



**DATE:** July 9, 2018

**TO:** Transportation Authority of Marin Programming & Projects Executive Committee

**FROM:** Dianne Steinhauser, Executive Director  
Scott McDonald, Senior Transportation Planner

**SUBJECT:** Bike Share Program Cooperative Agreement Between Sonoma County Transportation Authority (SCTA) and TAM (Action), Agenda Item No. 6

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## **RECOMMENDATION**

Review and refer to the full TAM Board to authorize the Executive Director to execute the Bike Share Program Cooperative Agreement between SCTA and TAM, as shown as Attachment A.

The Cooperative Agreement is based on a separate funding agreement between the Metropolitan Transportation Commission (MTC) and SCTA, shown as attachment B. SCTA was designated by MTC as the agency responsible for administering the grant on behalf of the program, therefore TAM is not a required signatory to the MTC/SCTA funding agreement.

## **BACKGROUND**

On November 15, 2017, MTC awarded a grant to SCTA and TAM from the MTC Bike Share Capital Grant Program for a bike share system focused around the SMART corridor. The award for a total of \$826,000, is based on the application proposal to fund a 200-bike share system with approximately half of the bikes along the Sonoma County portion of the program and half along the Marin County portion of the program. The exact scale of the system will be developed upon further planning and program development.

The SMART corridor bike share program application proposed a network of GPS enabled “smart bikes” located in both Marin and Sonoma Counties at SMART stations and key nearby destinations from Santa Rosa to Larkspur. Program goals include supporting train riders in getting to and from SMART stations, supporting reduced vehicle miles traveled and greenhouse gas reduction goals, supporting economic development, providing a low-cost alternative transportation option, supporting reduced automobile dependency and healthy lifestyles, and providing the benefits of bicycle transportation without the barriers of maintenance, storage, or transporting a bicycle on transit.

Funds will become available after July 1, 2018 and will be administered by SCTA, with the following MTC grant requirements regarding safety, equity, and inter-operability policies:

- A service area that includes at least 20% within ¼ mile of a Community of Concern (COC), Community Air Risk Evaluation (CARE) Program Area, or in communities with a developed community-based transportation plan for low income or disadvantaged communities
- Use of Clipper as a membership identifier

- Bicycle safety standards which meet or exceed International Organization for Standardization (ISO) 4210: Safety Requirements for City and Trekking Bicycles (SCTA and TAM would need to require contractors to provide equipment which meets these specifications for bicycle safety standards)
- Quarterly trip and membership data sharing with MTC
- Annual Program data and analysis related to mode shift, safety, public health and equity

Note that these requirements apply to the system, rather than to individual agencies or jurisdictions. TAM and SCTA staff have reviewed these requirements and will work together to meet each requirement when implementing the program and consult with program contractors early in the program development to ensure each can be achieved. Additional requirements including reliability and availability will also be required of the contractor selected.

## **DISCUSSION**

Due to the rapid changes in bike share models and technology, SCTA and TAM propose beginning the procurement process with solicitation of vendor information through a joint Request for Information (RFI), and then convene a two-county policy steering committee to review the responses to the RFI and determine preferred elements to include in a Request for Proposals (RFP) that reflects the latest technologies, models, and costs basis for bike share vendors confirmed through the RFI process. Vendor procurement would be advised by the policy steering committee. SCTA and TAM will develop a Public Outreach and Marketing Plan, per commitment outlined in the MTC Funding Agreement. Public outreach and station and/or service area planning will be conducted after vendor procurement.

TAM staff will additionally consult the TAM Commute Alternatives and Reduction of Trips (CART) Ad Hoc committee to discuss this program as it relates to other commute alternative programs such as TAM's Car Share Program and Lyft Pilot Program at SMART stations. With the recent acquisitions or partnerships between the TNC's, notably UBER and Lyft, and bike share vendors, there may be opportunities to consolidate outreach or services to improve the connections at SMART to nearby destinations.

### Program Launch & Operating Funding Discussion

While the grant will not cover vendor charges for ongoing operations specifically, STCA/TAM reached an agreement with MTC to allow for a leasing arrangement of a bike share system rather than requiring the purchase of equipment that may become outdated with systems improving rapidly. Therefore, while MTC will not reimburse ongoing operational costs, staff may be able to structure a vendor contract to avoid charges for ongoing operations, limited instead to costs for leasing of a bike share system and other eligible capital related expenses. Staff recently learned that the City of Fremont, one of the recipients of the MTC Bike Share Capital Grant Program awards, received multiple responses to its Request for Proposals at no cost for operations and maintenance. However, while the industry is operated currently by venture capital funded companies which often are willing to fund operations, if their approach changes over time staff is prepared to seek funding from private sponsors (based on \$270,000 in funding pledges received from potential sponsors previously) and from the Air District's Transportation Fund for Clean Air Program to fund system operations in the future. TAM staff and SCTA staff will delay executing any vendor contracts until ongoing costs have been established and presented for further review and approval.

Working with technical consultant Toole Design under contract with MTC, TAM and SCTA estimated during the operating phase the full two-county system could be supported at a cost of roughly \$150,000 to \$360,000 per year depending on a variety of factors including farebox recovery, sponsorship support, and bike share operator costs. In April 2018 the TAM Board approved staff's recommendation for programming funds through Measure B 3.2 Commute Alternatives Program to cover a conservative budget

for launch and operations of the program. The budget included \$25,000 annually over the next three years for technical assistance, along with \$63,000 in FY19/20 and \$126,000 in FY20/21 for potential operational support for 18 months of operating the program. Note that these figures are conservative and would preserve funds for TAM's contribution if needed, however staff from SCTA and TAM are fully anticipating offsetting the need for local funding assistance with the structuring of the program to include operations and maintenance, and then including other grants and private contributions, if necessary.

