

**KENDALL COUNTY BOARD AGENDA
SPECIAL MEETING**

**Kendall County Office Building, Rooms 209 & 210
Monday, November 27, 2017 at 6:00 p.m.**

1. Call to Order
2. Roll Call
3. Determination of a Quorum
4. Approval of Agenda
5. Citizens to Be Heard
6. Executive Session
7. New Business
8. Old Business
9. Standing Committee Reports
 - A. Administration/HR
 1. Approve Contract with CTS Software for purchase and installation of TripMaster software in the amount of \$50,912.00 to be paid from IDOT and Community Foundation for the Fox River Valley grants
 - B. Finance Committee
 1. Approve claims in an amount not to exceed \$ 1,546,397.94 and approval of Petit Juror claims in an amount not to exceed \$871.64
 2. Approve coroner claims in an amount not to exceed \$ 2,401.46
 3. Approval of Kendall County Fiscal Year 2017-2018 Combined Budgets and Appropriations Ordinance for all funds with revenues and transfers-in in an amount not to exceed \$66,523,454 and expenditures and transfers-out not to exceed \$80,325,000
 - C. Animal Control
 1. Approval of donation from the Estate of Nancy Miller in the amount of \$2,500
10. Other Business
11. Chairman's Report
12. Citizens to be Heard
13. Questions from the Press
14. Executive Session
15. Adjournment



SOFTWARE LICENSE AND SERVICES AGREEMENT

THIS SOFTWARE LICENSE & SERVICES AGREEMENT (the "Agreement") is made and entered into as of October 9, 2017 (the "Effective Date"), by and between **Foxster Solutions, Inc., dba CTS Software**, a North Carolina corporation, located at Post Office Box 57, Swansboro, North Carolina 28584 ("Licensor"), and **County of Kendall on Behalf of Kendall Area Transit** located at 111 W. Fox Street, Yorkville, IL., 60560 ("Licensee"). Licensor and Licensee may be referred to individually as a "Party," or together as the "Parties."

WHEREAS, Licensor is the owner of certain software and related documentation and materials for use in the Public/Private transportation Industry; and

WHEREAS, Licensee desires to acquire the non-exclusive, non-transferable right to use the Licensor Software in the operation of its Public/Private Transportation activities; and

WHEREAS, Licensor is willing to grant Licensee the non-exclusive, non-transferable right to use the Licensor Software under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, paid by the parties each to the other, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions In this Agreement the capitalized words set out below will have the following meanings:

- "Agreement" This Software License and Services Agreement effectively made between Licensor and Licensee, and the attached schedules, all of which hereby are incorporated by reference herein and form an integral part hereof;
- "Confidential Information" Information disclosed, or to which access is provided, in the course of, or in connection with, this Agreement, including, but not limited to, information concerning a Party's business, products, services, content, finances, subscribers, source code, tools, protocols, product designs and plans, customer lists and other marketing and technical information, the existence of any business discussions, negotiations or agreements between the Parties, the terms of this Agreement, and any other information that is not publicly available;
- "Documentation" All operating manuals, user instructions, technical literature and all other related materials, and all amendments or modifications thereto, supplied by Licensor to Licensee to aid in the use and operation of the Licensor Software;
- "Licensor Software" The software as identified in Schedule A of this Agreement;
- "Hardware" Means a physically tangible electro-mechanical system or sub-system and associated documentation.

2. Software License

2.1 License Grant. Subject to the terms and conditions hereof, Licensor grants to Licensee a non-exclusive, limited, non-transferable, without right to sublicense, license for the Term to access and use the Licensor Software, which Licensor Software shall be hosted on Licensor's or its designated third party's servers, and use the Documentation, solely for Licensee's own lawful internal business uses.



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2.2 License Restrictions; Licensee Rights and Obligations. Licensee shall access and use the Licensor Software only as permitted in Section 2.1 above. Without limiting the foregoing, Licensee shall not:

- a. modify, make derivative works of, reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code for the Licensor Software;
- b. allow the Licensor Software to be combined with or become incorporated in any other computer programs without prior written consent from Licensor;
- c. distribute, encumber, sell, rent, lease, sublicense, or otherwise transfer rights to the Licensor Software (except to the extent, if any, expressly permitted hereunder);
- d. remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Licensor Software.

3. Updates, Upgrades and Backup Services

3.1 Updates.

- a. For purposes of this Agreement, the term "Updates" refers to fixes and minor changes to the Licensor Software.
- b. Updates to the Licensor Software will be noted by incremental numeric designation (e.g., release 1.1).
- c. Licensor shall at no additional charge or fee to Licensee, provide Licensee with all Updates issued and disseminated to Licensor's general customer base.

3.2 Upgrades.

- a. For purposes of this Agreement, the term "Upgrades" means and refers to major changes to or a new release of the Licensor Software, including without limitation any new major release of the Licensor Software.
- b. Upgrades to the Licensor Software will be noted by incremental numeric designation (e.g., release 2.0).
- c. Upgrades made available to and for the benefit of Licensor's general customer base ("Standard Upgrades") shall be provided at no additional charge or fee to Licensee.
- d. Upgrades requested by and made available solely to and for the sole benefit of Licensee ("Custom Upgrades") will be quoted by Licensor upon receipt of a written request from Licensee. A written quote with estimated time of completion shall be furnished to Licensee by Licensor. No work will be performed on such request(s) until Licensor receives a signed written authorization from Licensee for the work to be performed. Payment for work performed in connection with Custom Upgrades shall be billed separately and shall be in addition to other billed fees.
- e. Upgrades required by legislative or other regulatory acts of the federal, state, or local authorities ("Complimentary Upgrades") shall be provided to Licensee at no cost. Licensee shall furnish Licensor with necessary documentation from such authority(s) mandating the change when requesting any Complimentary Upgrade. Licensee shall also furnish Licensor with the name and phone number of the relevant authority.
- f. Licensee shall be advised of any add-on feature(s) made available by Licensor. If Licensee requests to acquire the right to access and use these add-on feature(s), no work will be performed on such request(s) until Licensor receives a signed written authorization from Licensee for the work to be performed. Payment for work performed in connection with any such add-on features shall be billed separately and shall be in addition to other billed fees.



