

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND WAGEWORKS

This Agreement is entered into this ____ day of February 2018, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and WageWorks, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing services for registering, processing, purchasing, and distributing employee commute benefits for the County's Commuter Bus and Commute Alternatives Program; and

Whereas, Contractor has been providing the services set forth herein since December 1, 2015, to the present pursuant to the terms set forth herein; and

Whereas, the County has paid Contractor the amount of \$1,317,503.69 for the service period from December 1, 2015, through June 30, 2017 (last payment in May 2017), and the parties agree that Contractor has been paid in full for said time period; and

Whereas, for the service period from July 1, 2017, to March 31, 2018 (i.e., payments that were due to be paid in June 2017 through and including February 2018), the parties agree that the County owes Contractor the sum of \$710,104.77 pursuant to the terms set forth herein and that payment of said amount will represent payment in full for the services provided during said time period; and

Whereas, the County desires that the Contractor continue to provide the services through June 30, 2018, with the County's last payment due in June 2018 for the service month of July 2018, with Wageworks continuing to provide Commuter Benefit Program claims processing services following the Agreement's June 30, 2018 termination ("run out services") as set forth in Exhibit B herein.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A	Services
Exhibit B	Payments and Rates

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed One Million Thirty Five Thousand dollars

(\$1,035,000) which maximum amount includes (i) \$710,104.77 for services rendered during the period July 1, 2017, to March 31, 2018, and (ii) the anticipated amount for the period April 1, 2018 through June 30, 2018. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement. All payments for fees shall be made within thirty (30) days from the date of the invoice unless otherwise stated in Exhibits A and B. County shall pay by a WageWorks initiated ACH Debit, as further directed in Exhibits A and B.

Notwithstanding the foregoing, the parties agree that: (i) for the service period December 1, 2015, through June 30, 2017, the County has made all payments in full totaling \$1,317,503.69 and no further amounts are due to Contractor for services rendered during said time period, which the parties hereby agree have already been paid in full; and (ii) for the period July 1, 2017 to March 31, 2018, the County hereby agrees to make such payments in the total amount of \$710,104.77 by February, 28, 2018, and the parties agree that payment of said amount will represent payment in full for the services provided during said time period.

Contractor has the right to suspend services to the County in the event fees are not paid within sixty (60) days of invoicing provided that Contractor has sent prior written notice of intent to suspend services. County shall be responsible for paying reasonable costs and expenses incurred by Contractor as a consequence of any failure of County to pay undisputed amounts more than sixty (60) days past due.

If payments are not made within thirty (30) days of the County's approval of the invoice, the charges shall bear interest from the date of approval until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (the "Interest Rate"). County must submit written notice to WageWorks and supporting documentation as to any Fees it disputes within thirty (30) days from the date of the invoices. WageWorks shall provide a written response within thirty (30) days of the notice of dispute. Upon resolution County shall pay any and all outstanding amounts within five (5) business days of such resolution County hereby authorizes a "pre-note" for the sole purpose of testing the accuracy of electronic transactions for any benefit funding (to the extent applicable) and Fee payment arrangement under which WageWorks is to issue an ACH debit. This pre-note will not result in a charge to County and shall be issued at least thirty (30) days prior to the effective date of the first benefit month under this Agreement to ensure all systems are properly functioning.

Notwithstanding anything in this Agreement (or any Exhibit) to the contrary, with the sole exception of the payments due for the service period July 1, 2017 to March 31, 2018, so long as such payments are made by February 28, 2018, if County fails to pay Contractor within the required time period any undisputed amount that is more than sixty (60) days past due (including, without limitation, Fees and benefit claims funding amounts) as a result of any service provided by Contractor to County (including, without limitation, the Services), Contractor shall be permitted to deduct the past due amount from any funds provided by County pursuant to this Agreement which are held by Contractor without prior notice and without prior approval of the County. Contractor has the right to suspend services to the County in the event undisputed amounts are not paid within sixty (60) days of invoicing provided that Contractor has sent prior written notice of intent to suspend services.

County acknowledges and agrees that all benefit funding amounts provided to Contractor pursuant to the terms of this Agreement shall be provided from County's general assets. In no event will County provide funds to Contractor that consist of plan assets or participant/employee contributions, whether made by salary reduction or otherwise, as those terms have their general meanings under ERISA. All benefit funding amounts provided by County to Contractor shall not be segregated or set aside in a trust or escrow account by Contractor. Upon termination of this Agreement, Contractor shall provide an accounting and reconciliation to County and shall pay to County any amount due based on the terms and conditions of each applicable Exhibit to this Agreement. County understands that although its current Commuter program is not subject to

ERISA, County is willing to comply with above provision in the event that IRC changes, making the Plan subject to ERISA.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall cover and be effective from December 1, 2015, through June 30, 2018.

