

AGREEMENT

This Agreement is made and entered into this _____ day of _____ 2017 (“Effective Date”) by and between the Ventura County Transportation Commission, a Regional Transportation Agency and public entity, created pursuant to the laws of the State of California, hereinafter referred to as “VCTC” and Syncromatics Corporation, hereinafter referred to as “Contractor.” Both parties may be referred to as Parties.

RECITALS

WHEREAS, Contractor was the successful proposer for the Automatics Vehicle Location & Passenger Information System Project (“Project”); and

WHEREAS, the Commission awarded the contract for said Project to Contractor;

NOW THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the Parties thereto as follows:

1. CONTRACT DOCUMENTS:

The complete Agreement between the Parties shall consist of the following component parts, to wit:

1. This Agreement;
2. Exhibit A- Request For Proposal No. 17-90164-AVL (“RFP”), including all exhibits, forms and addenda;
3. Exhibit B - Contractor’s Proposal dated July 11, 2017, including any subsequent responsive documents associated therewith;
4. Exhibit C – Priced Statement of Work and Milestones Chart;
5. Exhibit D – Syncromatics Addenda Documents (Addendum A “ITS and System Standards”, Addendum B “System Acceptance Checklist”, and Addendum C “Warranty & Service Level Agreement”).

This Agreement and the other exhibits mentioned above in this Section, which are incorporated by reference, constitute the complete Agreement between the parties and are collectively referred to as “Contract Documents.” In the event of any conflict between any of the provisions of the Contract Documents, (including Exhibits), the Contract Documents shall control in the following order: (1) This Agreement (2) The RFP, including all addenda, exhibits and attachments, (3) The Contractor’s Proposal, (4) Priced Statement of Work and Milestones Chart and (5) Contractor’s Addenda. Where the Contractor’s proposal specifically responds to a requirement in the RFP Compliance Matrix to clarify the extent to which it complies with a feature (fully, partially, or non-compliant), the Contractor’s Proposal shall be controlling.

2. SCOPE OF SERVICES

A. The Scope of Services includes providing and installing an Automatic Vehicle Location (AVL) and Passenger Information system (“System”) at transit terminals, transit stops, and on transit buses and to disseminate vehicle location information (hereafter referred to as “Project”). The Project is comprised of ten tasks. The tasks will include installation of transit stop upgrades and the installation and deployment of the System on each of the transit systems within VCTC’s fleet network: Gold Coast Transit District, Thousand Oaks Transit, Moorpark City Transit, Kanan Shuttle, Ojai Trolley, Valley Express, VCTC Intercity, Camarillo Area Transit, and Simi Valley Transit, as more thoroughly described in the RFP, (Exhibit A) and in Contractor’s Response (Exhibit B), in compliance with the Priced Statement of Work and Milestones Chart (Exhibit C) and in accordance with the Contract Documents.

1. Tasks. Task One: Countywide Bus Stop Signage and Equipment Service Plan will include the installation and induction of System equipment, software and services for the entire Ventura County transit operator service area. Task Two will include the installation and induction of System equipment, software and services for the Gold Coast Transit District. Task Three will include the installation and induction of System equipment, software and services for Thousand Oaks Transit. Task Four will include the installation and induction of System equipment, software and services for Moorpark City Transit. Task Five will include the installation and induction of System equipment, software and services for the Kanan Shuttle. Task Six will include the installation and induction of System equipment, software and services for Ojai Trolley. Task Seven will include the installation and induction of System equipment, software and services for Valley Express. Task Eight will include the installation and induction of System equipment, software and services for VCTC Intercity. Task Nine will include the installation and induction of System equipment, software and services for Camarillo Area Transit. Task Ten will include the installation and induction of System equipment, software and services for Simi Valley Transit.
2. Task Sequence. VCTC may issue Notices to Proceed for Task Orders out of the numerical sequence described above.
3. Task Modification. In the event that any or all Transit Operators in VCTC’s network decline to provide funding for any Group #2 Task components for the Project, then VCTC may revise or remove any Group #2 Task components from the Taskshown in Exhibit C. In the event that any or all Transit Operators in VCTC’s network wish to add funding for Group #3 Task components, prior to issuance of Notice to Proceed for Tasks specified in Section 2.A.1., then VCTC may revise the Tasks to include Group #3 Task components as shown in Exhibit C and update the Milestone Chart accordingly.

