

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND EDENRED
COMMUTER BENEFIT SOLUTIONS LLC**

This Agreement is entered into this 14th day of May, 2019, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Edenred Commuter Benefit Solutions LLC, 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 operating a commuter benefit program for County employees that will include options for subsidy distribution, an online portal employee account management, outstanding customer service, online reporting tools, and marketing materials to help employees make informed choices about their commutes.

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 two million, nine hundred thousand dollars (\$2,900,000). 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.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from May 14, 2019, through May 13, 2022 with the option to extend two additional one-year terms.

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 ninety (90) 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 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 five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to 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 and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials 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

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 this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) 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; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. 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 solely liable by reason of its own negligence or willful misconduct.

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.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

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.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

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 and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. 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. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and The County's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and the County'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 the County 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/officers/agents 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:

- (a) Comprehensive General Liability... \$1,000,000
- (b) Motor Vehicle Liability Insurance... \$1,000,000
- (c) Professional Liability..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, 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 to the full limits of liability of the policy 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 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. liquidated damages of \$2,500 per violation; and/or

- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

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

(a) 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.

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

(c) 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.

15. 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.

16. 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.

17. 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 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 94063
Telephone: 650.363.4189
Email: jeggemeyer@smcgov.org

In the case of Contractor, to:

Name/Title: Dharmesh Parikh, Edenred Commuter Benefit Solutions LLC
Address: 265 Winter Street, 3rd Floor, Waltham, MA 02451
Telephone: 857-228-1410
Facsimile: 857-228-1400
Email: Dharmesh.parikh@edenredusa.com

18. 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.

19. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

* * *

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

For Contractor: EDENRED COMMUTER BENEFITS SOLUTION, LLC



May 6, 2019

Dharmesh Parikh (VP of Finance)

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

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

The Contractor will operate a commuter benefit program for County employees that will include options for subsidy distribution, an online portal employee account management, outstanding customer service, online reporting tools, and marketing materials to help employees make informed choices about their commutes. These services will be provided for a three-year term, with two, one-year renewal options at the discretion of the County, and services will need to be operational by July 1, 2019. The Contractor will be responsible for:

- (a) Program Implementation
- (b) Eligibility/Enrollment Administration & Support
- (c) Transportation Spending Account/Benefit Distribution
- (d) Program Marketing & Communications
- (e) Comprehensive Reporting

Specifications Section

1. Program Specifications

- A. Service Option: Individual Enrollment, Individual Delivery
- B. Benefit Period: Monthly
- C. Fee Program: Per Participant Per Month Flat Fee

2. Services

Pursuant to this Agreement, the Contractor shall provide the Commuter Check Direct service (the "Benefit Services Program" or the "Program") shall fulfill the Section 132 transit, parking and bicycling benefit needs of The County's participating employees only by (i) with respect to the transit benefit, delivering transit media (including Commuter Check vouchers and, where available, fare media in specified territories) to the homes of the participating employees with the exception of orders that are electronic in nature and will be fulfilled according to the merchant's guidelines but no later than the 1st of the month for the applicable benefit and (ii) with respect to the parking benefit, effecting arrangements with selected parking facilities for direct payment of the participating employees' parking requirements, delivering parking vouchers for participating employees to use as a payment mechanism to parking facilities to pay for their daily, weekly, or monthly parking costs, or managing reimbursement for qualified parking claims and (iii) with respect to the bicycling benefit, delivering bicycling vouchers for participating employees to use as a payment mechanism to bicycling facilities. Program shall be implemented pursuant to the Program Timeline set forth in Section 6 below. In this connection, the date on which a participating employee's order file for the Benefit Services cannot be changed for the next Benefit Period is the 10th day of the month preceding that Benefit Period (the "Cutoff Date").

General Terms and Conditions

1. Commuter Check Services by the Contractor

The Contractor shall use all reasonable efforts at its own cost to perform the services identified in the Specifications Section in accordance with the terms and conditions of the Program set forth in this Agreement. The Contractor's delivery of service is dependent upon the timely performance by the County of its obligations under this Agreement.

2. Program Features

A. Enrollment

The Contractor will work with the County to initially enroll participating employees. Employees may enroll or change orders via the Contractor online ordering system at any time; however, changes to be effective for a Benefit Period must be made prior to the Cutoff Date (as defined in this Agreement) preceding the beginning of such Benefit Period. The County will provide Contractor with the following eligibility information: employee name, employee ID number, delivery address, delivery city, delivery state, delivery zip code, phone number, email address and the County's office/branch location(s) ("Eligibility Information").