The execution of the cooperative agreement, the action of this item, does not commit TAM to any specific amount of expenditures. Staff will provide more details regarding budgetary needs and seek Board approval of final funding levels once vendor proposals are provided for review. Since funds granted are federal, a match is required, which can consist of in-kind staff support, as detailed in the following section.

### **FISCAL IMPACTS**

The MTC Bike Share Funding Agreement provides \$826,000 to SCTA and TAM for implementation of a bike share pilot program. The Cooperative Agreement between TAM and SCTA establishes a shared funding and project management arrangement of the grant award from MTC, where up to \$413,000 of the funds in the MTC Bike Share Funding Agreement may be used by TAM, or on behalf of TAM, to benefit the Marin County portion of the bike share program. SCTA and TAM must provide a local match of 11.47% or \$94,700, which may be in-kind staff time divided between the two agencies.

### **NEXT STEPS:**

TAM and SCTA staff will develop a bike share system Request for Information (RFI), which will provide updated information from vendors regarding current costs and models for consideration. SCTA/TAM will then develop a funding plan to include the procurement of a program vendor, working with a steering committee of representatives.

TAM staff is currently working with SCTA to develop the framework for a two-county Bike Share steering committee to bring together representatives from the agencies along the SMART corridor. TAM and SCTA staff have held meetings with several individual agency partners in their respective counties to confirm partner support to implement a bike share program; these meetings have included SMART, the Golden Gate Bridge Highway & Transportation District, City of Larkspur, City of San Rafael, County of Marin, and the City of Novato. Staff will continue to coordinate with these partners in the future on program implementation.

### **ATTACHMENTS:**

Attachment A: Bike Share Program Cooperative Agreement Between SCTA and TAM  
Attachment B: Bike Share Funding Agreement Between SCTA and MTC

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**COOPERATIVE AGREEMENT BETWEEN  
SONOMA COUNTY TRANSPORTATION AUTHORITY  
AND  
THE TRANSPORTATION AUTHORITY OF MARIN**

This agreement is made between the SONOMA COUNTY TRANSPORTATION AUTHORITY, hereinafter referred to as "SCTA" and the TRANSPORTATION AUTHORITY OF MARIN, hereinafter referred to as "TAM."

**RECITALS**

**WHEREAS**, in November 2017, the Metropolitan Transportation Commission (MTC) adopted Resolution number 3925, Revised, awarding grants totaling \$2.6 million to three projects for Phase I of the two phase Bike Share Capital Program to expand bike share to emerging communities. Through this process, MTC awarded \$826,000 to SCTA and TAM for Bicycle Sharing Capital and Outreach along the SMART Corridor under the Innovative Grants program; and

**WHEREAS**, SCTA, as a Congestion Management Agency ("CMA") for Sonoma County, has assumed the role of Lead Agency for the SMART Corridor Bike Share Program (referred to hereinafter as "PROJECT"). As the Lead Agency for the PROJECT, SCTA has entered into a funding agreement with MTC (SCTA-MTC Bike Share Funding Agreement) on \_\_\_\_\_ for the SMART Corridor Bike Share Program; and

**WHEREAS**, TAM will work cooperatively with SCTA to implement the PROJECT and receive payment of Bicycle Sharing Capital and Outreach funds in accordance with the agreement between SCTA and MTC and this AGREEMENT; and

**WHEREAS**, SCTA and TAM desire to enter into a cooperative agreement to establish a clear understanding of PROJECT scope, schedule and budget, and for payment of MTC Bicycle Sharing Capital and Outreach funds from SCTA to TAM for costs related to work performed on PROJECT; and

**WHEREAS**, the APPROVAL DATE for expenditure of funds under this AGREEMENT is the date upon which SCTA approves this AGREEMENT;

**NOW, THEREFORE**, in consideration of the foregoing and for good and valuable consideration the adequacy of which is hereby acknowledged, SCTA and TAM do hereby agree as follows:

**SECTION I**

TAM AGREES:

1. Scope of Work. To undertake, approximately 50% of the staff-level work (whether qualifying for reimbursement through the SCTA-MTC Bikeshare Funding Agreement or not) required to complete the PROJECT as described in the Scope of Work in the SCTA-MTC Bike Share Funding Agreement attached hereto as EXHIBIT A, and to apply MTC funds received under this AGREEMENT to said PROJECT consistent with the terms and conditions specified in this AGREEMENT and in accordance with the

funding amounts specified in Section III, Article 16 of this AGREEMENT. The 50%-50% division of work shall be arranged by informal meetings between SCTA and TAM. Both SCTA and TAM agree to meet in good faith and to make best efforts to allocate the outstanding PROJECT work 50%-50% when such a meeting is requested by either party.

2. Compliance with Laws. With regard to administering and completing the Project, TAM shall at all times comply with all applicable laws of the United States, the State of California, the County, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this AGREEMENT.

3. Compliance with Funding Restrictions. That as the joint controllers and managers of PROJECT, TAM and SCTA shall be responsible for complying with the funding and use restrictions established by MTC, by other applicable federal laws and regulations, by applicable state laws and regulations, and by this AGREEMENT.

4. Local Match. To comply with the local match requirement of 11.47% of the total project cost for the MTC funds. TAM shall contribute not less than the required match amount toward the cost of the PROJECT and shall document such expenditures in accordance with the procedures shown in EXHIBIT B attached hereto.

5. Invoices. Should TAM desire reimbursement of its expenses in connection with this AGREEMENT, TAM shall do so by providing invoices for payment to SCTA consistent with the procedures and formats set forth in EXHIBIT B attached hereto. TAM acknowledges that the reimbursement of such expenses by SCTA with MTC funds under this AGREEMENT shall be subject to and not due hereunder unless and until SCTA has received such funds from MTC.

6. Progress Reports. To submit to SCTA Narrative Progress Reports in the format set forth in EXHIBIT A no later than 10 days prior to the schedule established in EXHIBIT A during the period in which the PROJECT is either ongoing, or any MTC funds thereon have yet to be reimbursed. In addition, TAM agrees to provide SCTA with monthly or quarterly progress reports and financial information as may be reasonably requested by SCTA or MTC.