4. New Tasks. In the event that any or all Transit Operators in VCTC's network wish to add funding for Group #3 Task components following issuance of Notices to Proceed for the Tasks specified in Section 2.A.1 or as otherwise modified in accordance with section 2.A.3, then VCTC shall issue Notice(s) to Proceed for new Task Orders for those Group #3 components, and the Priced Scope of Work pricing for Group #3 components in Exhibit C shall apply and remain firm for a period of one-hundred eighty (180) days from the Effective Date.

B. The Contractor will be responsible for all work performed under the terms of this Agreement for the Project to the extent provided by law.

C. VCTC shall not be held liable or responsible for the maintenance and/or safety of the Contractor's equipment, personnel or supplies placed upon VCTC and/or the Transit Operator's property in accordance with this Agreement. The Contractor acknowledges that it assumes full responsibility for any loss, injury, or damage to its equipment, personnel and supplies.

D. Any materials, equipment or work found to be damaged or defective shall be repaired, replaced or corrected by the Contractor hereunder without additional cost to VCTC.

E. Contractor shall be responsible for paying all sales, use, and other taxes which are applicable to equipment and materials associated with this procurement. VCTC's financial obligation shall be limited to the amounts outlined in the Agreement as specified in Section 5 below. Contractor is advised that VCTC may be exempt from certain taxes. It is Contractor's responsibility to determine which taxes VCTC may be exempt from.

3. TERM

This Agreement shall commence on the Effective Date and shall expire six (6) years from the anniversary of the Effective Date, unless earlier terminated pursuant to Section 22 below or otherwise extended through a written amendment signed by both Parties.

4. DATE OF COMPLETION AND LIQUIDATED DAMAGES:

The Contractor is responsible for beginning Task Orders for the Project no more than ten (10) days from VCTC's issuance of a Task Order Notice to Proceed for each Task and shall complete all work for each Task Order on or before two hundred and ten (210) days from issuance of the Task Order Notice to Proceed for that Task, all in strict accordance with the Contract Documents and System Final Design.

VCTC will impose a liquated damages charge of \$100 per day, per incomplete/inoperable vehicle unit installation and/or per incomplete/inoperable bus stop unit installation for each day after the completion date identified in Exhibit C that

the Task remains incomplete or inoperable. In the event of an unavoidable delay, the scheduled date of completion for a Task may be extended by the Executive Director of VCTC for the number of days of excusable delay that are necessary in the sole determination of the Executive Director. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor's performance, and was not caused directly or substantially by acts, omissions, negligence or mistakes of the Contractor, the Contractor's subs, or their agents, and was substantial and in fact caused the Contractor to miss delivery dates, and could not adequately have been guarded against by contractual or legal means. Once System Acceptance is reached for any vehicle units or bus stop units, future inoperability shall in no event lead to liquidated damages; liquidated damages are only used and intended to compensate the Agency for unreasonable delays in the initial execution of the promised scope of work.

5. CONTRACT PRICE:

The contract amount for the Project shall not exceed Four Million Four Hundred and Eighty Thousand Dollars (\$4,480,000) for all services, equipment, materials and supplies, inclusive of installation costs, warranties and labor.

6. PAYMENTS:

A. Payment for equipment, material, installation, services, and Annual Fees for years 1 and 2 after Final System Acceptance shall be made in accordance with the procedure outlined in the Priced Statement of Work and Milestones Chart attached as Exhibit C. "Annual Fees" are those annual support, service, maintenance, software licensing, and computer hosting fees and warranty costs that are necessary for continued and proper operation of the Project.

B. Payment for Annual Fees for years 3 through 5 after Final System Acceptance will occur annually on the anniversary of Final System Acceptance.

C. The Parties understand and agree that any retainage held by VCTC in accordance with the Priced Statement of Work and Milestones Chart attached as Exhibit C may be used by VCTC to complete or remedy any incomplete or defective Tasks, but only if written notice has been delivered to the Contractor of such incomplete or defective tasks, and either (i) no work has been done to remedy the incomplete or defective tasks for thirty (30) days, OR (ii) attempts have been made by the Contractor to remedy the incomplete or defective tasks and but they remain incomplete or defective for ninety (90) days. In the event VCTC uses such retainage to complete or remedy any incomplete or defective Tasks, Contractor will have no claim to those sums.