5. Termination

This Agreement may be terminated by Contractor or by the Director of the Office of Sustainability or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to the effective date of termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have thirty (30) business days after receipt of such notice to respond and cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services under this Agreement pending the resolution of the process described in this paragraph.

WageWorks may terminate this Agreement immediately if Wage Works (i) voluntarily files for bankruptcy; (ii) admits its insolvency; (iii) takes action to commence winding down its business; or (iv) is named as a defendant in any involuntary bankruptcy or insolvency proceeding.

Either party shall have the right to terminate a Service if a material change to such Service is required as a result of a legislative and/or regulatory change. Upon receipt of written notice of such change, the parties shall meet and confer in good faith. If the parties do not reach agreement on any such modification of the Service, then either party shall have the right to terminate the Service thereafter upon thirty (30) days' prior written notice to the other party.

Upon termination for any reason, all rights and licenses granted hereunder to use the WageWorks System (including, without limitation WageWorks software) shall immediately terminate.

6. Contract Materials

At the end of this Agreement, or in the event of termination, each party, upon the request of the other, will return or destroy all copies of all of the other's Confidential Information in its possession or control (unless impracticable), except to the extent such Confidential Information must be retained pursuant to a party's document retention policy or if permitted by law.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. Hold Harmless, Warranty and Limitation of Liability

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from the negligence of Contractor in the performance of any work or services required of Contractor under this Agreement, including any of the following:

- i. injuries to or death of any person, including Contractor or its employees/officers/agents;
- ii. damage to any property of any kind whatsoever and to whomsoever belonging;
- iii. any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended.

However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct. In addition, although Contractor serves as the County's agent for services rendered pursuant to this Agreement, the County remains solely and completely responsible for all activities of the Commute Alternatives Program (the "Plan") sponsored by the County, including compliance, if applicable, with the Employee Retirement Income Security Act of 1974, as amended, ('ERISA'), the Health Insurance Portability and Accountability Act of 1996, as amended, ('HIPM'), the Internal Revenue Code of 1986, as amended, (the "Code"), and state and local escheat and unclaimed property laws. The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code. In addition, Contractor shall not be responsible for the following:

1. verifying the completeness or accuracy of any information provided by County, or rekeying or reprocessing incorrect data;
2. developing County's policies and procedures for its Plan;
3. independently determining fraudulent activities by County employees or beneficiaries;
4. providing legal or tax advice to County or County employees or beneficiaries;
5. reporting any information to any government agencies, or withholding from any Plan benefits amounts necessary to cover any income, employment or other payroll taxes;
6. negotiating any Services on behalf of County employees or beneficiaries; and
7. activities or services not specified in this Agreement or the Addenda attached hereto.

b. Exclusive Warranty

THE WAGWORKS SYSTEM AND SERVICES ARE PROVIDED "AS IS" WITHOUT ANY FURTHER WARRANTY OF ANY KIND (EXPRESS OR IMPLIED) INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

c. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS, LOSS OF DATA OR COST OF SUBSTITUTE SERVICES) ARISING OUT OF OR IN CONNECTION WITH ANY AGREEMENT BETWEEN THE PARTIES, THE WAGWORKS SYSTEM

OR THE SERVICES PERFORMED THEREUNDER UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE). IN ADDITION, EXCEPT FOR BREACHES OF CONFIDENTIALITY OR PRIVACY, WAGeworks SHALL ONLY BE LIABLE TO THE COUNTY FOR ANY DIRECT DAMAGES IN AMOUNT EQUAL TO (A) ACTUAL DAMAGES OR (B) THE FEES PAYABLE TO WAGeworks FOR THE SERVICE(S) GIVING RISE TO THE CLAIM DURING THE PLAN YEAR IN WHICH THE EVENT OCCURS, WHICHEVER IS LESS.

Notwithstanding any other provision of this Agreement, neither party shall be liable in any way for any delay or any failure of performance of a Service or for any loss or damage due to acts of nature, acts of terrorism or a public enemy, war (whether declared or not), acts of the Government, earthquake, fire, floods, degradation or disruption of any communication service not under a party's control, loss of electrical power, congestion, failure or other inability to access the Internet, provided prompt notice thereof is given to the other party.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party without the prior written consent of County, which consent will not be unreasonably withheld. Any such assignment without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

Contractor utilizes subcontractors to perform certain Services. Contractor shall be liable for the acts or omissions of its subcontractors.

10. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. Insurance carrier(s) will endeavor to provide 30 days' notice of cancellation or non-renewal, 10 days for non-payment of premium..

