MAPC
METROPOLITAN AREA PLANNING COUNCIL

SMART GROWTH AND REGIONAL COLLABORATION

CONTRACT FOR GOODS AND SERVICES

BY AND BETWEEN

METROPOLITAN AREA PLANNING COUNCIL

AND

VENTEK INTERNATIONAL

This AGREEMENT, dated 3/14/18, is made and entered into by and between the **Metropolitan Area Planning Council ["MAPC"]**, a public body politic and corporate, established by Chapter 40B, Sections 24 through 29 of the Massachusetts General Laws, with its principal office located at 60 Temple Place, Boston, Massachusetts 02111, acting as the collective purchasing agent for the Massachusetts Bay Transportation Authority ["MBTA"], and the following regional planning agencies, on behalf of 329 municipalities that they represent: Berkshire Regional Planning Commission, Cape Cod Commission, Central Massachusetts Regional Planning Commission, Franklin Regional Council of Governments, Martha's Vineyard Commission, Merrimack Valley Planning Commission, Nantucket Planning and Economic Development Commission, Northern Middlesex Council of Governments, Old Colony Planning Council, Pioneer Valley Planning commission, Southeastern Regional Planning and Economic Development District (to be referred to hereafter as the **"BUYER"** in their individual legal capacity). Such collective purchasing has been accomplished pursuant to M.G.L. c. Chapter 7, Section 22B of the Massachusetts General Laws and without liability to **MAPC**, and **VenTek International ["VENDOR"]**, with its principal office located at 1260 Hold RD., Ste. A, Petaluma, CA 94954.

RECITALS

WHEREAS, **MAPC** has, on behalf of the above named **BUYERS**, has conducted a procurement to enable **BUYERS** to purchase Parking Meters (RFP # MAPC 2018 Parking Meters, hereinafter ("RFP")); which procurement was conducted pursuant to M.G.L. c. 30B; and,

WHEREAS, **VENDOR** proposal has been evaluated and selected by the **MAPC** Evaluation Team to provide Parking Payment Systems to any of the above listed **BUYERS**; and,

NOW THEREFORE, in consideration the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

TERMS AND CONDITIONS

Article I

General Description of the Work

1. Pursuant to the Terms and Conditions of this AGREEMENT and those Special Terms and conditions listed in Exhibit C[1], the Request for Proposals ["RFP"] – RFP # MAPC 2018 Parking Meters referenced attached in Exhibit B; and the **VENDOR'S** Price Proposal and Technical Proposal referenced in Exhibit D, **MAPC** hereby authorizes **BUYERS** to engage the **VENDOR** to provide Parking Meters to the **BUYERS.**

Article II

Services of the VENDOR

2. The **VENDOR** will provide the goods and/or services as described in the RFP and its response thereto and **VENDOR** will, if required by the **BUYER**, negotiate an SOW and/or municipal contract.

3. The **VENDOR** shall report, and be responsible to **MAPC** or its designee to comply with all requirements set forth in The Contract Administration Fee which has been included herein as Exhibit E.

4. There shall be no amendment to this AGREEMENT without the written approval of **MAPC. MAPC** shall be under no obligation to pay for any goods provided or services performed by the **VENDOR.**

5. The **VENDOR** represents and warrants to **MAPC** as follows:

   i. That it and all its personnel (whether employees, agents or independent) are qualified and duly licensed as required by Massachusetts state law and/or local municipal code to provide services and/or goods required by this AGREEMENT.
   ii. That it further agrees to perform services, including any manufacturing, in a professional manner adhering to a reasonable standard of care and in accordance with all applicable State or Federal laws, rules and regulations.
   iii. That it will obtain any and all permits, bonds, insurances and other items required for the proper and legal performance of the work.

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[1] [1] Exhibits B (the RFP) and D (Vendor's proposal) referenced herein shall be in name only. MAPC retains the original copies of the RFP and the Vendor's Proposal. These documents are hereby incorporated and annexed to this AGREEMENT.

iv. That it is not a party to any AGREEMENT, contract or understanding, which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this AGREEMENT.

Article III

Performance of the VENDOR

6. In the performance of services under this AGREEMENT, the **VENDOR** acts at all times as an independent contractor. There is no relationship of employment or agency between **MAPC**, on the one hand, and the **VENDOR** on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this AGREEMENT which the parties view as consistent with their independent contractor relationship.

7. The **VENDOR** agrees to be responsible for and warrantee the work of its subcontractors listed in Exhibit F and to ensure their compliance with all legal, quality and performance requirements of the Request for Proposals ["RFP"] – RFP No. attached in Exhibit B; and the **VENDOR'S** Price Proposal and Technical Proposal attached in Exhibit D, The **VENDOR** agrees that it may not use subcontractors not named in Exhibit F without the prior written consent of **MAPC**, which consent will not unreasonably be withheld.