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3.3 **Backup Services.** Backup routines will be managed and controlled by the Licensor and provided to the Licensee at no additional cost. Licensor will perform a database backup every 30 minutes and a full system backup nightly.

4. Proprietary Rights

Licensor owns and shall retain all right, title and interest in and to the (i) Licensor Software and Documentation and all Licensor Confidential Information and all inventions, works of authorship, and other intellectual property embodied thereby or included therein; (ii) all modifications, enhancements, derivative works, and compilations of the foregoing in clause (i); and (iii) all patent, trademark, copyright, trade secret, and other intellectual property rights in the foregoing in clauses (i) and (ii) (all subject matter in foregoing clauses (i)-(iii), collectively, "Licensor Property"). The Parties acknowledge each other's trademark rights, and neither Party shall use the other Party's trade name or trademarks in any manner whatsoever absent the other Party's prior written consent. Except to the extent of the license granted in Section 2.1 (License Grant), nothing in this Agreement grants or otherwise transfers to Licensee or any other entity or individual any right, title or interest in or to any Licensor Property.

5. Services

5.1 Support Services.

a. Licensor shall provide such Support Services commencing on the "License Date" on the terms and conditions set forth on Schedule B.

5.2 **Training or Other Services.** If Licensee and Licensor have agreed that Licensor will provide Licensee with training or other services, the terms and conditions of such services will be identified on Schedule A of this Agreement.

6. Fees and Payment

6.1 **Payment.** Fees and payment schedules for Licensee's use of the Licensor Software and related Upgrades are specified in Schedule A. The Parties agree to the allocation of the fees and payments to software, services (if any) and hardware (if any) as designated on Schedule A. Licensee shall pay Licensor's invoices in U.S. dollars to Licensor's address set forth on Schedule A. Any overdue payments will bear interest at one and one-half percent (1.5%) per month until the overdue payment and accrued interest are fully paid.

6.2 **Taxes.** Licensee shall be responsible for any and all sales, use, excise, value-added or similar taxes that may apply to any products and services provided under this Agreement, and Licensor will use commercially reasonable efforts to identify any applicable taxes on its applicable invoice to Licensee. Licensee will pay applicable taxes on the invoice or, in lieu of the payment of any such taxes, Licensee may provide Licensor with a certificate acceptable to the taxing authorities exempting Licensee from payment of these taxes.

6.3 **Disputed Invoices.** The Licensee may withhold payment on any portion of the invoiced amount that it disputes in good faith if it provides the Licensor with written notice of such dispute (together with reasonable detail of the facts underlying such dispute) within ten (10) days following the date of such invoice. Appropriate personnel from both Licensor and Licensee shall meet and attempt in good faith to resolve the dispute. If within twenty (20) days the disputed invoice remains unresolved, and if the dispute relates to whether amounts were properly charged, the dispute will be submitted to an independent third party invoice auditing firm that is mutually agreeable to by both Licensor and Licensee. The Parties shall cooperate with such invoice auditing firm and shall provide such invoice auditing firm access to such books and records as may be reasonably necessary to permit a determination by such invoice auditing firm. The resolution by such invoice auditing firm shall be final and binding on the Parties. Upon final determination that any amount in dispute is owed to the Licensor, the Licensee shall promptly pay such amount, together with interest at a rate equal to



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one and one-half percent (1.5%) per month from the original due date of such amount to the date of actual payment. The terms of the Parties' engagement with such invoice auditing firm shall stipulate that such firm shall use commercially reasonable efforts to complete its work within thirty (30) days following its engagement. The non-prevailing Party shall be responsible for the invoice auditing firm fees incurred due to the disputed invoice.

7. Warranties

- 7.1 **Licensor Software Warranties.** With respect to the Licensor Software, Licensor warrants that: (a) Licensor has taken all commercially reasonable steps to prevent the Licensor Software from containing any computer viruses, Trojan horses, time bombs, cancel bots or other computer programming routines that are intended to detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information, and (b) for a period of ninety days after the Effective Date ("Warranty Period"), the Licensor Software will operate substantially in accordance with the Documentation. In the event of a breach of any of the foregoing warranties reported to Licensor in writing, provided that any such breach of the warranty set forth in foregoing clause shall be reported in writing during the Warranty Period, Licensee's sole remedy for such breach shall be to have Licensor use commercially reasonable efforts to promptly correct, replace or provide a work around for such error or failure, at no charge to Licensee. The foregoing warranties and remedies apply only to the most recent version of the Licensor Software, and shall not apply to any breach, fault or error that arises out of or relates to Licensee's failure to use the Licensor Software in accordance with the Documentation, any misuse, corruption or abuse of, or modification to, the Licensor Software by any entity or individual other than Licensor, any combination, interface, or incorporation of Licensor Software with or into any other software, or any use of the Licensor Software with any software or equipment not approved in advance in writing by Licensor.
- 7.2 **Licensor Services Warranties.** Licensor warrants that all services that are performed under this Agreement will be performed in a professional and workmanlike manner by qualified personnel, and Licensor has the required skills and experience to perform such services. Licensee's sole remedy for breach of a warranty in Section 7.2 shall be to have Licensor use commercially reasonable efforts to promptly correct, replace or provide a work around for such breach, at no charge to Licensee.
- 7.3 **Licensor General Warranties.** Licensor represents and warrants that Licensor owns, or has all necessary rights to, the Licensor Software and Documentation, and has all necessary rights and authority to grant the rights granted hereunder to Licensee and to carry out its obligations hereunder.
- 7.4 **Mutual Warranties.** Each Party represents and warrants to the other Party: (a) such Party's execution, delivery and performance of this Agreement have been authorized by all necessary corporate action, do not violate in any material respect the terms of any law, regulation, or court order to which such Party is subject, do not violate the terms of any material agreement to which Licensor is a party, and are not subject to the consent or approval of any third party, (b) this Agreement is the valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other similar laws relating to creditors' rights generally, or general equitable principles, (c) such Party is not subject to any pending or, to such Party's knowledge, threatened litigation or governmental action which could interfere with such Party's performance of its obligations hereunder, and (d) such Party has secured or shall secure all material permits, licenses, regulatory approvals and registrations to the extent necessary to perform its obligations hereunder.
- 7.5 **Disclaimer of Warranty.** EXCEPT AS SET FORTH IN SECTIONS 7.1 to 7.4, LICENSOR DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NONINFRINGEMENT OF THIRD PARTIES' RIGHTS, AND SECURE, ERROR-FREE OR UNINTERRUPTED OPERATION.