D. Contractor shall invoice VCTC monthly for the work completed. Work completed shall be documented in a report prepared by Contractor and submitted along with the invoice for the work. Contractor shall also furnish such other information as may be requested by VCTC to substantiate the validity of an invoice. VCTC has the final decision for work completed in approving partial payments.

D. Contractor shall submit invoices to VCTC's Accounts Payable Office in duplicate. Each invoice shall include the following information:

1. Invoice No.;
2. Supporting documentation;
3. Unit and total prices by line item number;
4. Current total (gross) invoice amount, current retention amount and current net invoice amount;
5. Previous amount(s) invoiced and amount of remaining project budget;
6. Certification of payments to subcontractors/suppliers as applicable;
7. Project Status Report; a separate narrative of progress made since the previous report (as specified in paragraph B above); and
8. Current Implementation Plan; and
9. Current Master Punch List; and
10. Invoice for the month of June (fiscal year end) to be submitted within one week from June 30.

VCTC shall remit payment within thirty (30) calendar days after acceptance and approval of invoice and supporting documentation. Payments will be based upon actual completion and VCTC's acceptance of each project event. If VCTC determines that an invoice does not comply with the above requirements, the Contractor shall be notified of the issue(s) within seven days of VCTC's receipt of the invoice.

VCTC reserves the right to withhold payments in the event of Contractor's performance being materially non-compliant with the Agreement. Contractor's final invoice shall be clearly marked "FINAL."

7. **WAIVERS:**

A waiver of any of the conditions or provisions of the entire Agreement between the parties hereto shall not be considered or deemed to be a waiver of any other condition or provision of said Agreement or a waiver of the same condition at a future time.

8. **INSURANCE REQUIREMENTS:**

A. During the term of this Agreement, Contractor shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.

1. Minimum Coverages (as applicable) - Insurance coverage shall be with limits not less than the following:
 - a. Comprehensive General Liability - \$1,000,000/occurrence and \$2,000,000/aggregate;
 - b. Automobile Liability - \$1,000,000/occurrence (bodily injury and property damage) (include coverage for hired and non-owned vehicles);
 - c. Workers' Compensation - Statutory Limits/Employers' Liability - \$1,000,000/accident for bodily injury or disease (If no employees, this requirement automatically does not apply.)
2. VCTC, its officers, agents, employees and volunteers shall be named as additional insured for all policies, except for the workers' compensation policy. (Evidence of additional insured may be needed as a separate endorsement due to wording on the certificate negating any additional writing in the description box.)
3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage (if applicable), shall be payable on a "per occurrence" basis.
4. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to VCTC.
5. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise approved by VCTC's Executive Director.
6. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
7. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects VCTC, its officers, agents, employees and volunteers. Any insurance maintained by VCTC shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.
8. The insurer shall waive all rights of subrogation against VCTC, its officers, employees, agents and volunteers.
9. Contractor shall disclose to and obtain the approval of VCTC for any self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. Further, if the Contractor'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.

B. Prior to commencing services pursuant to this Agreement, Contractor shall furnish VCTC with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of VCTC's Executive Director before work commences. Upon VCTC's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

C. During the term of this Agreement, Contractor shall furnish VCTC with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon VCTC's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

9. SOFTWARE LICENSE AND UPDATES:

A. The hardware procured and installed hereunder may be accompanied by computer software copyrighted by the Contractor or its subcontractor(s). The Contractor or its subcontractor(s) grant VCTC a perpetual, paid-up, non-exclusive, non-transferable license to use the software. VCTC shall be placed on the Contractor's regular mailing list to receive all announcements, including updates and upgrades to the software furnished under this Agreement; this shall include application software, system software, and software which the Contractor develops for this Project. "Updates" are those enhancements to the software that the Contractor generally makes available as part of the annual maintenance program. "Upgrades" are any new feature or major enhancement of the software that the Contractor markets and licenses for additional fees separately from the updates.

For five years or during the warranty period, whichever is longer, any software updates which become available and are applicable to the functionality of the supplied software on this Project shall be provided and installed to the VCTC's system within a mutually agreed upon timeframe. For five years or during the warranty period, whichever is longer, solutions to problems with the Contractor-supplied software hereunder, whether discovered and corrected on this Project or elsewhere, shall be documented and supplied to the VCTC without additional charge. After five years or during the warranty period,

whichever is longer, the VCTC shall have the option of purchasing future upgrades at fair market price. The Contractor shall also provide announcements pertaining to Contractor-produced software ten years after Final System Acceptance and shall include announcements pertaining to software produced by third-party suppliers during the warranty period.