B. Home Delivery of Transit Media, Parking Products and Bicycling Products (collectively referred to as the Order)

Transit media, parking and bicycling product orders will be mailed from the Contractor's offices in white, two -window envelopes via First Class Mail no later than five (5) days before the first day of the applicable Benefit Period with the exception of orders that are electronic in nature and will be fulfilled according to the merchant's guidelines but no later than the 1st of the month for the applicable benefit. Upon receipt of the Order, participating employees assume all responsibility for the items contained in the Order. The Contractor's delivery protection plan will replace for a participant the content of one Order each calendar year, for media or products that qualify for replacement under the delivery protection plan, provided that the participant gives Contractor notice of the participant's claim within the term specified in the Contractor Policy for Non-Received Orders appearing on the Contractor website.

C. Customer Service

The Contractor Customer Service representatives respond to incoming calls, faxes, and e-mails for timely resolution. Customer Service hours of operation are 8:00 am-8:00 pm Monday thru Friday EST, excluding Federal Holidays. Inquiries received during business hours will be responded to within 24 hours.

D. Payroll Interface

Contractor provides a comprehensive payroll deduction file of pre-tax and post-tax amounts by employee that can be imported into the County's payroll system to facilitate processing of payroll deductions two day after the monthly cutoff date (12th of the month). The Contractor must provide a payroll deduction file that meets the County's payroll system import requirements.

E. Employee Communications

From time to time, the Contractor reserves the right to directly communicate to all eligible employees of the County, with the sole purpose of informing employees of the availability of Commuter Benefits, its advantages, how to sign up and of helping the County increase commuter benefit utilization. The communication can include but is not limited to printed material sent to employees' home address on record, email campaigns sent to employee email addresses on

record with the Contractor. The Contractor will provide other customizable communication pieces for use by the County for distribution to its employees and the County program manager including for example the following: posters, welcome letters, user guides. Communication materials will be provided in an electronic format to the County for customization and/or printing. Additional fees for customized communication materials may apply according to scope or request. Contractor will also communicate with employees directly regarding the status of their orders, the availability of products that might serve their commuting needs, and periodic surveys about the service they are receiving and the commuter benefit overall.

3. The County Obligations

The County shall (i) adhere to the term conditions describe herein this Agreement including but not limited the guidelines and requirements for program set-up, employee enrollment, management of the program, (ii) promptly report to Contractor any errors or dissatisfaction of the Commuter Check Direct program which come to its attention regarding Contractor's Program administration, orders, fulfillment, customer service, including a description in reasonable detail of any errors or problems, within 2 business days of identifying the error, (iii) make all payments listed in the Specifications Section on a timely basis and (iv) accurately maintain the employee eligibility roster / details with employee addresses and required personal information, office locations, as well as reporting new eligible employees and terminations in the required time frames established by Contractor.

4. Term

The term of this Agreement shall begin on its execution, continue for a three-year period, with two additional one-year terms at the discretion of the County unless either party provides notice to the other no less than 60 days prior to the next expiration date of its decision not to renew this Agreement. Either party may suspend its performance under or terminate this Agreement in the event the other party has committed a material breach of its obligations under this Agreement (including with respect to The County the obligation of making payments to Contractor) which breach has not been corrected within 15 days of notice of the breach. In addition, this Agreement may be terminated for convenience by either party, by giving the other party notice of such termination no less than ninety (90) days prior to the effective date of such termination.

5. The County Liaison

The County Liaison and Alternate Liaison identified in the Specifications Section are authorized to act on behalf of the County in connection with all matters pertaining to this Agreement and the Program and Contractor can rely on their decisions as representing the decisions of the County in connection with this Agreement and the Program.

6. General Provisions

A. The County shall maintain in strict confidence and not disclose to any other person or entity or otherwise use (other than for its Program for which the transit media, parking and bicycling products are provided under this Agreement) any information relating to CONTRACTOR (including without limitation, any Personal Information or other confidential or proprietary information) which may be disclosed to The County. The County acknowledges and agrees that its purchase of the Benefit Services Program (Commuter Check Direct) does not grant it any property right, interest, license or right to use any confidential or proprietary information, technology system or concept of Contractor. Without limiting the foregoing, The County shall maintain in strict confidence and not disclose to any other person or entity or otherwise use any

Contractor confidential or proprietary information which may be disclosed to the County in connection with this agreement or the performance of services hereunder. Both the County and Contractor shall maintain a secure system environment with appropriate security control measures, including but not limited to encryption of electronic data to the extent technically feasible, and will not disclose knowingly to any third party, information of a confidential nature, including specific information of any employee of either Party. Further, the County understands and agrees that the Contractor obligation to maintain a secure system environment as described above in this Section 6.A, relates only to Eligibility Information provided by the County to Contractor, as described in Section 2.A above.