8. **VENDOR** agrees that it will meet with **MAPC** quarterly (or a lesser period of time as determined by **MAPC**) to discuss the status of any implementation and review any concerns. Such meetings can be either in person at the **MAPC** office, or it may be conducted remotely. **VENDOR** shall prepare a written status report and send such written report to **MAPC** four (4) business days in advance of the meeting.

Article IV

Time of Performance and Liquidated Damages

9. Time shall be of the essence in relation to **VENDOR'S** performance under this AGREEMENT. **VENDOR** shall complete performance as promised in its quote that accompanies **BUYER'S** purchase order or other document confirming its authorization to the **VENDOR** to proceed. Reasonable extensions shall be granted by the **BUYER** at the written request of the **VENDOR**, provided the justifying circumstances are documented by and are beyond the reasonable control of **VENDOR** and without fault of **VENDOR**. In the event of such an extension, all other Terms and Conditions of this AGREEMENT, except the dates of commencement and completion of performance, shall remain in full force and effect between the parties unless modified in writing.

10. **MAPC** and **VENDOR** agree that the economic damage suffered by **BUYER** as a result of delay in the successful implementation of **BUYER'S** Parking Meters is not readily ascertainable. Where delay is solely attributable to **VENDOR**, **BUYER** may elect to impose liquidated damages as set forth herein. Liquidated damages shall be due to **BUYER** in the amount of 0.1% (one-tenth of one percent) of the face value of the **VENDOR'S** quoted or modified purchase price for each day performance exceeds the promised date(s). Such liquidated damages may be acknowledged in **VENDOR'S** final invoice or taken by **BUYER** as a deduction to such final invoice. In the event that **VENDOR'S**, final implementation of its system fails to perform in accordance with the RFP and **VENDOR'S** proposal, **BUYER** shall, in writing, advise **VENDOR** of such failure to comply. **VENDOR** shall be given a 2 (two) week period to cure such failure. If **VENDOR** has not been able to cure such failure within 2 (two) weeks post written notice, **BUYER** may invoke liquidated damages, which shall include the assessment calculated above, as well as to require **VENDOR** to assume fiscal responsibility to recompense **VENDOR** for the cost of cover to engage a subsequent **VENDOR** to provide Parking Meters.

11. Any dispute in the amount of liquidated damages shall be submitted to arbitration by either **BUYER** or **VENDOR** through the American Arbitration Association within 10 (ten) business days of written notice given by the party declaring impasse. **BUYER** and **VENDOR** agree to fully comply with the arbitrator's decision within a reasonable time.

Article V

Revisions in the Work to Be Performed

12. If during the **VENDOR'S** Time of Performance, **BUYER** requires revisions or other changes to be made in the scope or character of the work to be performed, **BUYER** will promptly notify **VENDOR** in writing. For any changes to the scope or character or work, **VENDOR** shall provide **BUYER** with a written quote of change in price and/or change in time of performance and shall proceed with such changes only upon written consent of **BUYER**, which shall be construed as a modification to **VENDOR**'s original purchase order.

13. **BUYER** will neither unreasonably request revisions nor will it unreasonably withhold final acceptance of delivered products.

Article VI

Term of AGREEMENT

14. The term of this AGREEMENT shall commence upon execution by **MAPC**, and it will continue until **December 31, 2018**, or until otherwise terminated as provided by this AGREEMENT or the RFP. **MAPC**, in accordance with the RFP, may elect to exercise 2 (two) 1 (one) year options to extend this AGREEMENT.

15. All Terms and Conditions of: This AGREEMENT and any amendments thereto; the RFP; **VENDOR'S** proposal and any amendments thereof, shall remain in full force and effect during the entire Term of this AGREEMENT and any extension thereto. Notwithstanding this provision, **VENDOR** may, in the event of **MAPC's** exercise of the second extension, request that **MAPC** negotiate a reasonable cost escalation, which price cannot exceed 5% of the cost at the time of the request. **VENDOR** shall make such request in writing and demonstrate the basis for such price increase. **MAPC** will in good faith negotiate such price increase request. However, **MAPC** will not guarantee that the requested price increase will be accepted.

Article VII

Orders, Fees, Invoices, and Payments

16. Orders, fees, invoices, and payment shall be processed and paid as specified in Sections 9.10 and 9.14- Terms & Conditions of the RFP.