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees and officers while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- i. Comprehensive General Liability..... \$1,000,000
- ii. Professional Liability..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on the General Liability (but only to the extent of liabilities falling within WageWorks indemnity obligations pursuant to the terms of this agreement), which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if applicable and attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any

services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting: Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as allowed by law.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records; Right to Monitor and Audit

Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

No more often than once per year and upon reasonable advance notice, Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed. Any assistance required of Contractor under this Section 14 shall be billed at \$150.00 per hour.

15. Confidentiality

All data produced or compiled by Contractor shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of County. All financial, statistical, personal, technical, and other data and information relating to the County's operations which is made available to the Contractor in order to carry out this Agreement shall be presumed to be confidential. Contractor shall protect said data and information from unauthorized use and disclosure by the observance of the same or more effective procedures as the County requires of its own personnel. The Contractor shall not, however, be required by this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the Agreement or is rightfully obtained from third parties.

WageWorks owns and shall retain all right, title and interest in and to all Wage Works' proprietary software and Wage Works' proprietary processes, used in connection with the provision of services (the "WageWorks System"). County may not use such software or proprietary processes following the termination of this Agreement.

WageWorks grants County and County employees and beneficiaries a limited, non-exclusive, non-transferable license to access and use the WageWorks System during the Term of this Agreement, solely and exclusively: (a) in accordance with this Agreement and any instructions, user guides, and policies made available by WageWorks; and (b) for the purpose of receiving the Services provided by WageWorks under and in accordance with this Agreement.

Without limiting the generality of the foregoing, except where required by law, County may not, (a) without WageWorks' prior written consent, disclose or provide access to the WageWorks proprietary software or proprietary processes to any third parties, or (b) duplicate the WageWorks System or use the same in connection with any other benefits program (including County programs).

In addition, notwithstanding the provisions of this Section 15 (Confidentiality) of the Agreement, in the process of providing Services hereunder, WageWorks may be required to disclose to transit, parking and van pool operators certain personal information of Participants, such as name, address, or license plate numbers. The information is required by such operators as a condition precedent to receiving their services. The information that WageWorks will provide to these entities is the same information a Participant would have provided to obtain services directly from such operators. WageWorks makes no representation or warranty, as to those entities' policies and procedures for maintaining confidentiality or privacy of such data. Furthermore, certain transit operators require the disclosure of County's name in order to allow WageWorks to procure transit media. County hereby permits the disclosure of its name to such operators.

16. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

17. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

18. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Jim Eggemeyer, Director, Office of Sustainability
Address: 455 County Center, 4th Floor, Redwood City, CA 94064
Telephone: 650.363.4663
Email: jmullin@smcgov.org

In the case of Contractor, to:

Name/Title: Jose Cisneros
Address: 2609 Cherry Sage Drive, Flower Mound, TX 75022
Telephone: 650.577.6361
Email: Jose.Cisneros@WageWorks.com

With a Copy To:

Name/Title: WageWorks, Inc.
Attn: General Counsel
Address: 1100 Park Place, 4th Floor
San Mateo, CA 94403

19. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

20. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for Services it performs under this Agreement at Contractor's own expense prior to commencement of said Services.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: WAGEWORKS

<u>Edm Jiffa</u>	<u>2/7/2018</u>	<u>Edward Taffet</u>
Contractor Signature	Date	Contractor Name (please print)

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

Date:

EXHIBIT A – SERVICES

The County has established a commuter benefit program providing qualified transportation benefits to the extent permitted under IRS Code 132(f) and existing and applicable laws and regulations (the "Commuter Benefit Program" also known as "Commuter Order Model"). The County, as the administrator of the Commuter Benefit Program, remains responsible for maintaining and operating the Commuter Benefit Program, including paying all benefits owed or established under the Commuter Benefit Program, to its Participants. WageWorks ("Contractor") shall provide certain administrative services with respect to the Commuter Benefit Program as set forth below and under the terms and conditions provided herein.

Contractor shall also provide commuter express benefits ("Commuter Express") administrative services to the County as stated below based on the number of enrolled WageWorks Accounts with active orders at each monthly order deadline. As of the effective date of this agreement, there is an average of 1,100 County employees participating in the Commuter Benefit Program who order transit ticket and parking pass benefits each month. The volume of County employees' transit ticket and parking pass orders fluctuates monthly, therefore Contractor's services and payments will fluctuate accordingly.

1. Definitions

Capitalized terms in Exhibits A and B shall have the same meaning as in the Agreement. If the meaning of such terms in these Exhibits contradicts their definition in the Agreement, then the language of the Agreement shall control.