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7.6 LIMITATION OF LIABILITY. EXCEPT FOR BREACHES OF SECTION 8 (CONFIDENTIALITY) OR INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, (I) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM AGAINST THE OTHER BY ANY THIRD PARTY AND (II) LICENSOR'S LIABILITY TO LICENSEE UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AMOUNT ACTUALLY PAID BY LICENSEE TO LICENSOR PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

Licensee acknowledges and agrees that (i) it is solely responsible for providing and ensuring the proper training of its drivers, owners or operators in the operation of the motor vehicle or motor vehicles (i.e. any automotive machinery utilized for the transport of persons or goods in which Foxster Solutions Products has been incorporated or installed), (ii) Licensor shall not be liable to Licensee or any other entity or individual for any claim or action including costs arising out of the use or misuse of any motor vehicle operated by or on behalf of the Licensee or any such entity or individual in connection with this Agreement, including any personal injury or property damage claim or action, and Licensee shall defend, indemnify and hold Licensor harmless from any such claim or action, and (iii) Licensee shall include this paragraph, or the substance thereof, in any agreements between Licensee and any third party involving any Licensor Property.

8. Confidentiality

8.1 Confidentiality Obligations. Each Party acknowledges that Confidential Information may be disclosed to the other Party in connection with this Agreement. Each Party agrees (i) that, during and following the Term of this Agreement, it shall hold in strict confidence the other Party's Confidential Information and prevent disclosure thereof, except as expressly permitted herein, and will use such Confidential Information only for the purpose of exercising such Party's rights and perform such Party's duties and obligations under this Agreement ("Permitted Purpose") and, without limiting the foregoing, (ii) such Party will take all reasonable steps, at least substantially equivalent to the steps such Party takes to protect its own proprietary information, to (a) prevent use of the other Party's Confidential Information for any purpose other than the Permitted Purpose, and (b) prevent the disclosure of the other Party's Confidential Information, other than to such Party's employees, officers, directors, other representatives, and contractors, who (1) must have access to such Confidential Information for such Party to and (2) each agree to be bound to such Party by written agreements including provisions of confidentiality with respect to such Confidential Information that are no less protective of than those provided herein.

Each Party acknowledges that the other may suffer irreparable damage in the event of any material breach of the provisions of this Section 8 (Confidentiality). Accordingly, in such event, an aggrieved Party may seek preliminary and final injunctive relief, as well as any other applicable remedies at law or in equity against the Party who has breached or threatened to breach this Section 8 (Confidentiality).

8.2 Exclusions. The Parties' obligations set forth in Section 8.1 (Confidentiality Obligations) shall not apply with respect to any portion of the Confidential Information that: (a) was in the public domain at the time it was disclosed to or observed by the receiving Party; (b) entered the public domain through no fault of the receiving Party; (c) is rightfully received by the receiving Party from a third party without a duty of confidentiality; (d) is independently developed by the receiving Party without reference to or incorporation of the other Party's Confidential Information; (e) is disclosed as required by administrative, legislative, or judicial demand or order, except that the receiving Party will disclose only such information as is legally required and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed and, to the extent not prohibited by applicable law, will provide the disclosing Party notice of such possible disclosure



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prior to disclosure in order to allow an opportunity for the disclosing Party to contest such disclosure; or (f) is disclosed with the other Party's prior written approval.

- 8.3 Return of Confidential Information.** Each Party agrees to return to the other Party or, at the request and instruction of the disclosing Party, destroy, and certify that it has destroyed, all material embodying Confidential Information (in any form or medium and including, without limitation, all summaries, copies and excerpts of Confidential Information) at any such time as the disclosing Party may so request.