7. Project Management and Cooperation. To provide management of certain components of the PROJECT that may require TAM's oversight, including responsibility for schedule, budget, and oversight of services performed by others and to be responsible for evaluation, selection, and management of consultants and contractors. TAM understands and acknowledges that the PROJECT is part of a larger multi-jurisdictional program and agrees to coordinate closely with the other agencies involved in the larger program. However, SCTA shall serve as the program sponsor for the funding agreement between MTC and SCTA.

8. Project Completion. TAM acknowledges that SCTA or MTC may redirect funds in the event that PROJECT is delayed or fails to be completed. TAM shall use its best efforts to notify SCTA in writing in the

event that it encounters difficulty that is expected to delay the timely performance of the PROJECT, and SCTA agrees to cooperate with TAM to work out a mutually satisfactory course of action with TAM and MTC.

9. Nondiscrimination. Without limiting any other provision hereunder, TAM shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the SCTA's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this AGREEMENT are incorporated herein by this reference.

10. AIDS Discrimination. TAM agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this AGREEMENT and any extensions of the term.

11. Records Maintenance. TAM shall keep and maintain full and complete documentation of all executed contracts and accounting records concerning all services performed that are compensable under this AGREEMENT and shall make such documents and records available to SCTA for inspection at any reasonable time. TAM shall maintain such records for a period of four (4) years following completion of work hereunder.

## SECTION II

SCTA AGREES:

1. Reimbursement of TAM Expenses. To reimburse TAM for reimbursable eligible expenses incurred by TAM in connection with the PROJECT. SCTA payment to TAM shall be consistent with SECTION I, paragraph 5 and with the procedures specified in EXHIBIT B. Reimbursement of TAM's eligible expenses shall be conditioned upon SCTA's prior receipt of such MTC FUNDS and limited to the amounts set forth in Section III, paragraph 16.

2. Notice of Audit. To provide timely notice if any audit which is to be conducted relating to this AGREEMENT and TAM's receipt of MTC FUNDS.

## SECTION III

IT IS MUTUALLY AGREED:

1. Term. The Termination Date for this AGREEMENT shall be 60 months from the effective date this AGREEMENT as first set forth above unless terminated earlier by the written consent of all the parties hereto. The Termination Date may be modified only if mutually agreed to in writing by TAM and SCTA. Any appropriated but unexpended funds related to this AGREEMENT as of the Termination Date shall revert first to SCTA and shall be available for other eligible uses within the scope of the PROJECT.

2. Discharge. This AGREEMENT shall be subject to discharge as follows:

- a. Any party may terminate this AGREEMENT at any time for cause pursuant to a power created by the AGREEMENT or by law, otherwise than for breach, by giving written notice of termination to the other party which shall specify both the cause and the effective date of termination. Notice of termination under this provision shall be given at least ninety (90) days before the effective date of such termination. Payment shall be made by the SCTA for all services rendered by TAM pursuant to this AGREEMENT up to the time of termination, subject to any expenditure limits applicable to this AGREEMENT.
- b. This AGREEMENT may be canceled by a party for breach of any obligation, covenant, or condition hereof by the other party, upon written notice to the breaching party. With respect to any breach that is reasonably capable of being cured, the breaching party shall have 30 days from the date of the notice to initiate steps to cure.
- c. If the breaching party diligently pursues cure, such party shall be allowed a reasonable time to cure, not to exceed thirty (30) days from the date of the initial notice, unless a further extension is granted by the non-breaching party. On cancellation, the nonbreaching party retains the same rights as a party exercising its right to terminate under the provisions of Section III, paragraph 2(a), except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.
- d. By written consent of all the parties, this AGREEMENT may be terminated at any time.

3. Funding. Qualified expenditures for the PROJECT under this AGREEMENT shall be eligible for reimbursement in accordance with EXHIBIT A when incurred after the APPROVAL DATE, provided they are consistent with the terms and conditions of this AGREEMENT and applicable federal and state laws and regulations, provided further that all requests for reimbursement are submitted to SCTA staff no later than the date which is 58 months from the APPROVAL DATE. In no event shall any portion of FUNDS exceed the FUNDS amount set forth in Section III, paragraph 16. All funding by SCTA will be provided in accordance with EXHIBIT B, and Section I, paragraph 5 of this AGREEMENT.

4. Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of SCTA and TAM:

- a. TAM shall indemnify, defend, and hold harmless SCTA and SCTA's board, representatives, agents, officers and employees from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of TAM, its officers, employees or agents, or subcontractors or any of them by reason of anything done or omitted to be done by TAM under or in connection with any work, authority or jurisdiction delegated to TAM under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, TAM shall fully indemnify and hold SCTA harmless from any liability imposed for injury and damages (as defined by Government Code Section 810.8) or environmental obligations or duties occurring by reason of anything done or omitted to be done

or imposed by obligation of law or assumed by TAM under this AGREEMENT or in connection with any work, authority, or jurisdiction delegated to TAM under this AGREEMENT.

b. SCTA shall indemnify, defend, and hold harmless TAM and TAM’s board, representatives, agents, officers and employees from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of SCTA, its officers, employees or agents, or subcontractors or any of them by reason of anything done or omitted to be done by SCTA under or in connection with any work, authority or jurisdiction delegated to SCTA under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, SCTA shall fully indemnify and hold TAM harmless from any liability imposed for injury and damages (as defined by Government Code Section 810.8) or environmental obligations or duties occurring by reason of anything done or omitted to be done or imposed by obligation of law or assumed by SCTA under this AGREEMENT or in connection with any work, authority, or jurisdiction delegated to SCTA under this AGREEMENT.

5. Notice. Any notice which may be required under this AGREEMENT shall be in writing, shall be effective when received, and shall be given by personal service or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such addresses which may be specified in writing by the parties hereto.