- a. **"Available Benefits"** means the amount of commuter benefits available to a Participant through the Commuter Benefit Program, subject to the terms and conditions of the Commuter Benefit Program and IRS Code section 132(f) and the applicable and existing laws and regulations, including the monthly statutory benefit limits.
- b. **"Benefit Period"** means the calendar month coverage period, as applicable, during which transit benefits are provided to a Participant, as determined by WageWorks.
- c. **"Enrollment Deadline"** means the date by which an eligible Employee must enroll in the Commuter Benefit Program or a Participant must make changes to elections in the Commuter Benefit Program to be effective in the subsequent Benefit Period.
- d. **"Invoice Amount"** means the fees and charges described in Exhibit B.
- e. **"Participant Monthly Fee"** is the monthly fee defined in Exhibit B (Payments and Rates).
- f. **"Participant"** means a County employee or affiliate enrolled in the Commuter Benefit Program or receiving benefits through the Commuter Benefit program.

2. Scope of Core Services (As may be applicable to Commuter Order Model and Commuter Express, respectively)

a. WageWorks Accounts

Each WageWorks Transit and/or Parking Account ("Account") enables a Participant to purchase transit media or place a parking order on the website (www.wageworks.com). There is no cash value to any Account. The value associated with an Account is not usable anywhere other than on the website. An Account is not, and may not be used as, an electronic gift certificate.

b. Funding of WageWorks Accounts

The County must activate each Participant Account by providing WageWorks with authorization to issue a debit against the County's direct deposit account (DDA) using the Automated Clearing Housing (ACH) process. Any Account purchase must be funded with sufficient amounts of money.

WageWorks will contact the County if the ACH failed (e.g., because the account number was wrong or there was insufficient balance to correct the funding deficiency). Failure to correct the funding deficiencies will result in deactivation of Accounts. There will also be a \$30.00 charge for any returned or reversed ACH due to lack of funds.

Once funds have been added to an Account, no refund or credit will be made.

c. Ordering Transit Media

Once activated, a WageWorks Transit Account may be used by a Participant to order transit media available on the WageWorks website. All transit media orders must be made by 11:59 PM Eastern Time (8:59 PM Pacific Time) on the 10th day of each month for delivery of transit media by the last day of the same month.

For example, for a transit pass to be usable in April, the Participant must order on the website by 11:59 PM Eastern Time on March 10. The transit media will be delivered by U.S. Postal Service to the Participant's address provided to WageWorks.

d. Placing a Parking Order

Once activated, a WageWorks Parking Account may be used by a Participant to place a parking order on the website. All parking orders must be made by 11:59 PM Eastern Time on the 10th day of each month for service by the last day of the same month. For example, for a parking payment needed for April, the order must be placed on the website by 11:59 PM Eastern Time on March 10. The payment will be delivered by U.S. Postal Service to the Participant's address provided to WageWorks.

e. No Cross Use

A Parking Account cannot be used for transit media. A Transit Account cannot be used to order parking.

f. Security of Account Number

It is the Participant's responsibility to protect and maintain the security of the Transit and/or Parking Account number like all other valuables. WageWorks is not responsible for use of an Account by individuals other than the authorized holder.

g. Transit Passes, Parking, Vanpool Delivery

WageWorks shall:

- i. Timely purchase transit media and mail by U.S. Postal Service to the Participant's address provided to WageWorks;
- ii. Load value onto transit media and/or deliver said media in a similar manner to (a) above;
- iii. Make monthly direct payments to parking and vanpool providers designated by Participants (who accept such payments) prior to the beginning of the month; and
- iv. Accept receipts provided by Participants for the purpose of providing reimbursements to Participants once a month.

h. Customer Service

- i. **Customer Call Center:** WageWorks shall make a customer call center available between the hours of 5:00 AM and 5:00 PM Pacific Time, Monday through Friday except holidays.
- ii. **Participant Website:** WageWorks shall make a Participant-accessible website available 24/7.
- iii. **Monthly Participant Reminders:** WageWorks shall send a monthly purchase reminder/confirmation to Participants via email.

- iv. **Maintenance:** WageWorks reserves the right to perform routine system (both web and IVR) maintenance during off-hours (normally between 9 PM and 5 AM ET). Any longer maintenance period will be posted on WageWorks' website.

- i. **Right to Purchase**

County grants to WageWorks the right to purchase on its behalf Commuter Purchases from providers in connection with the provision of Commuter Express benefit administrative services provided to County. Moreover, County grants to WageWorks the right to take such action as is necessary to qualify County for employer-based discount programs offered by transportation authorities and providers.