Article VIII

Assignment

17. Neither party shall assign, transfer or otherwise dispose of this AGREEMENT or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party. Any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

Article IX

Indemnification

18. **VENDOR** agrees to indemnify and save **MAPC**, The Commonwealth of Massachusetts and **BUYERS** harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by **VENDOR** (including all its employees or agents) in performing under this AGREEMENT, or any breach of the terms of this AGREEMENT, which constitute an obligation of **VENDOR**. **VENDOR** shall reimburse **MAPC** and **BUYER** for any and all costs, damages, and expenses including reasonable attorney's fees which **MAPC** and **BUYERS** pay, or becomes obligated to pay, by reason of such activities or breach. The provisions of this Section shall be in addition to and shall not be construed as a limitation on any other legal rights of **MAPC, BUYERS**, and The Commonwealth of Massachusetts expressed or not expressed in the RFP and with respect to this AGREEMENT.

Article X

Insurance

19. Before performing under this AGREEMENT, the **VENDOR** shall obtain, and shall maintain throughout the term of this AGREEMENT, insurance at limits specified in the RFP and provide written documentation of such in the form specified in the RFP.

20. The **VENDOR** shall give **MAPC** 20 days (twenty) written notice and copies of documentation in the event of any change or cancellation of coverage.

Article XI

Termination of Agreement

21. Either **MAPC** or the **VENDOR** may terminate this AGREEMENT for cause upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill any material duty hereunder in a timely and satisfactory manner.

22. **MAPC** shall have the right to terminate this AGREEMENT for its convenience upon 14 (fourteen) calendar days of written notice.

23. **MAPC** shall have the right to terminate this AGREEMENT immediately in the event that **MAPC**, in its exclusive right determines that there has been a breach of security with regards to Personally Identifiable Information or Credit Card Data. **MAPC** shall bear no liability to **VENDOR** if it is ultimately determined that no breach occurred.

24. **MAPC** shall not be liable for payments for the services and/or expenses or lost profits of the **VENDOR** in the event of any termination.

25. The **VENDOR** shall remain liable for any damages, expenses, warrantees, or liabilities arising under this AGREEMENT (including its indemnity obligations) with respect to work performed pursuant to the AGREEMENT.

Article XII

Negotiation in the Event of Disputes

26. In the event of an unresolved dispute between **BUYER** and **VENDOR**, **BUYER** reserves the right to submit a written request to **MAPC** to work with the parties to resolve the dispute. Pursuant to this AGREEMENT, **VENDOR** is required to participate in good faith in such dispute resolution. **BUYER** and **VENDOR** would submit its positions in writing to **MAPC**. **MAPC** shall apply best efforts to resolve disputes in a fair and reasonable manner. Such

efforts shall include remote or in person meetings with either or both of the parties. Participation in dispute resolution does not obviate the parties' ability to seek any legal remedies after **MAPC** has been given 2 (two) weeks to attempt to facilitate issue resolution. Such resolution must be mutually agreed to in writing by the parties. **MAPC** will not be a party to any resolution nor will it become liable for any issue resolution between the parties.

Article XIII

Entirety of Agreement

27. This AGREEMENT, together with its Exhibits, the RFP referenced above and its Addenda, the required supplemental documents and any additional Exhibits, constitute the entire AGREEMENT between **MAPC** and the **VENDOR** with respect to the matters set forth therein and may not be changed (amended, modified or terms waived) except by a writing signed by both parties. Any notices required or allowed shall be sent by receipt-verified mail, email, fax or courier to the persons designated in Exhibit A.

28. The provisions of the RFP and the **VENDOR**'s Proposal are incorporated herein by reference. In the event of any conflict among the named Documents, the documents shall be construed according to the following priorities:

Highest Priority:	Amendments to Contract (if any)
Second Priority:	Contract
Third Priority:	Addenda to the RFP (if any)
Fourth Priority:	RFP
Fifth Priority:	**VENDOR"S** Proposal

Article XIV

Severability

29. In the event any provision of this AGREEMENT is found by a court of appropriate jurisdiction to be unlawful or invalid, the remainder of the AGREEMENT shall remain and continue in full force and effect.

Article XV

Governing Law and Jurisdiction

30. This AGREEMENT shall be governed by, construed and enforced in accordance with laws of the Commonwealth of Massachusetts. **MAPC**, **BUYER**, and **VENDOR** agree to submit their respective jurisdiction and venue to the state and federal courts in the Commonwealth of Massachusetts to resolve any disputes or disagreements that may arise under any provision of this AGREEMENT.

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Article XVI

Notice

31. Except as otherwise expressly provided in this AGREEMENT, any decision or action by **MAPC** relating to this AGREEMENT, its operation, or termination, shall be made only by **MAPC** or its designated representative identified in Exhibit A.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their duly authorized officers on the date written below.

