

**AGREEMENT BETWEEN
CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY
AND
CoPLAN, LLC**

This Agreement is entered into this _____th of _____ 2019, by and between the CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY, a joint powers agency whose members include the County of San Mateo and the twenty incorporated cities and towns within San Mateo County, hereinafter called “C/CAG,” and CoPLAN, LLC, hereinafter called “Consultant.”

WHEREAS, C/CAG, is the Congestion Management Agency for San Mateo County; and

WHEREAS, C/CAG has determined that on-call consultant services are needed to assist C/CAG and its 21-member agencies with the development of the 2019 State Highway State Congestion and Safety Performance Assessment; and

WHEREAS, the purpose of the 2019 State Highway State Congestion and Safety Performance Assessment is to access performance measures and assess key hot spots on major highway corridors; and

WHEREAS, C/CAG has determined that Consultant has the requisite qualifications to perform this work; and

WHEREAS, the total amount available to Consultant under this Agreement is not to exceed \$92,135; and

WHEREAS, by adoption of RESOLUTION 19-08, the C/CAG Board of Directors approved the 2019 State Highway State Congestion and Safety Performance Assessment and authorized the C/CAG Chair to execute agreements with Consultant to provide traffic monitoring services to assist C/CAG and its 21 member agencies for 1-year terms, and further authorize the C/CAG Executive Director to negotiate final terms, subject to legal counsel review prior to execution by the C/CAG Chair, in a cumulative amount not to exceed \$92,135.

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. **Services to be provided by Consultant.** In consideration of the payments hereinafter set forth, Contractor agrees to perform the services described in Exhibit B, attached hereto (the “Scope of Work”).
2. **Payments.** In consideration of Consultant providing the Services, C/CAG shall reimburse Consultant based on the fee schedule set forth in Exhibit A up to a maximum amount of ninety-two thousand, one hundred thirty-five dollars (\$92,135) for Services provided during the Contract Term as set forth below. The hours stated in Exhibit A are intended to be an estimate of the amount of time Contractor expects to spend on each

task. Payments shall be made to Contractor monthly based on an acceptable invoice submitted by Contractor that identifies expenditures and describes services performed in accordance with the agreement. C/CAG shall have the right to receive, upon request, documentation substantiating charges billed to C/CAG.

3. **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 Consultant under this Agreement shall become the property of C/CAG and shall be promptly delivered to C/CAG. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law.
4. **Relationship of the Parties.** It is understood that Consultant is an Independent Consultant and this Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Consultant.
5. **Non-Assignability.** Consultant shall not assign this Agreement or any portion thereof to a third party, or subcontract with a third party, without the prior written consent of the C/CAG Executive Director. Any such assignment or subcontract without the C/CAG Executive Director’s prior written consent shall give C/CAG the right to automatically and immediately terminate this Agreement without penalty or advance notice.
6. **Contract Term/Termination.** This Agreement shall be in effect as of _____
_____, 2019, and shall terminate on February 29, 2020; provided, however, the C/CAG Chairperson may terminate this Agreement at any time for any reason by providing 30 days’ notice to Consultant. Termination will be effective on the date specified in the notice. In the event of termination under this paragraph, Consultant shall be paid for all services provided to the date of termination, subject to availability of funding. Such payment shall be that prorated portion of the full payment determined by comparing the work actually completed to the work required by the Agreement.
7. **Hold Harmless/Indemnity.**
 - a. *General.* Consultant shall indemnify and save harmless C/CAG 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 Consultant 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 Consultant 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 Consultant’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 C/CAG and/or its officers, agents, employees, or

servants. However, Consultant's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which C/CAG 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 Consultant 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.

The duty to indemnify and save harmless as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

- b. *Intellectual Property.* Consultant 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.

Consultant 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. Consultant shall defend, indemnify, and hold harmless C/CAG 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. Consultant's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) C/CAG notifies Consultant promptly in writing of any notice of any such third-party claim; (b) C/CAG cooperates with Consultant, at Consultant's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Consultant retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Consultant shall not have the right to settle any criminal action, suit, or proceeding without C/CAG'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 C/CAG, impair any right of C/CAG, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of C/CAG without C/CAG's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Consultant'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 C/CAG's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Consultant shall, at Consultant's option and expense, either: (i) procure for C/CAG 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, Consultant will have no obligation or liability to C/CAG 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 C/CAG (other than modification performed by, or at the direction of, Consultant) 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 C/CAG in a manner prohibited by this Agreement.

The duty of Consultant 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.