SCTA:

TAM:

\_\_\_\_\_  
SONOMA COUNTY TRANSPORTATION  
AUTHORITY  
490 Mendocino Avenue, Suite 206  
Santa Rosa, CA 95401

\_\_\_\_\_  
TRANSPORTATION AUTHORITY OF MARIN  
900 Fifth Avenue, Suite 100  
San Rafael, CA 94901

By executing this AGREEMENT, each of the parties acknowledges and agrees that the persons identified above, or any other person designated by a party to this AGREEMENT by notice to the other parties, is authorized to execute documents and to bind such party with respect to this AGREEMENT in accordance with the procedures set forth in Section III, paragraphs 6 through 12 below.

6. Additional Acts and Documents. Each party agrees to do all such things and take all such actions and to make, execute, and deliver such other documents and instruments as shall be reasonably requested to carry out the provisions, intent, and purpose of the AGREEMENT.

7. Integration. This AGREEMENT represents the entire AGREEMENT of the parties with respect to the subject matter hereof. No representations, warranties, inducements, or oral agreements have been made by any of the parties except as expressly set forth herein or in other contemporaneous written agreements.

8. Amendment: This AGREEMENT may not be changed, modified, or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this AGREEMENT shall be void and of no effect.

9. Independent Agency. TAM and SCTA renders its services under this AGREEMENT as an independent agency. None of the agents or employees of a party shall be agents or employees of the other parties.

10. Assignment. This AGREEMENT may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other parties.

11. Successors. This AGREEMENT shall be binding upon the successor(s), assignee(s) or transferee(s) of the SCTA or TAM as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this AGREEMENT other than as provided above.

12. Severability. Should any part of this AGREEMENT be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this AGREEMENT which shall continue in full force and effect, provided that the remainder of this AGREEMENT can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

13. Limitation: All obligations of SCTA under the terms of this AGREEMENT are expressly subject to the SCTA's continued authorization to pass-through FUNDS for PROJECT pursuant to applicable funding mechanisms through MTC. If for any reason SCTA's right to the FUNDS should be reduced, terminated, or suspended in whole or part, SCTA shall promptly notify TAM, and the parties shall consult on a course of action. If, after twenty-five (25) business days, a course of action is not agreed upon by the parties, this AGREEMENT shall be deemed terminated by consent of the parties without further obligation or liability to SCTA.

14. Exhibits. Exhibits A through B are hereby incorporated by reference and made a part of this AGREEMENT. The exhibits are as follows:

- EXHIBIT A: SCTA-MTC Bike Share Funding Agreement
- EXHIBIT B: Invoicing Procedure.

15. Survival: The following provisions in this AGREEMENT shall survive the discharge or termination of this AGREEMENT:

- a. As to TAM: Section I, paragraphs 7, 8 and 11.
- b. As to SCTA: Section II, paragraphs 1 and 2.
- c. As to both parties: Section III, paragraphs 2, 4, 5 and 15.

16. Total Cost. The total funding commitment of this AGREEMENT is \$826,000 and will not exceed that amount unless amended in writing by all parties. Funds for the MTC Funding portion shall be made available through this AGREEMENT by SCTA to TAM. Funds for Local Match shall be expended by TAM and documentation of Local Match expenditures shall be submitted to SCTA in accordance with EXHIBIT B. The following table shows the total MTC funding allocation for PROJECT. The local match of 11.47% is in addition to the MTC funding shown below and must be expended in advance of, or concurrent with the expenditure of MTC funds by TAM. MTC funding must be expended in accordance with the provisions in EXHIBIT A. It is anticipated that MTC funding will be expended on equipment and services

under a single contract with SCTA for benefit of both Sonoma and Marin counties. The MTC funding in the cost table below reflects the funding directed to benefit each agency, rather than to be expended by each agency.

Cost Table

	TAM	SCTA	Total
MTC Funding	\$413,000	\$413,000	\$826,000
Local Match	\$47,350	\$47,350	\$94,700
Grand Total	\$460,500	\$460,500	\$921,000

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the Effective Date.

TRANSPORTATION AUTHORITY OF MARIN

SONOMA COUNTY  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_

By: \_\_\_\_\_  
SCTA Chair

ATTEST:

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Executive Director

APPROVED AS TO LEGAL FORM  
FOR TAM:

By: \_\_\_\_\_  
Legal Counsel TAM

By: \_\_\_\_\_  
Legal Counsel SCTA

**COOPERATIVE FUNDING AGREEMENT NO. \_\_\_\_\_**  
**BETWEEN**  
**THE SONOMA COUNTY TRANSPORTATION AUTHORITY**  
**AND**  
**THE TRANSPORTATION AUTHORITY OF MARIN**

**EXHIBIT B**

**INVOICING PROCEDURE**

PROCEDURE FOR INVOICES PREPARED BY TAM FOR SUBMITTAL TO SCTA:

1. TAM shall prepare and submit invoices to SCTA on a calendar quarterly basis within 20 calendar days of the close of each quarter;
2. Each invoice shall include a cover letter signed by TAM's authorized representative that includes the following:
  - reference to this AGREEMENT, including Cooperative Agreement number;
  - a sequential billing number (1, 2, 3, ... etc.)
  - the quarterly period for which the invoice applies;
  - a breakdown of costs incurred by TAM staff and Project Manager, consultant costs, total costs incurred, costs for which TAM is seeking reimbursement and local match;
  - Expenditure Summary Report described in paragraph 4 below;
  - a listing of attachments;
  - contact person and information.
3. SCTA shall reimburse TAM for costs of staff time expended to fulfill the responsibilities of Project Manager, Project Administrator, and technical and administrative support. Costs incurred by TAM staff, Project Manager, and Project Administrator shall be shown on a separate attachment and shall list the name of each person, position title, hours worked, and rate charged. Overhead rate for TAM staff and Project Manager costs shall not exceed 50% above actual hourly wages paid. Costs other than staff costs are non-reimbursable. TAM's staff costs may also be used to fulfill the local match requirement. Local match expenditures must be incurred prior to seeking reimbursement for services provided.
4. EXPENDITURE SUMMARY REPORT