For **MAPC** and any **VENDOR** identified herein:

x _____ 3/14/18

Signature Date

Marc Draisen

Name

Executive Director

Title

For the **VENDOR:**

x Erika Anderson 1/22/18

* Signature * Date

Erika Anderson

* Name

Director of Sales Admin

* Title

* Affix Corporate Seal

(or mark *"n/a"*)

EXHIBIT A

Notice Addressees

For **MAPC:**	For the **VENDOR:**
Rebecca Davis	Erika Anderson
Name	* Name
Deputy Director	Director of Sales Admin
Title	* Title
MAPC	VenTek International
Organization	Organization
60 Temple Place	1260 Hoem Rd, Ste A
Street Address	* Street Address
Boston, MA 02111	Petaluma, CA 94954
City, State, ZIP	* Street Address
617.933.0708	707-773-3373
Phone	* Phone
617.482.7185	707-773-3381
Fax	* Fax
rdavis@MAPC.org	erikaa@ventek-inte.com
e-mail	* e-mail

EXHIBIT B

Request for Proposals

RFP # MAPC 2018 Parking Payment systems, Parking Meters

(Incorporated by Reference)

EXHIBIT C

Special Terms & Conditions

1. **VENDOR** attests to and warrants any and all representations made in **VENDOR**'s Complete Price and Complete Non-Price Proposals including, but not limited to, any and all representations and warranties made by it that exceed those of the manufacturers of products and assemblies used in its manufacture of subject apparatus and fitments.

2. **VENDOR** shall indemnify **VENDOR** for any and all loss of value of manufacturers' warranties incurred prior to **VENDOR**'s complete performance with regard to each individual **VENDOR**.

* * * * * *

EXHIBIT D

VENDOR'S PROPOSAL IN RESPONSE TO MAPC 2018 PARKING PAYMENT SYSTEMS, PARKING METERS

(INCORPORATED BY REFERENCE)

EXHIBIT E

CONTRACT ADMINISTRATION FEE

Pursuant to Section 9.14 of the RFP, Vendor will be required to pay to MAPC a Contract Administration Fee of 1.5 % (one and one-half percent) of the total invoiced amount of equipment and services purchased through all resulting contracts and reported in the quarterly reports.

MAPC may lower, but will not increase, the Contract Administration Fee at any time during the term of this contract, in which case the cost reduction to the Proposer shall be reflected as a discount on the quotes provided to Buyers.

Basic Fee	1.5% of the total invoiced amount of equipment and services purchased

MAPC will invoice Vendors after which payment of the quarterly Contract Administration Fee is due from the Vendor to MAPC within 30 days of invoicing.

Reporting requirements and the Contract Administration Fee shall apply to all transactions regardless of financing arrangement.