B. The software is proprietary and title and ownership to the Software remains with the Contractor and its subcontractors. The VCTC agrees: (1) to take reasonable steps to maintain the Contractor's rights in the Software; (2) not to sell, transfer, publish, display, disclose, or make the Software or any copies available to third parties except that VCTC may disclose the Software to designated federal representatives, under a nondisclosure agreement if requested by Contractor, (3) not to use or allow the Software to be used, either directly or indirectly, for the benefit of any other person or entity, and (4) not to use the Software on any equipment other than the designated equipment on which the Software was originally installed, or such upgrades or substitutions as the VCTC may, from time to time, install, without the Contractor's written consent.

C. In the event Contractor fails to continue support of the system under the provisions of this Agreement and does not provide for such support by a third party, Contractor agrees to deposit any Contractor-written application software source code that is customized specifically for VCTC in an existing third party escrow account to enable VCTC to continue operation and maintenance of the system. In such event, the VCTC agrees to maintain the confidentiality of the source code.

D. The Contractor shall incorporate the above provisions into all subcontracted agreements issued by Contractor to fulfill its obligations under this Agreement.

10. COMPLIANCE WITH FEDERAL REQUIREMENTS:

The Contractor shall comply with all Federal requirements described in Attachment J to the RFP (Exhibit A), and any other Federal requirements that may be applicable to this Project.

11. TIME IS OF THE ESSENCE:

Time is of the essence on this Agreement.

12. INDEMNITY:

Contractor will defend, indemnify and hold harmless the Ventura County Transportation Commission, the County of Ventura, the City of Camarillo, the City of Fillmore, the City of Moorpark, the City of Oxnard, the City of San Buenaventura, the City of Santa Paula, the City of Simi Valley, the City of Thousand Oaks, the City of Carpinteria, the City of Santa Barbara, the City of Goleta, the County of Santa Barbara, the Gold Coast Transit District, the Santa Barbara County Association of Governments; the State of California, the Trustees of California State University and the employees, officers and agents of each

of them (the "VCTC Group") from any and all liability costs, damages or expenses, including attorneys' fees, arising out of or incurred in connection with the Contractor and its employees', agents', and subcontractors' acts or omissions in the performance of the services provided pursuant to this Agreement, and agrees at its own cost, expense and risk to defend, with legal counsel acceptable to VCTC, any and all resulting actions, suits or other legal proceedings brought or instituted against the VCTC Group arising out of its performance of this Agreement, and to pay and satisfy any resulting judgments, claims, damages and costs.

Contractor agrees to defend, with legal counsel acceptable to VCTC, and pay the entire cost of defending any claim or suit whenever or wherever made or brought against the VCTC Group based upon an infringement or alleged infringement of any patent, or any other intellectual property claims, and to indemnify and save harmless the VCTC Group from and against any and all liability, damage, loss or injury adjudged or sustained in any such claim or suit, or adjudged or sustained by reason of the equipment or software to be furnished hereunder constituting an infringement of any patent or other intellectual property or adjudged or sustained by reason of inability of the VCTC Group to use said equipment or software because of any infringement or alleged infringement of any patent.

13 ASSIGNMENT PROHIBITED:

The Contractor may not assign or subcontract its rights or obligations under the Agreement without prior written permission of VCTC, and no such assignment or subcontract will be effective until approved in writing by VCTC. Notwithstanding the foregoing, Contractor may assign its right to receive the payments from VCTC without such consent; however, VCTC shall not be under any obligation to pay any third party unless Contractor and/or its assignee have given VCTC at least thirty (30) days' notice of such assignment.

14 SUCCESSORS AND ASSIGNS:

Subject to any provision under this Agreement restricting assignment or subcontracting by Contractor, the provisions of this Agreement shall be binding upon and insure to the benefit of the respective successors, assigns, heirs, and personal representatives of the parties to this Agreement.

15 EQUIPMENT DELIVERY:

All equipment provided under this Agreement shall be delivered to the Ventura County Transportation Commission, or at such other location that VCTC may so designate, in first class condition, complete and ready for installation and/or operation, and the Contractor shall assume all responsibility and risk of loss incident to said delivery.