- j. **Disputes with Transit Agencies**

The Participant is solely responsible for interacting with providers of transit services such as public transit agencies. WageWorks shall not be responsible (nor can WageWorks make a claim on Participant's behalf) for actions of a transit service provider or its employees, such as any labor strike or stoppage, revocation or denial of the use of any transit media, etc., or any costs resulting from such actions.

- k. **Additional Limitations on Confidentiality and Privacy for Commuter Benefits**

WageWorks may be required to disclose to transit, parking and van pool operators certain enrolled Employee's personal information, such as name, address, or license plate numbers. The information is required by such operators as a condition precedent to receiving their services. The information that WageWorks will provide to these entities is the same information an enrolled Employee would have provided to obtain service directly from such operators. WageWorks has no contractual agreements with such providers, and consequently, makes no representation or warranty, as to those entities' policies and procedures for maintaining confidentiality or privacy of such data. Furthermore, certain transit operators require the disclosure of the County's name in order to allow WageWorks to procure transit media. County hereby permits the disclosure of its name to such operators.

Contractor agrees that the requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality shall survive termination of this Agreement.

- 3. **Scope of Administrative Services (As may be applicable to Commuter Order Model and Commuter Express, respectively)**

WageWorks shall be responsible for providing the following general administrative services, subject to the terms and conditions of this Agreement.

- a. **Enrollment and Processing Enrollment Files**

The County shall be solely responsible for determining the individuals who are eligible to participate in the Commuter Benefit Program. The County shall provide WageWorks with a complete list of Participants eligible to participate in the Commuter Benefit Program and any demographic or other information that WageWorks may need to properly administer the Commuter Benefit Program pursuant to this Agreement. The County shall notify WageWorks on a monthly basis (or such shorter time period as agreed to by the parties) of any changes in Participant Information. All Participant information shall be provided to WageWorks in an electronic format pursuant to Section 4(c) of this Exhibit A. WageWorks shall process all data files within a commercially reasonable time after receipt.

Late notification of Commuter Benefit Program eligibility or incorrect Commuter Benefit Program eligibility information provided by the County to WageWorks may result in erroneous benefit claim payments. In this event, the County shall be solely responsible for any such erroneous payment and the County shall also be solely responsible for collecting any such erroneous payments from the individual.

In addition to the eligibility information above, the County shall provide the termination dates for Participants who have terminated employment with the County so that WageWorks can take proper action for these Participants. The County shall be responsible for any costs resulting from the failure to provide timely notice of a termination date.

Eligible employees shall be permitted to enroll through the WageWorks website or by phone by calling the Participant Call Center during times specified in Section 4(f) of this Agreement. Upon enrollment in the Commuter Benefit Program, the Participant shall receive an enrollment guide by e-mail, or by regular mail if no e-mail address is provided.

b. Transit Passes Delivery, Parking, Vanpool, Reimbursement Administrative Services

- i. To the extent consistent with each Participant's elections and as permitted under IRS Code Section 132(f), and subject to each Participant's Available Benefits, WageWorks shall purchase and mail transit media by USPS, prior to the month of use, to the designated address (see Section 7 below regarding address designation) of the Participants who have enrolled in the Commuter Benefit Program as of the applicable Enrollment Deadline.
- ii. To the extent consistent with each Participant's elections and as permitted under IRS Code Section 132(f), and subject to each Participant's Available Benefits, WageWorks shall load value onto "electronic fare media" supported by some transit agencies. WageWorks shall have sole discretion to determine whether a particular "electronic fare media" program is supported under the Commuter Benefit Program.
- iii. To the extent consistent with each Participant's elections and as permitted under IRS Code Section 132(f), and subject to each Participant's Available Benefits, WageWorks shall allow Participants to use "Bill Payment Services" (referred to as "PayMyProvider" on the WageWorks' website), which allows Participants to direct payments to parking and vanpool providers, and WageWorks shall pay qualified parking and vanpool expenses on behalf of the Participant directly to the service provider via a check or other electronic funds transfer. Only payee information provided through the Employee Site or by calling the Participant Call Center during the times specified in Section 4(f) as of date that the payment is processed will be acted upon. Mail, fax, electronic mail or voicemail directions will not be processed.
- iv. To the extent consistent with each Participant's elections and as permitted under IRS Code Section 132(f), and subject to each Participant's Available Benefits, WageWorks will facilitate reimbursements of eligible commuter expenses which shall be made by the County through the following reimbursement method selected below

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Payroll

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Check and Direct Deposit. Each check is billed at \$1.00 and each direct deposit is billed at \$.25.