9. Indemnification

- 9.1 Indemnification by Licensor.** Licensor shall to the extent allowed by state law indemnify, defend and hold harmless Licensee, and its officers, directors, employees and agents, from and against any and all claim, action, demand, or suit made or threatened by any third party (collectively, "Claims") and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation or defense (collectively, "Damages"), to the extent such Claims or Damages arise out of or relate to an allegation that the Licensor Software, Documentation or services provided by Licensor hereunder, or Licensee's use of the same in accordance with this Agreement, infringe, misappropriate, or otherwise violate any third party's U.S. intellectual property rights. Licensor's indemnity obligation herein shall not extend to any Claims or Damages based on an unauthorized modification, combination or use of the Licensor Software by Licensee.
- 9.2 Notification of 3rd Party Claims.** Licensor will promptly notify Licensee of any threat, warning, claim or action against Licensor or suppliers, that could have an adverse impact on Licensee's use of the Licensor Software.
- 9.3 Third-Party Products and Services.** The Parties understand and agree that Licensor is not the manufacturer of the third party products or the provider of any third party services. As such, Licensor does not warrant or guarantee the condition or any other aspect of any third party products or third party services ("Third Party Product Exposures"). Furthermore, the Licensee is responsible for any performance and warranty related to any third party products or third party services used by or on behalf of the Licensee and will directly manage and coordinate with the applicable product or services vendor for any such issues.
- 9.4 Remedies.** If Licensor informs Licensee or Licensee determines that it must discontinue use of the Licensor Software, the Documentation, or any service furnished under this Agreement because of an existing or anticipated Claim that the Licensor Software, Documentation, or service infringes, misappropriates or otherwise violates any intellectual property right of a third party, Licensor, at its own expense and in its reasonable discretion, shall either: (a) secure for Licensee the right to continue using the Licensor Software, Documentation, or service; (b) replace or modify the Licensor Software, Documentation, or service to make it non-infringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Licensor Software, Documentation, or service; or if Licensor determines (a) or (b) to be commercially unreasonable, then (c) terminate this Agreement and refund to Licensee any unamortized portions of the fees paid by Licensee, based on a straight line amortization over a five-year useful life for the Licensor Software.
- 9.5 Indemnification by Licensee.** Licensee shall indemnify, defend and hold harmless Licensor, and its officers, directors, employees, agents, and other representatives and contractors from and against any and all Damages arising out of or relating to (a) Licensee's breach of or default under any provision of this Agreement, or (b) any unauthorized modification, combination or use of the Licensor Software made by or on behalf of Licensee.
- 9.6 Online Liability Waiver.**
- a. It is the Licensee's responsibility, and Licensor shall have no responsibility, to maintain control over all entities and individuals to whom Licensee provides any username and/or password information required to access and/or use Licensor Software. If the Licensee needs to change passwords, it is Licensee's responsibility to notify Licensor in writing.



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- b. Should any confidential data or other Confidential Information of or relating to Licensee or Licensee's business be accessed or misappropriated using any usernames and passwords provided to the Licensee, the Licensor will not be held responsible.

9.7 **Defense and Settlement.** A Party seeking indemnity ("Indemnified Party") shall provide the other Party ("Indemnifying Party") prompt notice of any such Claim made against it for which it is entitled to indemnity hereunder. Each Party shall reasonably cooperate with the other Party in the defense of any such Claim including appeals, negotiations and any settlement or compromise thereof, provided that Indemnifying Party shall control the defense, negotiations and settlement or compromise thereof and shall keep the Indemnified Party informed of the proceedings and review and consider input from the Indemnified Party; provided, that Indemnified Party shall be given the right to approve in advance the terms of any settlement or compromise with respect to such matter to the extent that such settlement or compromise requires Indemnified Party to admit any liability or pay any amounts not otherwise indemnified by Indemnifying Party hereunder, and such approval shall not be unreasonably withheld by Indemnified Party.

10. Notices

Any notice, approval, request, authorization, direction or other communication under this Agreement will be given in English in writing and will be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered by confirmed facsimile; (ii) on the delivery date if delivered personally to the party to whom the same is directed; (iii) one business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iv) seven business days after the mailing date, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. Licensor's and Licensee's Addresses for receipt of notices are provided on Schedule A.

11. Term and Termination

- 11.1 **Term.** Unless terminated earlier in accordance with Section 11.2, the term of the agreement will commence immediately upon execution hereof by the Parties' respective duly authorized representatives and will continue for an initial term of four months ("Initial Term"). At the end of the Initial Term, the Agreement will be renewed automatically on a month to month basis unless otherwise terminated by either Party on a thirty (30) day written notice and shall continue in accordance with its provisions (each such month, a "Renewal Term", and any and all such Renewal Terms, along with the Initial Term, collectively, the "Term").
- 11.2 **Termination; Effect of Termination.** A Party may terminate this Agreement as follows: (a) if the other Party breaches a material obligation under this Agreement, and fails to cure such breach within thirty (30) days after the date such other Party receives from the non-breaching Party a reasonably-detailed written notice of the breach and a demand for cure, (b) immediately by written notice if the other Party (i) materially breaches Section 8 (Confidentiality), or (ii) files a petition in bankruptcy, makes a general assignment for the benefit of its creditors, has a receiver appointed or applied for it, or winds up or liquidates. Upon termination, Licensee shall return to Licensor any and all copies of the Licensor Software and Documentation in Licensee's possession or under Licensee's custody or control, and pay all accrued but unpaid fees and expenses, provided, this shall in no way limit any legal or equitable remedies that Licensor to which may be entitled. Any advance fees paid by Licensee for services not supplied by Licensor prior to any such termination will be refunded, within 90 days of notice of termination.
- 11.3 This Agreement may be canceled or terminated at any time by the Licensee or the Licensor with or without cause by providing the other thirty (30) days written notice of such termination. Upon receipt of such notice, all work and labor being performed shall immediately cease, pending final cancellation at the end of such thirty (30) day period. Licensor shall be compensated in accordance with the terms of this Agreement for all work accomplished prior to the receipt of notice of such termination. Licensor shall invoice Licensee for all work performed within thirty (30) days after the termination notice.



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Upon termination and provision of a prior written request to Licensor, Licensee may export a copy of its current database master(s), if any, stored in Licensor Software, provided that any such export shall be arranged by Licensor and shall comply in all respects to the confidentiality provisions hereof.