8. **Insurance.**

- a. *General Requirements.* Consultant or its subconsultants performing the services on behalf of Consultant shall not commence work under this Agreement until all insurance required under this section has been obtained. Consultant shall use diligence to obtain such insurance. Consultant shall furnish C/CAG with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to C/CAG of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.
- b. *Workers' Compensation and Employer Liability Insurance.* Consultant shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Consultant 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.* Consultant shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect Consultant, its employees, officers and 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 that may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by any sub-consultant or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and

shall be not less than \$1,000,000 unless another amount is specified below and shows approval by C/CAG Staff.

d. *Insurance Limits; Insured Entities; Breach.* Required insurance shall include:

	Required Amount	Approval by C/CAG Staff if under \$ 1,000,000
1. Comprehensive General Liability	\$ 1,000,000	_____
2. Workers' Compensation	\$ Statutory	_____
3. Professional Liability	\$1,000,000	_____
4. Motor Vehicle Liability	\$1,000,000	_____

C/CAG 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 the insurance afforded thereby to C/CAG, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if C/CAG, or its officers, agents, employees, and servants have other insurance against a 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, the C/CAG Chairperson, at his/her 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.

9. **Compliance with All Laws.** Consultant shall at all times comply with all applicable federal, state, San Mateo County, and municipal laws, ordinances, and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, San Mateo 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. Consultant will timely and accurately complete, sign, and submit all necessary documentation of compliance.

10. **Non-discrimination.** Consultant and any subconsultants performing the services on behalf of Consultant shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.

11. **Substitutions.** If particular persons or classifications are identified in Exhibit A as working on this Agreement, Consultant will not assign others to work in their place without the prior written consent of the C/CAG Executive Director. Any substitution shall be with a person or classification of commensurate experience and knowledge unless otherwise authorized by the C/CAG Executive Director.
12. **Sole Property of C/CAG.** Work products of Consultant which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall be and become the property of C/CAG. Consultant shall not be liable for C/CAG's use, modification or re-use of products without Consultant's participation or for purpose other than those specifically intended pursuant to this Agreement.
13. **Record Retention; Right to Monitor and Audit.**
 - a. Consultant shall maintain all required records relating to services provided under this Agreement for three (3) years after C/CAG makes final payment and all other pending matters are closed, and Consultant shall be subject to the examination and/or audit by C/CAG, a Federal grantor agency, and the State of California.
 - b. Consultant shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by C/CAG.
 - c. Consultant agrees upon reasonable notice to provide to C/CAG, to any Federal or State department having monitoring or review authority, to C/CAG'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.
14. **Permits/Licenses.** If any license, permit, or approval is required to perform the work or services required by this Agreement, Consultant bears the responsibility to obtain said license, permit, or approval from the relevant agency at Consultant'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.
15. **Merger Clause; Amendments.** This Agreement, including Exhibits A and B attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this Agreement are not binding. All subsequent amendments shall be in writing and signed by the C/CAG Chair. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit A or B attached hereto, the terms, conditions or specifications set forth herein shall prevail.
16. **Governing Law.** This Agreement shall be governed by the laws of the State of

California, without regard to its choice of law rules, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.

17. **Notices.** All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and addressed as follows:

City/County Association of Governments of San Mateo County
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: Jeffrey Lacap

Notices required to be given to Consultant shall be addressed as follows:

CoPLAN, LLC
5508 Sandalwood
McKinney, TX 75070
Attention: Steve Taylor

IN WITNESS WHEREOF, the parties hereto have affixed their hands on the day and year first above written.

CoPLAN, LLC (Consultant)

By _____
Date

City/County Association of Governments of San Mateo County (C/CAG)

By _____
Maryann Moise Derwin
C/CAG Chair
Date

C/CAG Legal Counsel

By _____
Matthew J. Sanders, C/CAG Counsel

Exhibit A

CONSULTANT BILLING RATES

Hourly billing rates and staff for CONSULTANT and SUBCONSULTANT(S) are included on the following pages.