16 FORCE MAJEURE:

A. Contractor shall not be charged, nor shall VCTC demand from Contractor, damages because of failure in providing the services indicated in this Agreement due to unforeseeable causes beyond the control and without the fault or negligence of Contractor. Such causes of excusable delay may include acts of public enemy, fires, floods, epidemic, quarantine, restrictions, freight embargoes, public road closures, but in every case the delay is excusable only for so long as, and to the extent, that the excusable delay continues.

B. Contractor shall be entitled to no compensation for any service, the performance of which is excused pursuant to this Section.

C. Whenever Contractor has knowledge that any actual or potential force majeure may delay or prevent performance of this Agreement, Contractor on a timely basis, shall notify VCTC of the fact, and thereafter shall report to VCTC all relevant information then known to Contractor, and shall continue to so report.

17. TRAINING:

The Contractor shall provide system user and maintenance training as set forth in Exhibits A and B.

18. MANUALS:

The Contractor shall provide system operation and maintenance manuals prior to project acceptance.

19 AUDIT AND INSPECTION OF RECORDS:

The Contractor shall permit the authorized representative of VCTC to inspect and audit all data and records of the Contractor and any subcontractor relating to the performance under this Agreement from the date of the Agreement through and until the expiration of three (3) years after completion of the Agreement. The inspection and audit provided in this section does not include an audit of the manufacturer's cost and/or profit, with the exception of single proposal or sole source situations.

20 ACCEPTANCE:

A. Task System Acceptance: Upon completion of each Task, VCTC shall grant Contractor Task System Acceptance for the applicable Task in writing upon conducting all design, development, procurement, delivery, installation, integration and testing activities. Task System Acceptance is defined as that point in time in which all major subsystems for a specific Task are integrated, tested, and operational, and only a punch list of open items and/or minor deficiencies remain to be corrected by Contractor as more fully described in Addendum B in Exhibit D.

B. Final Acceptance: Upon completion of all Tasks for the Project, VCTC shall grant Contractor Project Final System Acceptance in writing upon completion of the punch list created during each Task System Acceptance. Final System Acceptance is defined as that point in time in which Contractor has met all of its contractual obligations to VCTC's satisfaction and the system is fully operational with no deficiencies existing. Final System Acceptance does not excuse Contractor's performance of its obligations related to the equipment and service warranties. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or VCTC's rights under any warranty or guarantee.

21. TERMINATION OF AGREEMENT:

A. **Termination for Convenience.** VCTC, by written notice, may terminate this Agreement, in whole or in part, when it is in VCTC's interest. If this Agreement is terminated, VCTC shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

B. **Termination for Default [Breach or Cause].** If the Contractor does not complete the Tasks in accordance with the Priced Statement of Work and Milestones Chart in Exhibit C, or, if the Contractor fails to perform the services in the manner called for in this Agreement or the Contract Documents, or if the Contractor fails to comply with any other provisions of this Agreement or the Contract Documents, VCTC may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract Price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement and the Contract Documents.

If it is later determined by the VCTC that the Contractor 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, VCTC, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

The VCTC in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to VCTC's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within thirty (30) days after receipt by Contractor of written notice from VCTC setting forth the nature of said breach or default, VCTC shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate

to preclude VCTC from also pursuing all available remedies against Contractor and its sureties for said breach or default.

In the event that VCTC elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement or the Contract Documents, such waiver by VCTC shall not limit VCTC's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

22. DISPUTES:

A. Disputes arising in the performance of the Agreement, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of VCTC's Executive Director. This decision shall be final and conclusive unless within fifteen (15) 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. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

B. Unless otherwise directed by VCTC, Contractor shall continue performance under the Agreement while matters in dispute are being resolved.

C. 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 therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

D. Unless the Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between VCTC and the Contractor arising out of or relating to the Agreement or its breach will be decided by mediation, or in a court of competent jurisdiction within the State and District in which VCTC is located.

E. The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder 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 the VCTC, 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 hereunder, except as may be specifically agreed in writing.

F. The rights afforded to VCTC under this Section shall be in addition to any other rights provided by law or set forth in these Contract Documents. VCTC may exercise any or all of such rights which individually or conjunctively will totally compensate VCTC for the damages suffered by VCTC resulting from the default of the Contractor.