12. Survival

The Parties hereto agree that any provisions of this Agreement requiring performance or fulfillment by other Party after the termination of this Agreement shall survive such termination, including without limitations Sections 1, 4, 7.5, 7.6, 8, 9, 12, and 13.

13. General

- 13.1 **Entire Agreement.** This Agreement (including all attachments) constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous proposals, agreements and communications, whether oral or written, between the parties relating to the subject matter hereof, and all past courses of dealing or industry custom. This Agreement may be amended only by a writing signed by the duly authorized representatives of both Parties.
- 13.2 **Independent Contractors.** In performing this Agreement, the Parties are independent contractors, and nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between the Parties. Except as expressly set forth in this Agreement, at no time shall either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.
- 13.3 **Assignment.** Neither Party may assign this Agreement or any right, interest or benefit under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld; provided that in the event of a change in control of a Party, except for a change of control of Licensee to a direct or indirect competitor of Licensor, either Party shall have the right to assign this Agreement to a successor that acquires substantially all of the assets or equity of such Party. Subject to the foregoing, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, Licensor may subcontract the performance of any or all of its obligations under this Agreement, provided it remains directly liable to Licensee.
- 13.4 **No Third Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing in this Agreement, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.
- 13.5 **Severability/Waiver.** If any provision in this Agreement should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect. A waiver by either Party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.
- 13.6 **Dispute Resolution.** In the event of a dispute between the Parties with respect to the Agreement which dispute cannot be settled following good faith efforts by the Parties' project teams, then the dispute shall be referred for resolution to appropriate members of the executive team of each Party who shall meet and resolve the dispute, if possible, within fifteen (15) business days from the date of such reference. If said members of the executive team of each Party are unable to resolve the dispute within fifteen (15) business days, then the dispute shall be referred to a single arbitrator appointed jointly by the Parties. In the event that the Parties cannot agree as to the single arbitrator to be appointed, then such arbitrator shall be appointed pursuant to the Rules of the American Arbitration Association. The arbitration shall be held in such place as



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the arbitrator shall select and shall be adjudicated in accordance with the aforementioned Rules and the decision of the arbitrator shall be made within thirty (30) days from the appointment of the arbitrator and be final and binding upon the parties. The arbitrator's fees and expenses shall be paid by the Parties as determined by the arbitrator.

- 13.7 **Governing Law.** All questions, issues or disputes arising out of or under this Agreement, including without limitation any interpretation of any of the terms and conditions, shall be governed by the laws of the State of North Carolina, without resort to the conflict of law provisions thereof. In the event suit is commenced to enforce this Agreement, costs of said suit including reasonable attorney's fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing Party by the other Party. In the event any litigation or other action to enforce the terms and conditions hereof is commenced by either Party to enforce this Agreement, such litigation or action will be filed and litigated only in a court of competent jurisdiction located in the State of North Carolina. Each Party waives any and all rights to have this action brought in any place other than the State of North Carolina.
- 13.8 **Force Majeure.** Except in connection with a Party's payment obligations hereunder, neither Party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of circumstances beyond the reasonable control of such Party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs (whether or not by that Party), strikes and other industrial disputes (in each case, whether or not relating to that Party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions.
- 13.9 **Section Headings.** Section and other headings contained in this Agreement are for references only and shall not affect in any way the meaning or interpretation of this Agreement.
- 13.10 **Counterparts; Facsimile.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one agreement. Facsimile or electronic signatures shall be deemed original signatures.
- 13.11 **Publicity.** Neither Party will make any public statements regarding the existence of this Agreement nor the relationship described herein, without the prior written consent of the other Party, except as required by law or as otherwise provided for herein. Notwithstanding the foregoing, Licensor shall have the right to use Licensee's name in customer lists that identify a substantial number of Licensor's customers, and Licensor shall provide a copy of any such listing to Licensee to the extent distributed to any third parties.
- 13.12 **Audits.** Licensor may perform audit(s) on the use of the Software and Documentation upon giving Licensees written notice of at least five (5) business days. Licensee agrees to make the necessary operational records, databases, equipment, employees and facilities available to Licensor for the audit(s). The purpose of the audit will be to verify compliance with the terms and conditions of this Agreement.

14. Insurance

- 14.1 **Insurance.** At a minimum, during the Term of this Agreement Licensor will maintain in full force and effect, at Licensor's expense:
- Commercial General Liability Insurance with limits of \$2,000,000 combined single limit for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage and products and completed operations coverage;
 - Technology Errors and Omissions Insurance in an amount not less than \$2,000,000 per occurrence.
 - Cyber Liability Insurance with limits of \$1,000,000 per occurrence.
- 14.2 **Provisions.** Licensor shall provide Licensee with a certificate of insurance evidencing that the required minimum coverage is in effect and that each Commercial General Liability Names Licensee, its subsidiaries, directors, officers and employees as additional insureds to the extent permitted. Licensor shall provide a waiver of subrogation clause in favor of the additional insureds and provide that all insurance provided by the



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Licensor shall be primary and that any other insurance maintained by or available to Licensee shall be excess only and shall not contribute with this insurance. Such insurance shall also cover the acts or omissions of Licensor's subcontractors under this Agreement. Such insurance shall require the insurer to provide Licensee thirty (30) days advance written notice of any cancellation or adverse material change with respect to any of the policies. If Licensor fails to procure or maintain in force the insurance specified herein, Licensee may procure such insurance and the cost thereof shall be borne by Licensor.

- 14.3 **Liability.** The insurance provided by Licensor hereunder shall operate independent and apart from any obligations imposed upon Licensor under the indemnification provisions of this Agreement, and that in no event will the coverage or limits of any insurance maintained by Licensor under this Agreement, or the lack or unavailability of any other insurance, limit or diminish in any way Licensor's obligations or liability to Licensee hereunder.
- 14.4 **Enforcement.** Licensor's failure to provide and keep in force the aforementioned insurance shall be regarded as a material default hereunder, entitling Licensee to exercise any or all of the rights and remedies provided hereunder.