The invoice shall include an Expenditure Summary Report that includes the following information by task:

- 4.1. Budget
- 4.2. Previous Expenditures
- 4.3. Total Expenditures This Period

- 4.4. Reimbursement Requested
- 4.5. Total Expenditures to Date (including this Invoice)
- 4.6. Local Match
- 4.7. Totals

II. INVOICING PROCEDURE FOR REIMBURSEMENT OF EXPENSES INCURRED BY TAM'S CONSULTANT(S)

SCTA shall reimburse TAM for consultant costs incurred for the performance, in part or in whole, of the Scope of Work shown in EXHIBIT A. TAM shall ensure that consultant invoices are prepared in accordance with the invoicing procedure set forth below.

1. GENERAL REQUIREMENTS

1.1. Consultant shall prepare invoices on a monthly basis for each complete calendar month. Invoices shall be submitted within 30 calendar days after months' end to the Project Administrator.

1.2. Each invoice shall bear the following identification:

- 1.2.1. Contract number.
- 1.2.2. The sequential billing number under the Agreement with TAM (1, 2, 3, etc.).
- 1.2.3. Consultants' internal invoice number.
- 1.2.4. Date of invoice.
- 1.2.5. Calendar period covered by invoice.

1.3. The invoice should bear the following certification signed by an officer of the firm:

"I hereby certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed."

Signed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Invoice No. \_\_\_\_\_

1.4 The invoice must be accompanied by the following:

- 1.4.1 A transmittal letter, stating the period covered and briefly highlighting overall project status and any significant scope, schedule or budget issues.
- 1.4.2 Monthly Progress Report.
- 1.4.3 Budget Status Summary by task. (See item 4)

2 LABOR COSTS (INCLUDING FEE)

Labor Costs shall be based on Federal Acquisition Regulations (FAR), and shall include three elements: the Direct Salary Costs (actual wages paid), the Multiplier, and the Fee. All should be shown on the invoice by Task in the following manner:

2.1 The Direct Salary Cost calculations should be shown as follows:

- 2.1.1 Employee name and position.
- 2.1.2 Hourly rate paid.
- 2.1.3 Number of hours worked.
- 2.1.4 Total amount paid to employee.
- 2.1.5 Sum of all amounts paid to all employees.

2.2 The FAR Multiplier should be stated and applied to the result obtained in item 2.1.5.

2.3 The Fee (not to exceed 10%) should be applied to the result obtained in item 2.2. The results of this operation are the Total Direct Labor Costs.

2.4 The Total Multiplier (FAR plus fee) shall not exceed 3.00.

### 3. DIRECT COSTS

Direct Costs are those costs directly identifiable with the performance of the specific work of the Agreement which are not included in the Direct Salary Costs, the Multiplier or the Fee. Costs not identified as Direct Costs in the Agreement will not be reimbursed. Direct Costs should be invoiced by Task as follows:

3.1 For items for which a unit rate exists in the Agreement, show the following:

- 3.1.1 Description of item.
- 3.1.2 Rate per unit in Agreement.
- 3.1.3 Number of units for which compensation is claimed.
- 3.1.4 Total charge for item.
- 3.1.5 Sum of all charges for all items having a unit rate in the Agreement.

3.2 For items such as sub-consultants chargeable under the Agreement at the actual cost invoiced to consultant (usually furnished by a third party), show and provide the following:

- 3.2.1 Description of item.
- 3.2.2 Name of provider of item.
- 3.2.3 Amount being charged for each item.
- 3.2.4 A copy of the invoice for an item or a single month's billing of \$500 or more.
- 3.2.5 Sum of all charges for "at invoiced cost" items.

3.3 Show the sum of items 3.1.5 and 3.2.5.

3.4 Apply the handling fee, not to exceed five percent (5%), to the result obtained in item. The results are the Total Direct Costs.

4. BUDGET STATUS SUMMARY

4.1 The invoice shall include a Budget Status Summary that includes the following by task:

- a. Amount Budgeted
- b. Previously Invoiced Amount
- c. Current Invoice Amount
- d. Total Invoiced to Date including this invoice
- e. Percent Expended
- f. Percent Complete (qualitative)
- g. Balance Remaining assuming payment of the invoice with no changes

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## SUPPLEMENT 3 TO MASTER FUNDING AGREEMENT

This Supplement No. 3 to Master Funding Agreement (“Supplement” or “Agreement”) is entered into this 14<sup>th</sup> day of July, 2018, by and between the Metropolitan Transportation Commission (hereafter “MTC”) and the Sonoma County Transportation Authority (hereafter “AGENCY”), dated July 1, 2017.

Pursuant to this Supplement, MTC agrees to provide an amount not to exceed eight hundred, twenty-six thousand dollars (\$826,000) in MTC Exchange Program Funds to AGENCY to fund a Bike Share Capital Program (as more fully described in Annex I hereto, the “Supplement Project”). The estimated budget and payment provisions for the Supplement Project scope of work is attached as Annex II hereto.

MTC will reimburse AGENCY for its actual eligible costs incurred for completed Supplement Project milestones, deliverables, or provisions described in Annex II hereto.

The Supplement Project work will commence July 1, 2018, and be completed no later than June 30, 2023.

