

**AMENDMENT TO AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND
WAGeworks**

THIS AMENDMENT to the Agreement between the COUNTY OF SAN MATEO (“County”) and WAGeworks (“WageWorks” or “Contractor”) dated, February 13, 2018, is entered into this ____ day of August, 2018, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and WageWorks, hereinafter called “Contractor”;

W I T N E S S E T H:

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

WHEREAS, as authorized by Board Resolution No. 075703, the parties entered into an Agreement for the provision of services for the registering, processing, purchasing, and distributing of employee commute benefits for the County’s Commuter Bus and Commute Alternatives Program on February 13, 2018; and

WHEREAS, the parties now wish to amend the Agreement to utilize only the Commuter Order Model (COM) and payment terms to offer the County’s Commuter Benefit Program as a pre-tax payroll deduction, and therefore will not be utilizing Commuter Express services after August 31, 2018; and

WHEREAS, the parties now wish to amend the Agreement to allow County payment by Wire Transfer or ACH Credit only after June 30, 2018; and

WHEREAS, the parties now wish to extend the term of the Agreement by 12 months with a new termination date of June 30, 2019; and

WHEREAS, the parties now wish to amend the Agreement to increase the not-to-exceed amount by \$984,000 for a new not-to-exceed amount of \$2,019,000 to fund the administration fee and pass-through subsidy for the Commuter Benefit Program COM for the extended term.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. The 6th WHEREAS clause of the Agreement is amended to read as follows:

Whereas, the County desires the Contractor to provide services through June 30, 2019, with the County’s last payment due in May 2019 for the service month of June 2019,

with WageWorks continuing to provide Commuter Benefit Program claims processing services following the Agreement's termination on June 30, 2019, ("run out services") as set forth in Exhibit B of the Agreement.

2. Section 3 of the Agreement, "Payments," is amended to read as follows:

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 pay the 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 Two Million Nineteen Thousand Dollars (\$2,019,000). 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 must be made within thirty (30) days from the date of the invoice unless otherwise stated in Exhibits A and B. County will pay by Wire Transfer or ACH Credit, as further directed in Exhibits A and B for the remainder of the Agreement term.

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

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.

3. Section 4 of the Agreement, "Term," is amended to read as follows:

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, 2019.

4. Subsection 2b of Exhibit A of the Agreement, "Funding of WageWorks Accounts," is amended to read as follows:

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 two methods:

Must Select One:

- Wire or ACH Credit to WageWorks' account, based on the provisions of Exhibit B
- WageWorks to issue ACH debit against the County's account

5. Section 1 of Exhibit B of the Agreement, "Amount and Method of Payment," is amended to read as follows:

The County pay WageWorks via Wire Transfer or using the Automated Clearing Housing (ACH) Credit 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.

6. Subsection 2b of Exhibit B of the Agreement, "Participant Monthly Fee," is amended to read as follows:

County shall pay \$5.00 per month per enrolled WageWorks Account. This Participant Monthly Fee of \$5.00 is Per Participant Per Month (PPPM).

For purposes of determining the Participant Monthly Fee, a Participant is defined as 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).

7. Section 4 of Exhibit B of the Agreement, “Invoice Amount and Payment Invoice Payment and Terms,” is amended to read as follows:

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) through August 2018, prior to the purchase cutoff, WageWorks shall initiate an ACH debit against the County’s DDA for the fees and the Enrollment Elections. After August 31, 2018 all services will be rendered through the Commuter Order Model (COM), described below.

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 through 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:

- Wire or ACH Credit to WageWorks’ account, based on the provisions of Exhibit B
- WageWorks to issue ACH debit against the County’s account

b. Due Date (For Commuter Order Model Only – Relates to 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 for administrative fees, which shall be reflected on each monthly invoice, shall consist of the following:

- i. The Participant Monthly Fee, as described in Section 1(b);
- ii. Any fees and/or costs for optional services elected by the County.

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.

8. Section 4 of Exhibit B of the Agreement, “ACH Debit Payment Information / Commuter Express Funding Payment Method,” is removed in its entirety.
9. All other terms and conditions of the agreement dated February 13, 2018, and amended May 18, 2018, between the County and Contractor shall remain in full force and effect.

THIS AMENDMENT IS NOT VALID UNTIL SIGNED BY ALL PARTIES.

For Contractor: WageWorks, Inc.



Contractor Signature

7/31/2018

Date

Ed Taffet

Contractor Name (please print)

For County:

Purchasing Agent Signature
(Department Head or
Authorized Designee)
County of San Mateo

Date

Purchasing Agent Name (please print)
(Department Head or Authorized Designee)
County of San Mateo

Purchasing Agent or Authorized Designee
Job Title (please print)
County of San Mateo