IN WITNESS WHEREOF, each Party has caused this Software License & Services Agreement to be executed by its authorized representative to be effective as of the date hereof.

Foxster Solutions, Inc, dba CTS Software

County of Kendall on Behalf of Kendall Area Transit

Signature: _____

Signature: _____

Printed Name: Amie L. Green _____

Printed Name: _____

Title: Finance Director _____

Title: _____

Date: October 9, 2017 _____

Date: _____

[Remainder of page intentionally left blank.]



**SOFTWARE LICENSE AND SERVICES AGREEMENT
SCHEDULE A**

This Schedule A is made part of and incorporated in that certain Software License and Services Agreement, by and between **Foxster Solutions, Inc., dba CTS Software**, a North Carolina corporation, located at Post Office Box 57, Swansboro, North Carolina 28584 ("Licensor"), and **County of Kendall on Behalf of Kendall Area Transit** located at 111 W. Fox Street, Yorkville, IL., 60560 ("Licensee"). effective go live date as of October 9, 2017 ("Agreement"). All capitalized terms used by not defined in this Schedule A shall have the respective meanings ascribed to such terms in the Agreement.

1. License Fees; Maintenance and Support Fees

The Licensor's Software as mentioned in this contract may consists of, but not be limited to:
 Trip Master Enterprise Edition; Intelligent Automated Scheduling; Interactive Voice Response System; ParaScope – Tablet Interface; Vehicle Maintenance Module; ParaPass; ParaPortal Module; Illinois Medicaid Interface.

STANDARD:

- 1.1 The Licensee agrees to pay the Licensor a onetime fee of **\$ 50,912.00** for use of the Licensor Software in accordance with the Agreement. Such payment will be due and payable within thirty (30) days after receipt of the applicable invoice.
- 1.2 Beginning on the expiration date of the Initial Term (4 months from "go live"), Licensee shall pay Licensor the fees set forth in Attachment 1 hereto, which hereby is incorporated by reference herein ("Attachment 1") for all Support Services (as defined in Schedule B of the Agreement) for up to **13 vehicles and 5 License/User ID:**
 - a. If such fees are to be paid annually, payment will be due and payable within thirty (30) days after receipt of the applicable invoice.
 - b. If Licensee elects to pay such fees monthly, Licensor will submit the monthly invoice via email on the first day of each month, and such fees shall be due and payable by the tenth day of such month.
 - c. Payments not received by the due date will be subject to late fees and suspension of Support Services.

Major Activity Milestone Description	Due Date	Payment Schedule
Notice to Proceed		35%
Phase I: Going Live with Trip Master	0 – 4 weeks from Notice to Proceed	55%
Phase II: Going Live with ParaScope	2 – 6 weeks from Notice to Proceed	10%



SOFTWARE LICENSE AND SERVICES AGREEMENT SCHEDULE A

- 1.3 Under terms of the Agreement, the Licensor will charge Licensee an additional fee per vehicle per month of \$ 27.50 for each additional vehicle above the number contained in 1.2.
- 1.4 Under terms of the Agreement, the Licensor will charge Licensee an additional price per License/User ID per month of \$ 20.00 for each additional License/User ID above the number contained in 1.2.
- 1.5 When applicable, under terms of the Agreement, Licensor will cover up to 6,000 calls.
- 1.6 Full pricing and other details for any fees described in this Schedule A are set forth in Attachment 1.

2. Training

- 2.1 Licensor shall provide training and support services to Licensee. These services may be provided at Licensee's facility, Licensor's facility or remotely, as determined by Licensor in its sole and exclusive discretion. Charges for such services shall be billed separately at the rate of \$ 300.00 per day. If onsite training is elected, there would be an additional charge of \$ 2,000.00 for travel, lodging, meals and related expenses.
- 2.2 Retraining of Licensee's employees shall be charged at Licensor's training rate (\$100.00 per hour) with a one-hour minimum and will include reimbursement by Licensee of any and all expenses incurred by Licensor in connection therewith. Such charges shall be charged and billed separately and are in addition to all other charged fees.

3. Addresses for Notices:

For Foxster Solutions, Inc., dba CTS Software ("Licensor"):

Foxster Solutions, Inc., dba CTS Software
PO Box 57
Swansboro, North Carolina 28584
Attn: Adam Fox, President
(800) 704-0064

Licensor has the right to change the address for notifications by notifying Licensee in accordance with the notice provisions of the Agreement.

For County of Kendall on Behalf of Kendall Area Transit ("Licensee"):

County of Kendall on Behalf of Kendall Area Transit
111 W. Fox Street
Yorkville, IL., 60560
Attn: Mike Neuenkirchen
Phone Number: (630) 882-6970



**SOFTWARE LICENSE AND SERVICES AGREEMENT
SCHEDULE A**

IN WITNESS WHEREOF, each Party has caused this Software License & Services Agreement Schedule A to be executed by its duly authorized representative to be effective as of the date executed by both Parties.

Foxster Solutions, Inc, dba CTS Software

County of Kendall on Behalf of Kendall Area Transit

Signature: _____

Signature: _____

Printed Name: Amie L. Green _____

Printed Name: _____

Title: Finance Director _____

Title: _____

Date: October 9, 2017 _____

Date: _____



SOFTWARE LICENSE AND SERVICES AGREEMENT SCHEDULE B

This Schedule B is made part of and incorporated in that certain Software License and Services Agreement, by and between Foxster Solutions, Inc., dba CTS Software, a North Carolina corporation, located at Post Office Box 57, Swansboro, North Carolina 28584 ("Licensor"), and County of Kendall on Behalf of Kendall Area Transit located at 111 W. Fox Street, Yorkville, IL., 60560 ("Licensee"). All capitalized terms used by not defined in this Schedule A shall have the respective meanings ascribed to such terms in the Agreement.

