

# EXHIBIT D

## SUPPLEMENT 1 TO MASTER FUNDING AGREEMENT

This Supplement No. 1 to Master Funding Agreement (“Supplement or “Agreement”) is entered into this 1<sup>st</sup> day of August, 2018, by and between the Metropolitan Transportation Commission (hereafter “MTC”) and the City of Emeryville (hereafter “AGENCY”) and supplements the Master Funding Agreement, dated July 1, 2018, by and between MTC and AGENCY.

Pursuant to this Supplement, MTC agrees to provide an amount not to exceed seven hundred twenty-six thousand, nine hundred thirteen dollars (\$726,913) in Surface Transportation Program funds to AGENCY to fund the deployment of a different traffic signal system improvements (as more fully described in Annex I hereto, the “Supplement Project”). The project schedule, budget and payment procedures for the Supplement Project scope of work is attached as Annex II hereto. Insurance requirements are described in the attached Annex III, Insurance Requirements.

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

The Supplement Project work will commence August 1, 2018 and be completed no later than June 30, 2021.

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

- X Exhibit B-1, Additional Terms and Conditions (General), Paragraph A
- X Exhibit B-1, Additional Terms and Conditions (General), Paragraph B
- X Exhibit B-2, Additional Terms and Conditions (Federally Required Clauses)
- X Exhibit B-3, Additional Terms and Conditions (State Required Clauses)
- X Exhibit B-5, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Federally-Funded Agreements)

A funding award for this IDEA project was authorized in MTC Resolution 4202 as indicated in the revision recommended on February 14, 2018 by the MTC Programming and Allocations Committee. A scope of work for this project is described in Annex 1 with the schedule, payments and budget described in Annex 2.

The MTC Project Manager for the Supplement Project is Robert Rich (415-778-6621, [rrich@bayareametro.gov](mailto:rrich@bayareametro.gov)). The AGENCY Project Manager for the Supplement Project is Ryan O’Connell (510-596-4346, [roconnell@emeryville.org](mailto:roconnell@emeryville.org)).

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

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

**METROPOLITAN TRANSPORTATION  
COMMISSION**

**CITY OF EMERYVILLE**

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Steve Heminger, Executive Director

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Christine Daniel, City Manager

Approved As To Form



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City Attorney's Office

## **Annex I**

### **Project Description and Scope of Work**

AGENCY received a grant under MTC's Innovative Deployments to Enhance Arterials (IDEA) Program – an initiative that is designed to support cities, counties and transit agencies in the implementation of either mature, commercially-available technologies (Category 1) or new, higher-risk connected and automated vehicle technologies (Category 2). The IDEA Program aims to:

1. Improve travel time and travel time reliability along arterials for autos and transit vehicles;
2. Improve safety of motorists, transit riders, bicyclists, and pedestrians;
3. Decreasing motor vehicle emissions and fuel consumption; and
4. Improve knowledge of and proficiency in the use of advanced technologies for arterial operations.

Specifically, AGENCY received a grant for a Category 2 project (Figure 1) to deploy an Automated Traffic Signal Performance Measures (ATSPM) system, a transit signal priority (TSP) system and to implement virtual bicycle detection technology on Powell St., Shellmound St., Christie St. and 40th St. in order to improve arterial operations and enhance safety along these corridors.

Where appropriate and applicable, AGENCY shall lead the procurement to engage vendor(s), contractor(s), and/or consultant(s) to perform the work necessary to successfully complete the project. Such procurements could include, but are not be limited to, the following:

- Capital (e.g., systems, software/hardware/firmware, equipment, etc.)
- Design services
- System integration services
- Project construction services
- Construction management/support services

Insurance requirements will be determined for each procurement, and in general conformance with the attached Annex III, Insurance Requirements. Some of the procurements for technical assistance services could be led and managed by MTC. During the course of the project, MTC Project Manager and AGENCY Project Manager shall work collectively to determine which agency will lead which procurement, based on what would be the most efficient and expeditious approach to meeting the project delivery schedule.

AGENCY shall participate in regularly-scheduled calls to ensure project delivery goals are met. AGENCY shall provide an appropriate level of staff support and administration required for the successful completion of the project. AGENCY shall agree to share data collected as part of the project, if requested by MTC. MTC and AGENCY shall mutually agree upon what specific data can be shared.

Figure 1 Project Area



**Annex II**  
**Project Schedule, Payments and Budget**

The project schedule shall be determined through the systems engineering process and mutually agreed to by the MTC and AGENCY in accordance with the requirements of MTC funding sources.

MTC will reimburse AGENCY according to its actual costs incurred for AGENCY-led work described in Annex I and in accordance with the agency's cash match rate indicated in the budget table below. MTC and RECIPIENT jointly agree to exert their best efforts to manage the project in such a way that costs for AGENCY-led-work do not exceed the project budget table below.

AGENCY shall provide the following information in its reimbursement request to MTC:

- a. Brief description and documentation of the AGENCY-led work during the reporting period
- b. Total costs expended for the AGENCY-led work during the reporting period
- c. Dollar amount requested for reimbursement
- d. Total costs expended for AGENCY-led work activities to-date
- e. Total amount paid by MTC under this Agreement to-date
- f. Total amount of local cash match expended for project activities to-date
- g. Total amount of in-kind match expended for project activities to-date

The following table provides the total estimated project budget, broken down by MTC's share and AGENCY's share (cash and in-kind match) of the total project cost. Under a separate funding agreement and upon receipt of invoices from MTC, AGENCY shall forward to MTC the agreed-upon amount of \$31,065 to cover AGENCY's cash match for MTC-led work. AGENCY shall also commit \$110,023 in cash match for any AGENCY-led work.

	<b>MTC-led Work</b>	<b>AGENCY-led Work</b>	<b>Total Project Cost</b>
MTC Share	\$110,023	\$726,913	\$836,936
AGENCY Share (cash match)	\$31,065	\$139,823	\$170,888
<b>SUBTOTAL</b>	<b>\$141,088</b>	<b>\$866,736</b>	<b>\$1,007,824</b>
AGENCY Share (in-kind match)	n/a	\$150,050	\$150,050
<b>TOTAL</b>	<b>\$141,088</b>	<b>\$1,016,786</b>	<b>\$1,157,874</b>

**Annex III**  
**Insurance Requirements**

**1. INSURANCE**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of AGENCY's personnel, subconsultants, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted. AGENCY must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

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



**face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

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

**Metropolitan Transportation Commission  
Insurance Compliance  
P.O. Box 100085-M8  
Duluth, GA 30096**

**or**

**Email to [MTC@Ebix.com](mailto:MTC@Ebix.com)**

**or**

**Fax to 1-888-617-2309**

#### **ADDITIONAL INSURED**

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

Metropolitan Transportation Commission (MTC)