- B. The Contractor is hereby authorized to include the County on a list of entities using Contractor's services and to use such list in promotion, marketing or advertising which Contractor may in its discretion publish or distribute, provided Contractor shall not in so using such list inaccurately depict the County's relationship with the Contractor or indicate The County's endorsement of Contractor or its products or services. The Contractor, if required by any Banking regulations, is hereby authorized to provide the County Name, Address, Tax-ID # and such other necessary details, to its Sponsor Bank.
- C. The Contractor is required by Federal regulations that the County, for certain Prepaid products be identified by corporate name, address, government issued tax identification number and other relevant information. Therefore, the County may be asked to provide information and identification to comply with the law. As required by anti-money laundering laws, employees of those County's receiving the said Prepaid card products may be asked to provide further information for identification purposes. The County and employee shall be responsible for accurately providing such further information for identification purposes as requested and shall inform its employee's receiving said Prepaid card products, that such employee's may also be asked to provide further information for identification purposes for the purposes of complying with federal regulations with the issuance of such Prepaid card products.
- D. The Contractor shall not be liable for any delays in delivery or any failure of the Contractor to perform its obligations due to causes beyond Contractor's reasonable control, including without limitation, the elements, acts of God, delays in transportation, labor difficulties, interruption of communications or power, delays of delivery of supplies, delays in delivery of transit media supplied by other entities, civil disturbances, natural disasters or any other cause beyond the reasonable control of the Contractor.
- E. The County shall be responsible for any state, local or federal taxes in the nature of sales taxes which may be applicable to this Agreement or any services or deliveries under it whether such tax is imposed now or later by the applicable taxing authority. The County shall promptly pay Contractor for any such taxes even though such taxes are not identified on this Agreement regardless of when it is determined that such taxes are applicable even if such determination is made after the delivery of the applicable services or products or after the termination of this Agreement.
- F. With the exception of the reloadable Prepaid Card which is accompanied by its own Terms and Conditions and subject to agreement by the cardholder, the following shall be in effect. The County shall inform all participating employees that the transit media, parking and bicycling products delivered pursuant to the Benefit Services are like cash and should be protected by those participating employees as those employees would protect cash. Each such employee shall be informed that, subject to Contractor's delivery protection program identified in Section 2B above, Contractor shall not refund or credit any participating employee, and Contractor shall not refund or credit the County, for any transit media or bicycling and parking product delivered hereunder which is subsequently lost or otherwise unavailable for use. The County shall further inform each participating employee that vouchers that are expired may not be used and shall

have no value and that the validity of other transit media, parking or bicycling products delivered hereunder is subject to expiration dates and/or time frames and terms of use provided by the applicable entity issuing such transit media or parking product.