1. Support Services/Service Level Agreement

Licensor's maintenance and support services for the Licensor Software are set forth in this Schedule B (collectively, "Support Services"). During the Term of the Agreement, Licensor will provide the following Support Services if and to the extent that the Licensor Software does not operate substantially in accordance with the Documentation.

2. Overview

- 1.1 This Schedule B is designed to address any needs and issues with respect to the Licensor Software that may be raised by Licensor's customers on an ongoing basis. Licensor's goal is to provide a highly available system that delivers benefits to our customers.
- 1.2 This Schedule B seeks to provide as much flexibility for Licensor's customers as possible by utilizing user documentation, training manuals and the system knowledge base.
- 1.3 This Schedule B seeks to provide insight into the processes, procedures, and response target times for customer technical support requests that help Licensor to meet its commitment to all customers.
- 1.4 Licensor is committed to resolving customer needs and issues quickly and professionally. Customer support issues are resolved by highly skilled software engineers and support specialists, allowing customers to have quick access to persons with the technical ability to solve any needs and/or issues. Support will be handled via phone and email in the event that Licensor's support specialists are not at the customer site.
- 1.5 The infrastructure for this plan is a request tracking system used to facilitate the process of tracking and solving customer needs and issues. Every support request is logged into the system and is accessible by all Licensor's support specialists.
- 1.6 During and after scheduled down-time Licensor's support specialists are on "high alert" to ensure that any issues, questions, or support requests from the customer are handled and resolved as promptly as possible.
- 1.7 Customer support is available 24 hours a day, 7 days a week.



SOFTWARE LICENSE AND SERVICES AGREEMENT SCHEDULE B

3. Assignment of Support Request Severity

When a customer has opened a support request and reaches a support specialist, the specialist will assess the severity of the request based on the customer's description of the issue.

Table 1 describes the definitions used in identifying and assigning a severity to the customer's reported issue.

Table 1 - Severity Definitions	
Severity	Criteria
Critical	Customer's production system is down. Foxster Solutions product is unusable resulting in total disruption of work or other critical business impact. No workaround is available.
High	Major feature/function failure. Operations are severely restricted. A workaround is available.
Medium	Minor feature/function failure. Product does not operate as designed, minor impact on usage, acceptable workaround is available.
Low	Minor issue. Documentation, general information, enhancement request, etc.

4. Response and Resolution Targets

Licensor's Support Services response and resolution targets are described below:

Response: When Licensor's Support Services personnel receive a support request, a support specialist will provide feedback to the customer that the request has been logged and assigned to the appropriate resource. The exact response (described below) will vary depending on the support method used by the customer, and the response time will commence as soon as the support request is received and the support specialist has a clear understanding of, and the ability to reproduce or identify from the system log, the issue at hand ("Support Request").

E-Mail: An automated e-mail reply will be sent immediately after receiving an e-mail Support Request. A support specialist will reply to the e-mail with a Support Request ID # and a time frame when to expect a response or contain a request for additional information.

Phone: A support specialist will answer the call or respond to a call that has gone to voice mail, document product specific information in the support request, provide the customer with a Support Request ID # and begin support activities.

Resolution: An answer, fix or a satisfactory workaround to the question (s) raised and/or issue(s) identified in the Support Request.

Solution: The long-term resolution to the question (s) raised and/or issue(s) identified in the Support Request, issue, or question.



**SOFTWARE LICENSE AND SERVICES AGREEMENT
SCHEDULE B**

Table 2 - Response and Resolution Targets			
Severity	Target Response	Target Resolution	Solution (1 or more of the following)
Critical	1 Business Hour	Within 4 hours from actual response.	<ul style="list-style-type: none"> • Satisfactory workaround is provided. • Product patch is provided. • Fix incorporated into future release. • Fix or workaround incorporated into Solution Library.
High	8 Business Hours	Within 36 hours from actual response.	<ul style="list-style-type: none"> • Satisfactory workaround is provided. • Product patch is provided. • Fix incorporated into future release. • Fix or workaround incorporated into Licensor's collection of Licensor Software Solutions ("Solution Library").
Medium	24 Business Hours	Within 15 Business Days.	<ul style="list-style-type: none"> • Answer to question is provided. • Satisfactory workaround is provided. • Fix or workaround incorporated into Solution Library. • Fix incorporated into future release.
Low	72 Business Hours	Within 30 Business Days.	<ul style="list-style-type: none"> • Answer to question is provided through FAQ, Knowledge Base, or through trained customer subject matter experts (SME). • Fix or workaround incorporated into Solution Library.



**SOFTWARE LICENSE AND SERVICES AGREEMENT
SCHEDULE B**

5. Assignment of Service Request Status

When a customer contacts Licensor’s Support Services personnel and requests help to resolve a question or an issue, a Support Request is opened. The following table describes the possible status that may be assigned to a Support Request.