EXHIBIT F

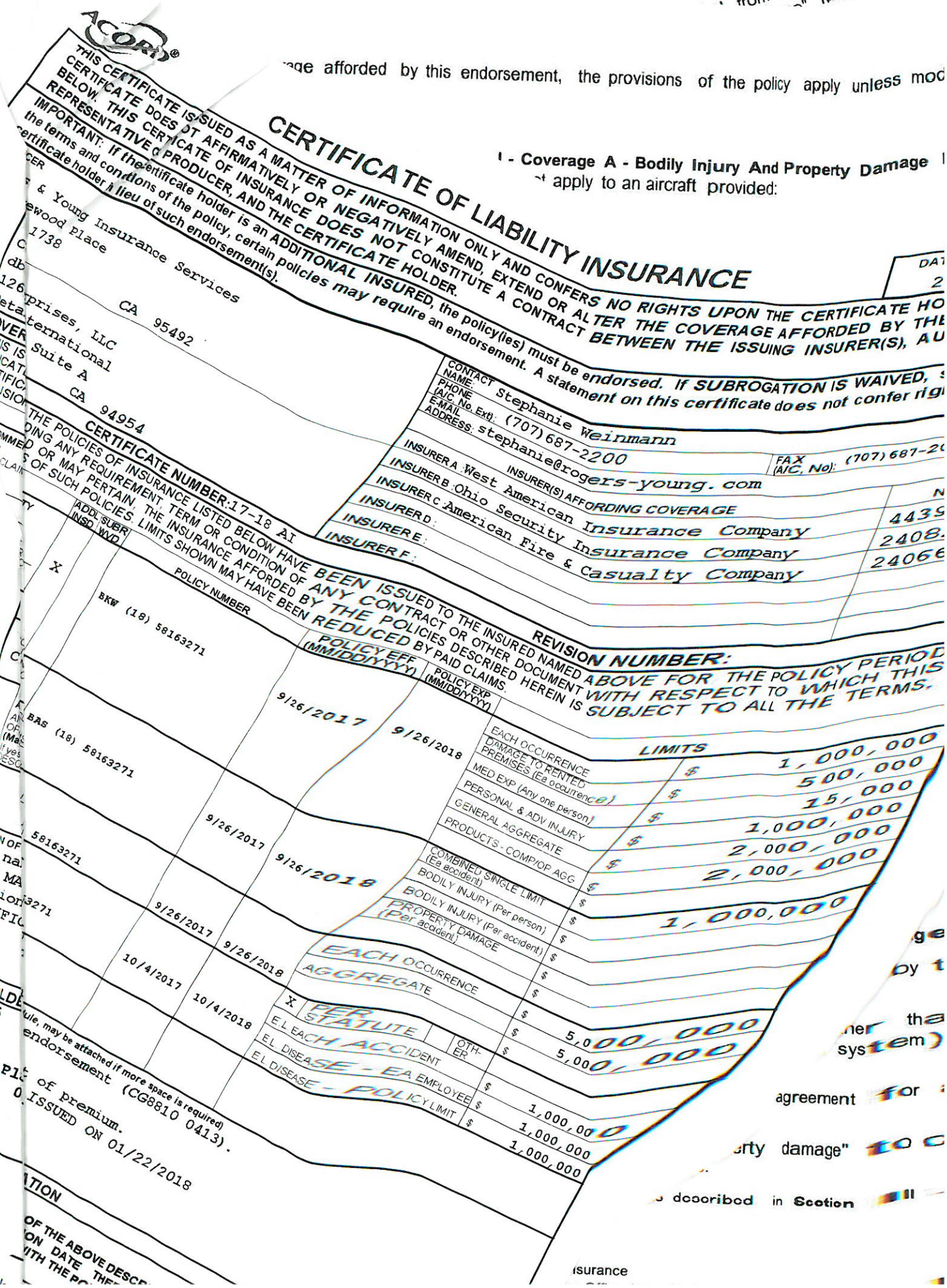
Vendor's Subcontractors

1.

EXHIBIT G

Other Documents:

1. Insurance Guarantee(s)__(to be provided By Vendor in order to effectuate Contract Execution)



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...I - Coverage A - Bodily Injury And Property Damage ...
...t apply to an aircraft provided:

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CERTIFICATE OF LIABILITY INSURANCE

DAT... 2...

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HO...
CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE...
BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AU...
REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, ...
the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rig...
certificate holder in lieu of such endorsement(s).

PRODUCER
...& Young Insurance Services
...ewood Place
1738
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CA 95492

INSURED
db...
126...prises, LLC
Peta...ternational
Suite A
CA 94954

CONTACT NAME: Stephanie Weinmann
PHONE (A/C, No, Ext): (707) 687-2200 FAX (A/C, No): (707) 687-2...
E-MAIL ADDRESS: stephanie@rogers-young.com

INSURER(S) AFFORDING COVERAGE | N...
INSURER A: West American Insurance Company | 4435...
INSURER B: Ohio Security Insurance Company | 2408...
INSURER C: American Fire & Casualty Company | 24066
INSURER D:
INSURER E:
INSURER F:

COVER...
THIS IS... INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD...
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D OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS...
S OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

	TY...	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMER... CLAIM...						
		X		BKW (18) 58163271	9/26/2017	9/26/2018	EACH OCCURRENCE $ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) $ 500,000
							MED EXP (Any one person) $ 15,000
							PERSONAL & ADV INJURY $ 1,000,000
							GENERAL AGGREGATE $ 2,000,000
							PRODUCTS - COMP/OP AGG $ 2,000,000
B	AU... OW... (Ma... If yes DESC...			BAS (18) 58163271	9/26/2017	9/26/2018	COMBINED SINGLE LIMIT (Ea accident) $ 1,000,000
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							BODILY INJURY (Per accident) $
							PROPERTY DAMAGE (Per accident) $
							EACH OCCURRENCE $
							AGGREGATE $
				58163271	9/26/2017	9/26/2018	$
				3271	9/26/2017	9/26/2018	$
					10/4/2017	10/4/2018	X PER STATUTE / OTH-ER $ 5,000,000
							E.L. EACH ACCIDENT $ 5,000,000
							E.L. DISEASE - EA EMPLOYEE $ 1,000,000
							E.L. DISEASE - POLICY LIMIT $ 1,000,000

DESCRIPTION OF... (ule, may be attached if more space is required)
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