The clauses selected below and attached as exhibits to the Master Funding Agreement shall apply to AGENCY’s performance of the applicable Supplement Project scope of work hereunder:

- X Exhibit B-1, Additional Terms and Conditions (General), Paragraph A
- X Exhibit B-1, Additional Terms and Conditions (General), Paragraph B
- Exhibit B-2, Additional Terms and Conditions (Federally Required Clauses)
- Exhibit B-3, Additional Terms and Conditions (State Required Clauses)
- Exhibit B-4, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Non-Federally-Funded Agreements)
- Exhibit B-5, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Federally-Funded Agreements)
- Exhibit B-6, Additional Terms and Conditions (Regional Toll Funds including RM1, RM2, and AB1171)
- Exhibit B-7, Additional Terms and Conditions (Regional Discretionary Federal Funds including STP and CMAQ)

The MTC Commission approved this project on November 8, 2017. The MTC Programming and Allocations Committee approved the funding agreement on February 14, 2018. The funding arrangements are further described under MTC Resolution Nos, 3925, revised, 3989, revised, 4035, Revised, and 4202, Revised.

To the extent requested by the MTC Project Manager, AGENCY shall submit communications and required documentation, including but not limited to invoices, requests for contract modifications, and information on payments received and made to subconsultants, subconsultant utilization, and if applicable, certified payrolls, to the MTC Project Manager or his or her designee via one or more web-based systems designated by MTC to which MTC will provide AGENCY with system access. MTC may withhold payment of invoices pending receipt of such communications and required documentation via the applicable web-based system.

Except for invoices submitted by AGENCY, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To MTC:                      Attention: Kara Oberg  
Metropolitan Transportation Commission  
375 Beale Street, Suite 800  
San Francisco, CA 94105  
Email: koberg@bayareametro.gov

To AGENCY:                Attention: Dana Turrey  
Sonoma County Transportation Authority  
490 Mendocino Avenue #206  
Santa Rosa, CA 95401  
Email: dana.turrey@scta.ca.gov

This Supplement is supplemental to the Master Funding Agreement; all terms and conditions of the Master Funding Agreement, as may be amended, remain unchanged hereby.

Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Master Funding Agreement.

**METROPOLITAN TRANSPORTATION  
COMMISSION**

**SONOMA COUNTY  
TRANSPORTATION AUTHORITY**

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Steve Heminger, Executive Director

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Suzanne Smith, Executive Director

**ANNEX I: SCOPE OF WORK**

MTC/SCTA BIKE SHARE CAPITAL PROGRAM AGREEMENT

DETAILED SCOPE FOR TASKS AND PRODUCTS

Project Title

Bike Share Capital Program
----------------------------

Project Manager(s)

Name	Agency
Dana Turrey	SCTA (AGENCY)
Kara Oberg	MTC

Overview & Description

The goal of the Bike Share Capital Program is to expand bicycle access and use through bike sharing and to facilitate multimodal transportation in connection with transit and other regional bike share operators. This funding is intended to help project sponsors with capital purchases and implementation costs, including outreach. Ongoing bike share operations are not eligible. Efforts will be made to ensure staff time and resources will be spent only on transportation equipment and outreach activities that meet local needs while being adaptable to any unforeseen circumstances.

Fiscal Management

Pursuant to this Supplement and subject to annual appropriations and/or obligation of funding, MTC agrees to provide an amount not to exceed eight hundred, twenty-six thousand dollars (\$826,000) in MTC Exchange Program funds. The AGENCY shall not incur expenses of funds until after the effective date of the Notice to Proceed (NTP) by MTC. A NTP will be issued for each fiscal year, issuance of which is subject to MTC’s receipt of bridge toll funding.

Previous and Ongoing Work

Project shall be consistent with previous and ongoing work, including:

- Regional Transportation Plan, Countywide Transportation Plans, and Countywide Bicycle and Pedestrian Master Plans
- Corridor Management Plans, corridor studies and related planning activities
- Coordinated land use and travel forecasting

Key Tasks

Consistent with the region’s long-term goals and objectives as established in the Bike Share Capital Program, AGENCY shall conduct the following tasks.

**Task 1: Program Development**

RECIPIENT shall launch a bike sharing system in a service area which includes cities along the SMART Corridor in Sonoma and Marin County within 24-months of the Effective Date. To help

promote safety, equity and bike interoperability in the Bay Area, RECIPIENT’s bike share system must include the following:

1. A service area that includes at least 20% within a ¼ mile of a Community of Concern (COC), Community Air Risk Evaluation (CARE) Program Area, or in communities with a developed community-based transportation plan for low income or disadvantaged communities;
2. Use of Clipper as a membership identifier;
3. Bicycle safety standards which meet or exceed International Organization for Standardization (ISO) 4210: Safety Requirements for City and Trekking Bicycles;
4. Quarterly trip and membership data sharing with MTC; and
5. Annual Program data and analysis related to mode shift, safety, public health and equity.

RECIPIENT shall develop targets related to safety, equity, and mode share, such as reducing adverse health impacts associated with road safety and physical inactivity, decreasing the share of lower income resident’s household income consumed by transportation and increasing non-auto mode share, as similarly stated in the Plan Bay Area’s 2040 Target Assessment<sup>1</sup>. Once the targets are set, RECIPIENT shall create plans for:

1. Outreach – RECIPIENT shall produce and submit an outreach plan. RECIPIENT acknowledges that approximately 18% of the capital funding, or \$126,000 shall be spent on tasks related to Outreach. Following submittal and MTC feedback, the system shall conduct outreach in accordance with such plan.
2. Marketing – RECIPIENT shall produce and submit a marketing plan. The marketing and outreach plans may be produced as one combined document and shall include at a minimum, demonstration events, social media outreach, programs, partnership and other efforts to educate residents about bike share. A portion of the marketing plan shall include marketing and outreach to low-income communities, disadvantaged communities, and communities for which English is not the native language.
3. Data - RECIPIENT shall collect, analyze and report annual Program data related to mode shift, safety, public health and equity to evaluate the Program’s effectiveness in meeting Program targets.
4. Funding - RECIPIENT shall provide a detailed funding plan and commit to ongoing operations costs, including staff time, for the duration of this Agreement.