- G. The Contractor is not providing the County any legal advice and, accordingly, Contractor undertakes no responsibility or liability regarding whether the Benefit Services as implemented by the County is in compliance with the requirements of Section 132(f) of Internal Revenue Service. The Contractor expressly recommends that the County obtain the advice of legal counsel with respect to such compliance.
- H. THE CONTRACTOR WARRANTS TITLE TO TRANSIT MEDIA, PARKING AND BICYCLING PRODUCT DELIVERED BY CONTRACTOR PURSUANT TO THIS AGREEMENT. OTHERWISE, CONTRACTOR MAKES NO GUARANTEES, REPRESENTATIONS OR WARRANTIES. WITHOUT LIMITING THE FOREGOING, CONTRACTOR MAKES NO WARRANTIES, REPRESENTATIONS OR GUARANTEES AS TO MERCHANTABILITY OR THE FITNESS OF ANY TRANSIT MEDIA, PARKING AND BICYCLING PRODUCT DELIVERED PURSUANT TO THIS AGREEMENT FOR ANY PARTICULAR PURPOSE. ANY SUCH WARRANTY, REPRESENTATION OR GUARANTEE SHALL BE THE RESPONSIBILITY OF THE ISSUER OF THE APPLICABLE TRANSIT MEDIA.
- I. The County acknowledges and agrees, and shall inform all participating employees, that this Agreement is exclusively between Contractor and the County and that the Contractor has no direct obligations to Employees and no third party beneficiary liability to anyone, including without limitation, participating employees. The County agrees to indemnify, defend and hold harmless the Contractor, its affiliates, and their respective officers, directors, shareholders, employees and agents against all such third party claims, and causes of action.
- J. Notwithstanding anything to the contrary contained herein, the parties agree that:
 - a. "Personal Information" is defined as an individual's first name or first initial and his or her last name in combination with any one or more of the following data elements: (i) Social Security number; (ii) government-issued identification number, including driver's license number; or (iii) account number, credit card or debit card number. The Contractor does not solicit or knowingly collect Personal Information of the County's employees. The Contractor shall have no liability, obligation or responsibility to any the County, any employees of any the County, or any other party with respect to any identification, records, documents, Personal Information or other confidential information that is given or made available to the Contractor, other than Eligibility Information required to be provided to Contractor herein, as specifically set forth in Section 2.A above. All identification, records, documents, Personal Information or confidential information that is not required to be given to Contractor pursuant to Section 2.A, are collectively referred to herein as "Other Information", and
 - b. Either Party shall indemnify and hold the Other Party and Other Party's members, managers, directors, officers, affiliates, agents, employees, representatives, successors and assigns harmless from and against any and all losses, damages, expenses (including legal costs and expenses), penalties, injuries, claims, actions or suits of any kind or nature, in contract or tort, however arising from any cause whatsoever arising from or related to any Eligibility and/or Other Information, including, without limitation, any access to, taking, or use of any Other Information, or any "identity theft" arising from or related to any such access to, taking, or use, UNLESS ANY OF THE FOREGOING IS CAUSED BY OR BASED IN ANY WAY ON, IN WHOLE OR IN PART, ANY NEGLIGENT OR GROSSLY NEGLIGENT ACT OR OMISSION OF EITHER PARTY OR ANY OF ITS MEMBERS, MANAGERS, DIRECTORS, OFFICERS, AFFILIATES, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS OR ASSIGNS OR ANY SUCH

PARTY'S STRICT LIABILITY IN TORT. The provisions of Section 6.J of this agreement shall survive any expiration or termination of this agreement.

- K. CONTRACTOR'S EXCLUSIVE LIABILITY IF ANY TO THE COUNTY REGARDLESS OF THE FORM OF ACTION, INCLUDING BUT NOT LIMITED TO, LIABILITY ARISING OUT OF CONTRACT, TORT OR ANY OTHER THEORY OF LAW SHALL BE LIMITED TO DIRECT DAMAGE (EXPRESSLY EXCLUDING ANY AND ALL SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGE) AND SHALL IN NO EVENT EXCEED IN AMOUNT OF 3 MONTHS OF THE FEES PAID BY THE COUNTY TO CONTRACTOR UNDER THIS AGREEMENT. The County hereby acknowledges that the limitations of liability set forth in these Terms and Conditions represent the allocation of risk of failure between the County and Contractor as reflected in the pricing of this Agreement and is an essential element of the basis for the bargain between the County and Contractor.
- L. Any the County who elects ECP Payment Option, (which enables the Employees of the County to pay via their personal Credit Card); the County would be liable to Contractor for any Credit Card Charge-back.
- M. Any claim not presented by the County within one year from the date on which the County discovered or reasonably should have discovered such claim shall be deemed waived. Furthermore, no action, regardless of form relating in any way to performance or nonperformance of the Contractor under this Agreement, may be brought by the County more than one year after the termination or expiration of this Agreement.
- N. This Agreement may not be assigned, sublicensed or otherwise conveyed or transferred by either The County or Contractor to any other person or entity, without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that the Contractor shall have the right to assign its rights and obligations under this Agreement to an affiliate of the Contractor without the consent of the County.
- O. The parties shall have the relationship for purposes of the Program of independent contractors and, accordingly, neither party shall have the authority to bind the other party.
- P. All legal communications, including notices, shall be effective upon delivery personally or by overnight courier to the address of the recipient stated in the Specifications Section or to such other address as the recipient may subsequently designate by notice.
- Q. This Agreement sets forth the entire agreement between the County and Contractor with respect to its subject matter and the parties are not bound by any understandings, agreements or other writings with respect to this subject matter otherwise than as expressly set forth in this Agreement. This Agreement may not be terminated (other than as stated expressly in this Agreement) or changed except by a writing signed by both parties. No waiver of any of the provisions of this Agreement shall be effective unless evidenced by a writing signed by the party charged with such waiver and any such waiver shall be strictly limited to the terms of such writing. This Agreement shall be binding upon and benefit the successors and permitted assigns of each party. No representations or warranties other than as may be expressly stated in this Agreement have been made in induce either party to enter into it. 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.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