Table 3 - Service Request Status Definition	
Status	Criteria
New	A Support Request has just been submitted. It may be assigned to an individual or a queue. Support specialist has not responded yet to customer.
Working	Support specialist has responded to the customer regarding the receipt of the Support Request and is actively pursuing a resolution.
On Hold	Support specialist is not actively working on the resolution of the Support Request. Generally, this is due to information pending from the submitter of the Support Request. However, Support Requests may be put on hold for other reasons as well.
Escalated	A Support Request set to an escalated status means either the Support Request has not been resolved within the target resolution time, or the submitter has asked for it to be escalated to the next level of support.
Closed	<p>Closed status reflect that:</p> <ul style="list-style-type: none"> The customer and the support specialist agree that a satisfactory resolution has been provided, or The customer understands that there is not a solution to the issue at hand, and the issue is not a result of a product defect, or The support specialist has made multiple attempts to contact the customer that opened the Support Request, and the customer has not responded. <p>Electronic service requests (e-mail) may be closed when a support specialist has provided an electronic reply with a high degree of confidence that the reply will resolve the issue or answer the question.</p>

Networking and hardware at the customer’s site are the sole responsibility of the customer and are not covered in Support Services. Any issues or problems arising out of Customer misuse or unauthorized use of Licensor Software also is not covered in Support Services.



**SOFTWARE LICENSE AND SERVICES AGREEMENT
SCHEDULE B**

IN WITNESS WHEREOF, each Party has caused this Software License & Services Agreement Schedule B to be executed by its authorized representative to be effective as of the date executed by both Parties.

Foxster Solutions, Inc, dba CTS Software

**County of Kendall on Behalf of Kendall County
Transit**

Signature: _____

Signature: _____

Printed Name: Amie L. Green _____

Printed Name: _____

Title: Finance Director _____

Title: _____

Date: October 9, 2017 _____

Date: _____



Attachment #1

For: Kendall Area Transit, IL. 13 Vehicles 5 License

Software	Unit Price	Unit	Quantity	Amount
Trip Master Enterprise Edition Software*	\$10,995.00	Lot	1	\$10,995.00
Automated Scheduling Software Interface*	\$7,995.00	Lot	1	\$7,995.00
ParaScope - Tablet Software Application	\$649.00	Each	13	\$8,437.00
Interactive Voice Response System Interface*	\$5,995.00	Lot	1	\$5,995.00
ParaPortal - Online Trip Booking Interface*	\$7,995.00	Lot	1	\$7,995.00
ParaPass - Digital Fare Collection Interface	\$12,995.00	Lot	0	\$0.00
Vehicle Maintenance Module*	\$5,995.00	Lot	1	\$5,995.00

* software warranty included

Software Total \$47,412.00

Services	Unit Price	Unit	Quantity	Amount
Data Acquisition, Conversion and Install	\$1,000.00	Lot	1	Included
CTS Software - Online Training	\$1,000.00	Lot	1	Included
CTS Software - Onsite Training	\$300.00	Day	5	\$1,500.00
CTS Software - Travel Expenses	\$2,000.00	Trips	1	\$2,000.00

Services Total \$3,500.00

Monthly Maintenance and Support	Unit Price	Unit	Quantity	Amount
Trip Master Software Maintenance and Support Base Fee	\$500.00	Lot	1	\$500.00
User License Fee	\$20.00	Each	5	\$100.00
Vehicle Base Fee	\$10.00	Vehicle	13	\$130.00
Automated Scheduling Vehicle Fee	\$5.00	Vehicle	13	\$65.00
ParaScope - Tablet Software Vehicle Fee	\$10.00	Vehicle	13	\$130.00
Interactive Voice Response Fee (6,000 Calls)	\$200.00	Lot	1	\$200.00
ParaPortal Fee	\$200.00	Lot	1	\$200.00
ParaPass Fee	\$400.00	Lot	0	\$0.00
Vehicle Maintenance Fee	\$5.00	Lot	13	\$65.00

Monthly Maintenance and Support Total \$1,390.00

Software and Said Services Upfront Total \$50,912.00

JOSEPH F. MIRABELLA, JR.
JOHN B. KINCAID
GEORGE S. FREDERICK
LYNN M. MIRABELLA
HENRY D. KASS

Founding Partner
JOSEPH F. MIRABELLA, SR.
1911-1977



CHRISTA M. WINTHERS
LINDSAY C. STELLA
JOSHUA D. BEDWELL
MEGAN C. HARRIS
TODD D. SCALZO
DAVID H. WEISS
JESSICA L. DEFINO
JENNIFER M. CUSACK

October 18, 2017

Via U.S. Mail

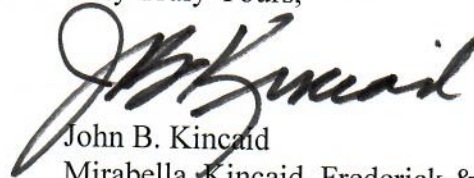
Kendall County Animal Control
802 John Street
Yorkville, IL 60560

Re: *Estate of Nancy Miller*

To Whom It May Concern,

As executor of the estate of Nancy Miller who passed away April 9, 2017, we are pleased to inform you that Nancy left a bequest to this shelter in the sum of \$2,500. We enclose a check now in that sum since the time to contest the will has just expired. Please sign and return the enclosed receipt for said bequest in the enclosed self-addressed envelope.

Very Truly Yours,



John B. Kincaid
Mirabella, Kincaid, Frederick & Mirabella, LLC

JBK/hf
Enclosure

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN RE THE ESTATE OF

NANCY E. MILLER
DECEASED

2017 P 353
CASE NUMBER

File Stamp Here

RECEIPT OF DISTRIBUTION

I, _____, acknowledge receipt of my share of this estate as follows:

I hereby acknowledge a total of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the Kendall County Animal Control.

I appear, waive notice and consent to the approval of the current account final account of the Executor Administrator Independent Representative and consent to the allowances of fees to the representative and attorney as set forth in the account.

X
Distributee Signature

Address

City, State, Zip

Name: Mirabella, Kincaid, et al. Pro Se
DuPage Attorney Number: 58500
Attorney for: Petitioner
Address: 1737 S. Naperville Road, Suite 100
City/State/Zip: Wheaton, Illinois 60189
Telephone Number: (630) 665-7300
Email: contact@mkfmlaw.com