**Deliverables:**

- 1.a Program targets for mode shift, safety, public health and safety
- 1.b Outreach Plan
- 1.c Marketing Plan
- 1.d Data Plan
- 1.e Funding Plan
- 1.f. Bi-monthly participation in meetings with MTC

**Task 2: Program Implementation:**

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<sup>1</sup> Plan Bay Area 2040, Goals and Targets  
<https://www.planbayarea.org/2040-plan/plan-details/goals-and-targets>

- 2.a Program Manager – RECIPIENT shall identify a full-time staff as Program Manager and primary MTC point of contact
- 2.b RFQ, RFP or RFI - RECIPIENT shall select a vendor that meets the contract terms listed in the Agreement, through a RFP/RFQ or Permit.
- 2.c Vendor Scoring Panel - RECIPIENT shall create a vendor scoring panel to help evaluate vendor options.
- 2.d Implementation of Outreach Plan – RECIPIENT shall conduct outreach for implementing a bikeshare system.

**Deliverables:**

- 2.b RFQ, RFP or RFI
- 2.c Vendor Scoring Panel
- 2.d Implementation of Outreach Plan

**Task 3. Capital Purchase/ Lease:**

3.a Capital Purchase – RECIPIENT shall be reimbursed for vendor costs, including engineering or preconstruction activities, permitting/agreements and technical analysis, up to 10-15% of the capital purchase total or \$105,000, and the capital leases or purchases, which when totaled will not to exceed \$700,000.

**Deliverables:**

- 3.a Receipt for Capital Purchase, or lease, and vendor costs.

**Task 4. Reporting and Evaluation**

- 4.a Quarterly User Reports - RECIPIENT shall submit quarterly user reports to MTC.
- 4.b Annual Program Goals/Targets Reporting and Analysis – RECIPIENT shall submit annual reporting on status of Program goals and targets.
- 4.c Draft Final Evaluation Report - RECIPIENT shall submit a draft Evaluation Report detailing the system usage, and the Outreach, Marketing and Data plans, status of reaching goals, as well as lessons learned.
- 4.d Final Evaluation Report – RECIPIENT shall submit a final Evaluation Report detailing the system usage, and the Outreach, Marketing and Data plans and, status of reaching goals, as well as lessons learned. The Report shall incorporate feedback from MTC. The Report shall be submitted within 24-months of the bike share system launch.

**Deliverables:**

- 4.a Quarterly User Reports
- 4.b Annual Program Goals/Targets Reporting and Analysis
- 4.c. Draft Final Evaluation Report
- 4.d. Final Evaluation Report

Schedule

<u>Products/ Deliverables/ Tasks</u>	<u>Delivery Date(s)*</u>
1.a Program targets for mode shift, safety, public health and safety	June 30, 2019
1.b Outreach Plan	June 30, 2019
1.c Marketing Plan	June 30, 2019
1.d Data Plan	June 30, 2019
1.e Funding Plan	June 30, 2019
1.f. Bi-monthly participation in meetings with MTC	Bi-monthly
2.b RFQ, RFP or RFI	December 31, 2018
2.c Vendor Scoring Panel	June 30, 2019
2.d Implementation of Outreach Plan	Ongoing
3.a Receipt for Capital Purchase, or lease, and vendor costs.	Ongoing
4.a Quarterly User Reports	Quarterly
4.b Annual Program Goals/Targets Reporting and Analysis	Annual
4.c. Draft Final Evaluation Report	March 31, 2021
4.d. Final Evaluation Report	June 30, 2021

\* Dates may be changed by mutual agreement of MTC and AGENCY

Reporting Requirements

AGENCY must provide summary of work accomplished with each invoice submitted, and how activities achieve the tasks outlined in this Annex. Additional invoicing requirements are listed in Annex II.

Additional Terms and Conditions

Annex II Cost Reimbursement  
Annex III Insurance Provisions  
Annex IV Special Conditions Relating to Personally Identifiable Information

**ANNEX II:  
BUDGET AND PAYMENT PROVISIONS**

**COST REIMBURSEMENT**

MTC shall reimburse AGENCY for all expenses deemed reasonable and necessary by MTC incurred in the performance of this Agreement in an amount not to exceed eight hundred and twenty-six thousand dollars (\$826,000). Estimated costs are shown in the table below. Such reimbursement shall include travel and personal expenses incurred by employees or agents of AGENCY in accordance with 48 Code of Federal Regulations Part 31 or Office of Management and Budget Circular A-122, as applicable.

<b>Project Tasks</b>	<b>Estimated Reimbursement Total</b>
Task 1: Program Development	\$0
Task 2: Program Implementation of Outreach	\$126,000
Task 3: Capital Purchase / Lease	\$700,000
Task 4: Reporting and Evaluation	\$0
<b>Total not to exceed:</b>	<b>\$826,000</b>

AGENCY shall submit invoices for services rendered on a monthly basis covering fees and expenses for a single calendar month, identifying the work for which payment is requested; the hours worked; any authorized expenses, together with receipts for such expenses; the amount requested; and the cumulative amount billed and paid under this Agreement. If applicable, AGENCY’s final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Annex IV, Special Conditions Relating to Personally Identifiable Information.

All invoices shall be submitted electronically via email to MTC at [acctpay@bayareametro.gov](mailto:acctpay@bayareametro.gov) or in writing and delivered or mailed to MTC as follows:

Attention: MTC Accounting Section  
Bay Area Metro Center  
375 Beale Street, Suite 800  
San Francisco, CA 94105

Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative.

## ANNEX III

### INSURANCE PROVISIONS

A. Minimum Coverages. The insurance requirements specified in this section shall cover AGENCY's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that AGENCY authorizes to work under this Agreement (hereinafter referred to as "Agents.") AGENCY or its Agents shall, at their own respective expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

AGENCY is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, AGENCY shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling AGENCY's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event AGENCY or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that AGENCY's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, AGENCY shall provide MTC with satisfactory evidence of compliance with the insurance requirements of this section.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of AGENCY's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as AGENCY is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of AGENCY and AGENCY's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$1,000,000, a products/completed operations aggregate liability limit of not less than \$1,000,000 and

Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

MTC and those entities listed in Part 3 of this Attachment C (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from AGENCY's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by AGENCY and AGENCY's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Excess or Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim.