In addition, reimbursements made by check or direct deposit for terminated employees who cannot be reimbursed via payroll will be billed to the County in the amount of \$1.00 per check and \$.25 per direct deposit.

c. Payroll Data Feedback

WageWorks will provide payroll deductions information to the County at an agreed-upon time so that proper adjustment to the payroll, including eligible claims for reimbursements, if applicable, can be made.

d. Downloadable Reports

WageWorks shall make the following types of reports available for viewing and download from a County accessible website: Participant commuter benefit elections made each month, payroll deductions, reimbursement and expense activity, any adjustments to Participant account balances, counts of lost passes reported by Participants and names of Participants who forfeited their benefits and the forfeited amounts. WageWorks reserves the right to modify or amend the types of reports available for download.

e. Claims Processing

The County agrees that the County and not WageWorks, is responsible for the policies, interpretations, rules, practices, and procedures of the Commuter Benefit Program. WageWorks shall have no power or authority to waive, alter, breach, or modify any terms and conditions of the Commuter Benefit Program. WageWorks shall make payments or distributions in accordance with the framework of policies, interpretations, rules, practices, and procedures set forth in the Commuter Benefit Program and as otherwise agreed upon or directed by the County.

Based on the foregoing, the County hereby assigns to WageWorks the following:

Initial Claims: Claims for Commuter Benefit Program benefits must be submitted in a form that is satisfactory to WageWorks within the time period designated by WageWorks. WageWorks shall determine whether a benefit is payable under the Commuter Benefit Program's provisions as mutually agreed to by WageWorks and the County. WageWorks shall use claim procedures and standards developed by WageWorks for benefit claim determinations.

f. Timeliness of Selection

Eligible employees are responsible for enrolling in the Commuter Benefit Program and making or changing Commuter Benefit elections. Employee enrollment and/or Participant elections changes must be made prior to the Enrollment Deadline for the Benefit Period to be effective for that Benefit Period. Employee enrollment and/or Participant election changes made after the Enrollment Deadline for a Benefit Period will be effective for the subsequent Benefit Period. The Enrollment Deadlines applicable to the County are posted on WageWorks' website.

g. Refunds Policy

WageWorks shall not provide cash refunds of pre-tax deductions to Participants at any time. WageWorks shall provide reimbursement of any post-tax balances or deductions by either check or direct deposit to the Participant's bank account (if available).

h. Address Designation

The delivery address for transit passes, commuter cards, and reimbursement payments, shall be designated by the Participant unless the County has chosen to be the address of record in which case such address shall be used. In either case, WageWorks shall not be responsible for verifying the correctness, accuracy or completeness of address.

i. Undelivered Transit Media Claims

WageWorks will reimburse Participants who file timely claims for undelivered physical transit media only if the claim is filed within the first two business days of the benefit month.

Reimbursements for timely filed Participant claims for undelivered transit media will be made as follows:

- i. If the delivery address was provided by the Participant and WageWorks mailed the transit media to the designated address with sufficient postage, County shall be responsible for reimbursement costs of such undelivered transit media up to the first 1% of the value of all transit media elections made

under the Commuter Benefit Plan during the applicable month. WageWorks shall be responsible for any excess amounts.

- ii. If the delivery address was provided by the County and WageWorks mailed the transit media to the designated address with sufficient postage, the County shall be responsible for 100% of the reimbursement costs of such undelivered transit media.
- iii. If WageWorks failed to mail the transit media to the delivery address provided by the County or the Participant, WageWorks shall be responsible for 100% of the reimbursement costs.
- iv. If WageWorks affixed insufficient postage, WageWorks shall be responsible for 100% of the reimbursement costs.

Address Control: If the County elected to be solely responsible for providing Participant mailing addresses to WageWorks, WageWorks will only accept mailing address information and updates provided by the County.

4. Scope of Additional Administrative Services (As may be applicable to Commuter Order Model and Commuter Express, respectively)

a. Communications Materials

WageWorks will provide access to an online communications gateway ("Gateway") where the County may access and download standard electronic communications material at no additional charge. Certain quantities of standard printed communications materials may also be available at no fee. Customized items are available for additional fees. The County agrees to pay sales or similar taxes (if any) and shipping and handling for all printed materials. Notwithstanding the foregoing, it is the County's responsibility to ensure that Program descriptions, Program documents and any other documentation relating to the Commuter Benefit Program are appropriately completed, are in compliance with the requirements of the Commuter Benefit Program and applicable law, and are appropriately and timely adopted by the County. The County shall be solely responsible for distributing materials regarding the Commuter Benefit Program to Participants on a timely basis as provided by applicable law. The County is responsible for making any filings with any applicable governmental agencies.

b. Assistance in Enrollment Meetings

Upon the County's request and reasonable notice, WageWorks will participate in enrollment meetings and benefit fairs at an additional cost.

