities of five (5) units per order, and lead time shall be sixty (60) days from placement of order to shipping by Delerrok. Modem is a Microhard LTE Cube or equivalent. Modems require a SIM card and data plan which shall be provided by COMMISSION.
- g. **Rooftop Antenna.** COMMISSION may procure Rooftop Antennas from Delerrok for \$250.00 each. Antennas must be procured in minimum quantities of five (5) units per order, and lead time shall be sixty (60) days from placement of order to shipping by Delerrok. Antenna is a MobileMark LTM401 or equivalent.

- 5.2 Following the Term, Cubic reserves the right to vary pricing for Additional Equipment set out in Section 5.1 with 90 days advance notice.



EXHIBIT B

**FEDERAL CLAUSES**

**No Obligation by the Federal Government.** COMMISSION and Contractor acknowledge and agree that, notwithstanding any occurrence by the Federal Government in or approval of this solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to COMMISSION, Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False Or Fraudulent Statements And Related Acts.** Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. And U.S. Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on Delerrok, to the extent the Federal Government deems appropriate.

Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Federal Changes.** Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the grant agreements between the COMMISSION and FTA, as they may be amended or promulgated from time to time during the term of this contract. Failure by Contractor to so comply shall constitute a material breach of this contract. In the event any such changes significantly affect the cost or the schedule to perform the work, Contractor shall be entitled to submit a claim for an equitable adjustment under the applicable provisions of this contract.

**Title VI Of The Civil Rights Act Of 1964.** During the performance of this Contract, Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), and subcontractors agree as follows:

A. Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

B. Nondiscrimination. In accordance with Title VI of the Civil Rights act, as amended, 42 U.S.C. 200d section 3 03 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal Transit laws at 49 U.S.C. 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

C. Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Contract:

1. Race, Color, Creed, National Origin, Sex – In accordance with title VII of the Civil Rights Act, as amended, 42 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (USDOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246 Relating to Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project for which this Contract work is being performed. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment of recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with section 4 of the Age discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal Transit laws at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. Immigration and Naturalization Act of 1986 – In connection with the execution of this Contract, the Contractor must comply with all aspects of the federal Immigration and Naturalization Act of 1986.

D. Solicitations for Subcontractors, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.

E. Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by COMMISSION or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to COMMISSION or the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

F. Sanctions for Noncompliance. In the event of the Contractor’s noncompliance with nondiscrimination provisions of this contract, COMMISSION shall impose contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Contractor under the contract until the Contractor complies; and/or
2. cancellation, termination, or suspension of the contract, in whole or in part.

G. Subcontracts. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**Disadvantaged Business Enterprises.** COMMISSION has established a DBE Program pursuant to 49 C.F.R. Part 26, which applies to this Agreement. The requirements and procedures of COMMISSION’s DBE Program are hereby incorporated by reference into this Agreement. Failure by any party to this Agreement to carry out COMMISSION’s DBE Program procedures and requirements or applicable requirements of 49 C.F.R. Part 26 shall be considered a material breach of this Agreement, and may be grounds for termination of this Agreement, or such other appropriate

administrative remedy. Each party to this Agreement shall ensure that compliance with COMMISSION's DBE Program shall be included in any and all sub-agreements entered into which arise out of or are related to this Agreement.

Contractor's failure to make good faith efforts to comply with COMMISSION's DBE Program shall be considered a material breach of this Agreement and may give rise to certain administrative penalties and proceedings, including, but not limited to, those set forth in 49 C.F.R. Part 26.107.

No later than Thirty (30) working days after receiving payment of retention from COMMISSION for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, Contractor shall make full payment to its subcontractors of all compensation due and owing under the relevant subcontract agreement, unless excused by COMMISSION for good cause.

No later than Thirty (30) days after receiving payment of retention from COMMISSION for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, CONTRACTOR shall also make full payment to its subcontractors of all retentions withheld by it pursuant to the relevant subcontract agreement, unless excused by COMMISSION for good cause.

There shall be no substitution of any DBE subcontractors subsequent to award of this Contract without the written approval of the COMMISSION's DBE Officer.

**Incorporation of Federal Transit Administration (FTA) Terms.** The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation, DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Ventura County Transportation Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

Contractor shall take such action with respect to any subcontract or procurement as COMMISSION or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request COMMISSION, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **Debarment and Suspension.**

A. The Contractor shall include in each subcontract exceeding \$25,000, regardless of tier, a clause requiring each lower tiered subcontractor to provide the certification set forth in paragraph B of this section. Each subcontract, regardless of tier, shall contain a provision that the subcontractor shall knowingly enter into any lower tier subcontract exceeding \$25,000 with a person who is disbarred, suspended or declared ineligible from obtaining federal assistance funds. If a proposed subcontractor is unable to certify to the statements in the following certification, the Contractor shall promptly notify COMMISSION and provide all applicable documentation.

B. Each subcontractor with a subcontract exceeding \$25,000 shall certify as follows: **INSERT CERTIFICATE FROM ATTACHMENT G**

**Buy America.** The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a

completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Breach of Contract.**

A. Disputes - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of COMMISSION's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position.

B. Performance During Dispute - Unless otherwise directed by COMMISSION, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

C. Claims for Damages - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

D. Remedies - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between COMMISSION and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which COMMISSION is located.

E. Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by COMMISSION or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Clean Air.** The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Agreement, including any air pollution control rules, regulations, ordinances and statutes, specified in Section 11017 of the California Government Code. All Contractors and suppliers shall be required to submit evidence, if requested, to COMMISSION that the governing air pollution control criteria will be met. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 under this Contract.

**Clean Water.**

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to COMMISSION and understands and agrees that COMMISSION will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**Lobbying.** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to COMMISSION.

**Cargo Preference.**

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**Fly America Requirements.** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**Federal Privacy Act.** Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**Energy Conservation.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**Recycled Products.** The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**National Intelligent Transportation Systems Architecture and Standards.** COMMISSION agrees to: (1) Conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), as amended by MAP-21, unless it obtains an exemption from those requirements, and (2) Except as the Federal Government determines otherwise in writing, follow: (a) FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and (b) Other applicable Federal guidance.

**Access Requirements For Persons With Disabilities (ADA).** COMMISSION agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Recipient also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which

prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (10) Any implementing requirements FTA may issue.

**State and Local Government Laws/Regulations.** To the extent required under Federal law, the State, as the Recipient, agrees to provide the following information about FTA funding for State Programs or Projects: a. Types of Information. The State will provide information including: (1) Identification of FTA as the Federal agency providing the Federal funds for the Program or Project, (2) The Catalog of Federal Domestic Assistance Number of the Program from which the Federal funding for the Program or Project is authorized, and (3) The amount of Federal funds FTA has provided for the Program or Project, and b. Documents. The State will provide the information required under this provision in the following documents: (1) Requests for proposals, (2) Solicitations, (3) Grant or cooperative agreement applications, (4) Forms, (5) Notifications, (6) Press releases, and (7) Other publications.