The policy shall provide coverage for all work performed by AGENCY and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the AGENCY. No contract or agreement between AGENCY and any subcontractor/consultant shall relieve AGENCY of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by AGENCY and any subcontractor/consultant working on behalf of AGENCY on the project.

6. Property Insurance. Property Insurance covering AGENCY'S own business personal property and equipment to be used in performance of this Agreement AND materials or property to be purchased and/or installed on behalf of MTC (if any). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

MTC (and those entities listed in Part 2 of this Attachment C, if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds.

7. Employee Dishonesty/Crime Insurance. An Employee Dishonesty insurance policy covering RECIPIENT's employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$250,000; and (b) Client Property Blanket Bond - \$250,000. RECIPIENT shall reimburse MTC for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys' fees and any other fees associated with a claim. In lieu of a Client Property Blanket Bond, the policy shall contain a Joint Loss Payee endorsement or other Third Party coverage naming MTC.

B. Acceptable Insurers. All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

C. Self-Insurance. AGENCY's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

D. Deductibles and Retentions. AGENCY shall be responsible for payment of any deductible or retention on AGENCY's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC seeks coverage as an additional insured under any AGENCY insurance policy that contains a deductible or self-insured retention, AGENCY shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of AGENCY, subconsultant, subcontractor, or any of their employees, officers or directors, even if AGENCY or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, AGENCY shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, AGENCY shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of AGENCY's personnel, subcontractors, and equipment have been removed from MTC's property, and the work or services have

been formally accepted. AGENCY must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, AGENCY shall deliver to Ebix, MTC's authorized insurance consultant, insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and endorsements referred to above and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

**AGENCY shall submit certificates of insurance to:**

**Ebix BPO  
P.O. Box 100085-M8  
Duluth, GA 30096-9302  
or  
Email to [mtc@ebix.com](mailto:mtc@ebix.com)  
or  
Fax to 1-888-617-2309**

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by AGENCY are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by AGENCY pursuant hereto, including, but not limited to, liability assumed pursuant to Section 9 of this Agreement.

## PART 2

The following entities are to be named as Additional Insureds under applicable sections of this Attachment C and as MTC Indemnified Parties, pursuant to Section 9 of the Agreement.

Metropolitan Transportation Commission

## ANNEX IV

### **SPECIAL CONDITIONS RELATING TO PERSONALLY IDENTIFIABLE INFORMATION**

AGENCY will have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by MTC or AGENCY that identifies or describes a person or can be directly linked to a specific individual. Examples of PII include name, address, phone or fax number, signature, credit card information, bank account number, or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

#### 1. Right to Audit

AGENCY shall permit MTC and its authorized representatives to audit and inspect: (i) AGENCY’s facilities where PII is stored or maintained; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) AGENCY’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying AGENCY’s compliance with this Agreement, and all applicable laws.

#### 2. General Confidentiality of Data

All PII made available to or independently obtained by AGENCY in connection with this Agreement shall be protected by AGENCY from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to MTC. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement.

AGENCY agrees to properly secure and maintain any computer systems (hardware and software applications) that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII that may be used, transmitted, or stored on such systems in the performance of this Agreement.

AGENCY is prohibited from storing PII on portable media including, but not limited to, laptops, thumbdrives, disks and so forth.

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, AGENCY agrees to retain PII for no longer than 30 days. At the conclusion of this retention period, AGENCY agrees to use Department of Defense (“DoD”) approved methods to permanently remove PII from any files. Discarded PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips (“Storage Media”). AGENCY agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. AGENCY also agrees to use DoD approved methods to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this Agreement, AGENCY shall submit a certification to the MTC Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of this Attachment D, Special

Conditions Relating to Personally Identifiable Information.” These requirements shall survive termination or expiration of this Agreement.

### 3. Compliance with Statutes and Regulations

AGENCY agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et.seq.*) and in the California Streets and Highways Code Section 31490. In addition, AGENCY warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and MTC relating to the handling and confidentiality of PII, including the terms and conditions contained in this Attachment D, Special Conditions Relating to Personally Identifiable Information and agrees to indemnify MTC against any loss, cost, damage or liability by reason of AGENCY’s violation of this provision.

### 4. Subconsultants

MTC approval in writing is required prior to any disclosure by AGENCY of PII to a subconsultant or prior to any work being done by a subconsultant that entails receipt of PII. Once approved, AGENCY agrees to require such subconsultant to sign an agreement in substantially identical terms as this attachment, binding the subconsultant to comply with its provisions.

### 5. AGENCY Guarantees

AGENCY shall not, except as authorized or required by its duties by law, reveal or divulge to any person or entity any PII which becomes known to it during the term of this Agreement.

AGENCY shall keep all PII entrusted to it completely secret and shall not use or attempt to use any such information in any manner which may injure or cause loss, either directly or indirectly, to MTC.

AGENCY shall comply, and shall cause its employees, representatives, agents and subcontractors to comply, with such directions as MTC may make to promote the safeguarding or confidentiality of all its resources.

If requested by MTC, AGENCY shall sign an information security and confidentiality agreement provided by MTC and attest that its employees, representatives, agents, and subcontractors involved in the performance of this Agreement shall be bound by terms of a confidentiality agreement with AGENCY substantially the same in its terms.

### 6. Notice of Security Breach

AGENCY shall immediately notify MTC when it discovers that there may have been a breach in security which has or may have resulted in compromise to PII. For purposes of this section, immediately is defined as within two hours of discovery. The MTC contact for such notification is as follows:

Privacy Officer  
privacyofficer@bayareametro.gov  
(415) 778-6700

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