1. Charges

- A. The County shall pay Contractor, a monthly administration fee of \$4.00 per employee participant per month; subject to a minimum 50 participants with minimum monthly billing of \$200 per month.
- B. The face value of the transit benefit, parking benefit and bicycling benefit provided by the Program with respect to the applicable Benefit Period (together the "Benefit Value").

2. Payment Terms

The Contractor shall make available to the County two (2) calendar days after the Cutoff Date for that applicable Benefit Period (period in which the ordered media will be used), an invoice / funding report for the administration fee and the Benefit Value for such Benefit Period based on the order file for the County's participating employees for such Benefit Period. The County shall cause the invoice to be paid via an ACH wire by the Contractor on the fifteenth calendar day of the month preceding such Benefit Period. The County shall take all action needed to enable the Contractor to effect such ACH payments. The Benefit Services will not be provided in any Benefit Period unless full payment of the invoice issued for such Benefit Services for such Benefit Period has been received by the Contractor. The County understands that this authorization will remain in effect until the debt for orders placed is fully discharged or it is canceled in writing whichever comes first. The County agrees to notify the Contractor in writing of any changes in its account information or termination of this authorization at least 15 days prior to the next billing date. The County confirms that the above business bank account is enabled for ACH transactions and agrees to reimburse the Contractor for all penalties and fees incurred as a result of the County's bank rejecting ACH debits or credits as a result of the account not being properly configured for ACH transactions. The County further agrees not to dispute these transactions with its bank provided the transactions correspond to the terms indicated in this authorization form. The County acknowledges that the origination of ACH transactions to its account will comply with the provisions of U.S. law. Both parties agree to be bound by NACHA Operating Rules and agree to provide any additional information to other party to ensure that parties are in compliance with NACHA Rules. Both Parties agree that this agreement can be terminated by other Party for breach of any NACHA Rules.

3. Monthly Processing Schedule

CATEGORY	ACTION	TIMEFRAME	RESPONSIBLE
Eligibility	The County uploads eligibility file online	1 week prior to initial enrollment period and on a regular Monthly basis to account for new hires and terminations	The County
Enrollment	Employees enroll via internet	Ongoing, but subject to the monthly Cutoff Date preceding the applicable Benefit Period	Employees
Invoicing	Invoice / funding report available to The County via admin site	2 days after the monthly Cutoff Date preceding the applicable Benefit Period	Contractor

Payroll Interface File	The Contractor provides the Payroll deduction file by employee with pre-tax and post-tax deduction amounts	2 days after the monthly Cutoff Date	Contractor
Payment	ACH credit or wire from The County	15th day of the month preceding the applicable Benefit Period	The County
Distribution	Products produced / mailed to Individuals	Mailing 19th – 23rd day of the month preceding the applicable Benefit Period	Contractor

The County shall cause the invoice to be paid via ACH credit or wire to the Contractor pursuant to the information provided by Contractor from time to time. Such ACH credit or wire must provide good funds to the Contractor for the applicable payment no later than the fifteenth calendar day of the month preceding such Benefit Period. In the event any such payment is not made within three calendar days of its due date, Contractor shall have the right (in addition to the remedy set forth in the last sentence of this paragraph) to charge the County a late payment fee equal to 1% of the amount due for each month or portion thereof during which such payment is outstanding, commencing from the due date of such payment.

The definitions of terms appearing in the Agreement shall apply to such terms as used in this Exhibit.

4. Development of Software to Interface with the County’s Payroll System

The Contractor will provide a custom, comprehensive payroll deduction file that can be imported into Employer’s payroll system (Workday) to facilitate processing of payroll deductions. In essence, this will allow the Contractor’s data files to be compatible with the County’s payroll system Workday. The Contractor will charge the following one-time fee for custom file reporting and testing services rendered.

\$175 per hour x 32 hours (required number of hours) = \$5,600

The fee is due upon conclusion of the testing period and before the first ordering schedule begins, which will occur by May 31, 2019.