G. In the event that VCTC elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by VCTC shall not limit VCTC's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

23. OWNERSHIP OF REPORTS AND DOCUMENTS:

The originals of all letters, documents, recommendations, reports and other products and data produced under this Agreement shall be delivered to, and become the property of VCTC, or if deemed appropriate by VCTC, electronic versions of originals may be accepted. Copies may be made for Contractor's records but shall not be furnished to others without written authorization from VCTC. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by VCTC.

VCTC undertakes that it shall ensure that its employees will not make copies in whole or in part of any System and/or Products or any know-how relating thereto or any other material provided or in any way obtained in eye readable form except for VCTC's own use whether supplied before, on, or after the date of this Agreement.

24. ATTORNEYS FEES:

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

25. SEVERABILITY:

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

26. NO IMPLIED WAIVER OF BREACH:

The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

27. WARRANTY:

Contractor shall provide VCTC a 5-year warranty on all hardware, software, equipment, and installation work. Said warranty shall be valid for 5 years from the date of Final Acceptance. During the warranty period, Contractor shall provide on-call support to assist VCTC in the maintenance of the System. This on-call support shall be provided

on-site for hardware and software issues and operational trouble-shooting, and by phone for issues stemming from missing or incorrect data.

All non-critical warranty work on defective or non-compliant installation work, or system hardware, or any software defects or errors that cause the software to fail to conform to the requirements of these specifications shall be performed at no cost to VCTC within fifteen (15) days of being notified in writing by VCTC or its representative. Any defects that affect the critical functions of the operations shall be fixed within 48 hours.

The Contractor shall maintain adequate resources for replacement of all defective or noncompliant work or equipment, including test repair, warranty repair, spare modules, spare assemblies, spare components and spare parts in furtherance of the warranty requirements and maintain sufficient relationships with qualified local technicians.

VCTC will operate the System hardware and software in accordance with the Contractor's specific instructions in order to maintain all warranties. The Contractor shall hold VCTC harmless and Contractor shall be responsible for repairing any damage from the VCTC's improper operation of any System hardware or software resulting from Contractor's failure to provide adequate or correct training and / or complete operating manuals, software manuals, electrical drawings, complete computer program documentation and other documentation required to be furnished as identified within these specifications.

The Contractor warrants that all installation work and all System hardware furnished by the Contractor including, but not limited to, all such work, and System hardware provided by sub-contractors, suppliers, or other manufacturers, shall be of good quality and free of any defects or faulty materials and workmanship for the warranty period.

The Contractor shall also warrant that all installation work and System hardware shall perform according to the specifications during the warranty period.

If the Contractor upgrades its devices to ensure the continued and proper operation of the System as configured for the Project, the Contractor will assume all costs related to the hardware upgrade and there shall be no additional cost to the VCTC.

The Contractor shall provide a single point of contact for all warranty administration during the warranty period.

28. PROHIBITED INTERESTS:

The Parties hereto covenant and agree that, to their knowledge, no board member, officer, or employee of VCTC, 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 VCTC, 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.

29. NOTICES:

Any written notice to Contractor shall be sent to:

**Chris Welch, Chief Financial Officer
Syncromatics Corporation
523 West Sixth Street, Ste. 444
Los Angeles, CA 90014**

Any written notice to VCTC shall be sent to:

**Darren Kettle, Executive Director
Ventura County Transportation Commission
950 County Square Drive, Ste. 207
Ventura, CA 93003**

30. COUNTERPARTS:

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

31. GOVERNING LAW:

This Agreement will be governed by and in accordance with the domestic laws of the State of California with no regard to the choice of law doctrine. Contractor shall comply with all California State laws, regulations, and local ordinances applicable to the performance of the work for this Project, including, but not limited to the provisions of Labor Code Section 1720(a)(1), which may be applicable to public works projects.

IN WITNESS WHEREOF the parties have executed these presents in several counterparts as of the day and year first above written.

VENTURA COUNTY TRANSPORTATION COMMISSION

BY: _____
Darren Kettle, Executive Director

Date

APPROVED AS TO FORM

BY: _____
Steve Mattas, General Counsel

ATTEST:

BY: _____
Donna Cole, Secretary of the Commission

CONTRACTOR

BY: _____ Date _____
Chris Welch, Chief Financial Officer
Syncromatics Corporation

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DRAFT