c. File and Data Exchange

WageWorks shall provide a set of electronic file specifications for the County to deliver data to WageWorks. The County is responsible for developing the routines, programs, and other means in which to deliver electronic data to WageWorks. The parties will exchange test data to ensure that they can receive and process each other's files. WageWorks shall also work with any other third party vendor hired by the County to provide such data to WageWorks, provided that WageWorks reserves the right to require such third-party vendor to enter into a data sharing agreement with WageWorks prior to exchanging any data.

d. Adjudication of Eligible Expenses

WageWorks shall determine whether an expense is qualified under the Internal Revenue Code and regulations hereunder, and any IRS written rulings, notices, and advisories based on rule and procedures developed by WageWorks. By entering into this Agreement, the County has authorized and instructed WageWorks to implement its standard administrative procedures to provide services in accordance with this Exhibit A, Exhibit B, and the Agreement. The County and WageWorks agree that is the County provides WageWorks with specific written instructions (in a form acceptable to WageWorks) to provide services in a manner other than in accordance with WageWorks standard procedures, WageWorks may (but is not required to) comply with the County's written instructions. However, to the extent that WageWorks complies

with such instructions, the County and not WageWorks shall be solely responsible for WageWorks' actions so taken, the County expressly releases all claims against WageWorks in connection with any claim or cause of action that results from or in connection with WageWorks following the County's written instructions and the County shall indemnify and hold WageWorks harmless (including reasonable attorneys' fees and costs) for any claims, losses or other damages that results from or in connection with WageWorks following the County's written instructions.

e. Co-Branded Website

Upon request, WageWorks will add the County's logo and/or name on the Participant Website.

f. Participant Call Center

Monday through Friday from 5:00AM to 5:00PM Pacific Time, excluding holidays and other non-business days, customer service representatives will be available to answer phone calls from Participants regarding the administration of the benefits selected by the County. Outside these hours, Participants may access the Participant Website or use the WageWorks interactive voice response unit.

g. County Services

Client Services shall be available to answer phone calls from Client HR representatives on issues such as Employee case escalation, file transfer errors, and using the Employer Site. The hours of operations are 5:00AM to 5:00PM Pacific Time, Monday through Friday, except for holidays and other non-business days.

EXHIBIT B – PAYMENTS AND RATES

1. Amount and Method of Payment

The County will provide WageWorks with its authorization to issue a debit against the Commute Alternatives Program's direct deposit account (DDA) using the Automated Clearing Housing (ACH) process. In no event will the amount of the subsidy that is passed through to WageWorks for the fulfillment of transit orders on behalf of our employees exceed \$75 per enrolled WageWorks Account, per month.

2. Fees

a. Implementation Fee

The Implementation Fee is \$0.00. Subsequent implementation may be subject to an additional fee as agreed by the parties in an executed amendment to this Agreement.

b. Participant Monthly Fee

County shall pay \$5.00 per month per enrolled WageWorks Account. The fee is collected each month as the Account is funded as part of the ACH debit. This Participant Monthly Fee of \$5.00 is Per Participant Per Month (PPPM). For purposes of determining the Participant Monthly Fee, a Participant is an employee of County (or an affiliate of County who is participating in the Commuter Benefit Program) who is eligible to participate in the Commuter Benefit program and who is enrolled in the Commuter Benefit Program or is receiving benefits through the Commuter Benefit Program (receiving claim reimbursements for prior benefit periods). If a Participant has both a Transit and a Parking Account, no more than \$5.00 will be charged to the County. The Participant Monthly Fee shall not be prorated if a Participant participates in the Commuter Benefit Program for less than a full month.

The minimum aggregate Participant Monthly Fee for the County is \$500.00 (Commuter Order Model Only).

c. Run-Out Administration and Fees

WageWorks shall provide Commuter Benefit Program claims processing services following the Agreement's termination for eligible commuter expenses incurred prior to the termination of the Agreement and shall allow Participants to continue to access the balance on their WageWorks Card for not more than six months after the last Benefit Period fulfilled by WageWorks for the County. The County may select a shorter run-out period at its discretion. All of the terms of this Exhibit B shall apply to the post-termination run-out services. However, WageWorks shall not provide the run-out services after the Agreement's termination if the Agreement was terminated because the County failed to pay the Service Fees or due to any other material breach.

d. PayMeBack Fees

Should the County choose to offer PayMeBack (Contractors claims reimbursement service), there is an additional transaction fee of \$1.00 per check and \$.25 per direct deposit fee. The fee is collected the month after processing occurs as part of the ACH debit. Account balance will be subject to a charge of \$1.50/month after 12 months of non-use. Unless a separate billing arrangements has been made, the charge will be deducted automatically from the remaining balance. "Use" for this purpose means a purchase or an order on the website.

4. Invoice Amount and Payment Invoice Payment and Terms

County will be charged monthly for the WageWorks' service fees for transit vanpool and parking (collectively, "Enrollment Elections") set forth on Exhibit B. WageWorks shall provide the services contained in this Agreement as long as amounts due are made available timely. For Commuter Express only, on the

4th calendar day of each month (or prior business day) prior to the purchase cutoff, WageWorks shall initiate an ACH debit against the County's DDA for the fees and the Enrollment Elections.

With regard to Commuter Express, if the County fails to have sufficient funds at the time of the ACH debit, all Commuter Purchases will be cancelled. The monthly administrative fees due for that month shall be charged even though Commuter Purchases were cancelled because the County failed to make funds available timely.

a. Electronic Invoice (For Commuter Order Model Only – Relates to Administration Fees)

WageWorks shall deliver monthly invoices for the Invoice Amount (as set forth in Section 2(c)) electronically to one or more County-designated e-mail addresses. The County shall be responsible for timely information to WageWorks for changes to such address. All invoices shall be paid using one of the following three methods:

Must Select One:

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Wire or ACH Debit to WageWorks' account, based on the provisions of Exhibit B

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WageWorks to issue ACH debit against the County's account ()

b. Due Date (For Commuter Order Model Only – Relates Funding)

The County agrees to pay the Invoice Amount according to the Funding Profile dated April 1, 2017, as necessary to ensure that Funding is received by WageWorks no later than the 5th (fifth) day of the month (or the next banking business day if the 5th is not a banking business day) subsequent to the date the invoice is provided to the County ("Due Date").

If County selects ACH debit, County authorizes WageWorks (or its delegate Bank (ODI)) to initiate an ACH Debit against the County's direct deposit account to ensure that WageWorks receives the Invoice Amount on the Due Date.

If County selected ACH Credit or County wire to WageWorks, County shall ensure that WageWorks shall receive the Monthly Service Fees (unrestricted) on the Due Date by either issuing a wire or electronic funds transfer (EFT) or ACH Credit.

c. Invoice Amount (For Commuter Order Model Only)

The Invoice Amount, which shall be reflected on each monthly invoice, shall consist of the following:

- i. Commuter benefits delivered or paid by WageWorks to or on behalf of the Participants for the prior Benefit Period, except in cases where reimbursement of a benefit is provided directly by the County's payroll;
- ii. The Participant Monthly Fee, as described in Section 1(b);
- iii. Any fees and/or costs for optional services elected by the County; plus
- iv. An estimated charge reflecting the aggregate cost of commuter benefits to be delivered by WageWorks for the next Benefit Period, which shall be equal to the amount of commuter benefits delivered or paid for the prior Benefit Period (e.g., the amount described in subsection (i) above)(the "Estimated Charge"), less a credit for the payment of the Initial Payment (in case of the first monthly invoice) or the prior month's Estimate Charge, as reflected on the prior month's invoice.

d. Other County Responsibilities with Respect to Invoices

The County is given the choice of the Enrollment Deadline (no later than the 10th of each month) and the date on which a payroll file is made available to the County. However, for Commuter Order Model, all invoices are generated approximately six (6) days subsequent to the monthly payroll file being made available. The County agrees that it is responsible for making the appropriate choices of the aforementioned dates so that it has sufficient time to pay the invoices on the Due Date.

3. Responsibility for Costs

County is responsible for Commuter Purchases in all cases where such purchases is reasonably determined to have been made at the direction of any individual WageWorks reasonably believes to be representing the Participants.

4. ACH Debit Payment Information / Commuter Express Funding Payment Method

If the County wishes WageWorks to issue ACH Debit, the following provisions apply

Commuter Express Funding Payment Method

You shall pay all Funding via ACH Debit. WageWorks shall make online invoice reports available to the County that contains the following information:

- (i) Funding required for Participant Commuter benefit elections; and
- (ii) Commuter Fees. The County hereby authorizes WageWorks (or its delegate bank) to initiate an ACH Debit against the County's designated direct deposit account so that:
 - (i) with respect to payment of monthly recurring Commuter Fees and Funding, the amount due is received by WageWorks no later than the 4th calendar day of each month (or the prior business day if the 4th is a bank holiday); and
 - (ii) with respect to the payment of Commuter Fees and Funding for other Participant Commuter benefit elections (e.g., one-time elections), the amount due is received by WageWorks no later than two (2) business days after such election is made. If notified by WageWorks of insufficient Funding, the County shall provide additional Funding to WageWorks within one (1) business day via electronic funds transfer.