Fee proposal for Required Scope of Work San Mateo County Transportation Authority		2019 SMCTA Performance Measures			Totals				
		Project Manager	GIS Task Manager	Database Usage (months)					
		\$83.00	\$60.00	\$580.00	CoPLAN				
No.	Task Description				Hours	Base Fee	Overhead	Profit	Total by Task
							118.43%	10%	
1	Database	12	24	2	36	\$3,596	\$2,885	\$648	\$7,129
	Setup Database and 2 month usage	12	24	2	36	\$3,596	\$2,885	\$648	\$7,129
2	Load Inrix Dataset	12	4		16	\$1,236	\$1,464	\$270	\$2,970
	Use 2015 CMP Freeway Dataset and Conflate Additional State Routes	12	4		16	\$1,236	\$1,464	\$270	\$2,970
3	Assign Linear Reference System Route and Measure	8	8		16	\$1,624	\$1,923	\$355	\$3,902
	Assign Route and Measure to TMC Segments	8	16		24	\$1,624	\$1,923	\$355	\$3,902
4	Calculate Buffer Time Index	18	48		66	\$4,374	\$5,180	\$955	\$10,510
	Initial Formula Setup	2	20		22	\$1,366	\$1,618	\$298	\$3,282
	Hourly for each month	8	24		32	\$2,104	\$2,492	\$460	\$5,055
	Two Peak Periods for each month	8	4		12	\$904	\$1,071	\$197	\$2,172
5	Calculate Congestion Delay	8	58		66	\$4,144	\$4,908	\$905	\$9,957
	Initial Formula Setup	4	24		28	\$1,772	\$2,099	\$387	\$4,258
	Total Delay for two peak periods for each month	2	4		6	\$406	\$481	\$89	\$976
	Congested delay for each month	2	30		32	\$1,966	\$2,328	\$429	\$4,724
6	Volumes	4	2		6	\$452	\$535	\$99	\$1,086
	Conflate model volumes to TMC segments	4	2		6	\$452	\$535	\$99	\$1,086
7	Crash Analysis	76	104		180	\$12,548	\$14,861	\$2,741	\$30,149
	Conflate Crashes from CHP Database	44	48		92	\$6,532	\$7,736	\$1,427	\$15,695
	Summarize Traffic Crashes	16	24		40	\$2,768	\$3,278	\$605	\$6,651
	Summarize Causes of Crashes	8	16		24	\$1,624	\$1,923	\$355	\$3,902
	Crash Rates	8	16		24	\$1,624	\$1,923	\$355	\$3,902
8	Reporting	28	140		168	\$10,724	\$12,700	\$2,342	\$25,767
	Excel or database deliverable of data only	8	8		16	\$1,144	\$1,355	\$250	\$2,749
	GIS geodatabase of results using CMP Segments	4	16		20	\$1,292	\$1,530	\$282	\$3,104
	Custom Tool to allow user to define limits of analysis and segmentation	16	116		132	\$8,288	\$9,815	\$1,810	\$19,914
Exp	Expenses	\$665				\$665			\$665
	Base Scope Hrs	166	388	2	358	\$39,363	\$44,456	\$8,315	\$92,135

Exhibit B

SCOPE OF WORK

SCOPE OF SERVICES

In support of the San Mateo County Transportation Authority's (TA) need to evaluate projects for possible funding, the CONSULTANT has been asked to calculate the Buffer Time Index (as a measure of travel time reliability) and the Congested Delay for use in scoring. These performance measures are currently being used by Caltrans and the MTC in the region for planning purposes and it's the desire of the TA to do a more detailed review of the same measures using detailed data. INRIX data is currently being used by C/CAG in the county for congestion management and will be leveraged through the below scope to expand its' application. The INRIX data includes over 20 million records in the county and is represented on over 1,800 segments referred to as TMCs between March – May 2019. The following scope addresses the TA's desire to expand on the summary performance measure effort s by the MTC using INRIX data C/CAG recently applied to the county CMP.

1. Database

CONSULTANT will setup a Microsoft SQL Server database server and structure to manage the 20 million INRIX records used in the C/CAG 2019 CMP.

The CONSULTANT will work closely with the TA and C/CAG to develop the summary segments, the combination of contiguous TMC segments, within the first two weeks after notice to proceed. See Task 8 for more detail.

2. Load INRIX Dataset

CONSULTANT will load the INRIX 5-minute interval dataset used in the C/CAG 2019 CMP into the database. The period of time is from March – May 2019.

3. Assign Linear Reference System (LRS) Route and Measure

CONSULTANT will conflate the INRIX dataset for the surface street state routes and freeways to the San Mateo County linear reference system (LRS) network developed for the C/CAG CMP. The corresponding route and measure will be assigned for each TMC segment. The roadways included within San Mateo County include:

- US 101
- I-280
- I-380
- SR 1
- SR 35
- SR 82
- SR 84
- SR 92
- SR 109
- SR 114

4. Calculate Buffer Time Index

As stated by MTC, “Experienced drivers know that, when planning a trip on Bay Area freeways, it’s a good idea to build in some extra time as a cushion against the effects of heavier-than-normal traffic or other unforeseen events. Transportation planners have a term for this cushion: buffer time index, or BTI. BTI represents a multiplier for the additional time required; for example, a driver with a 20-minute typical commute that features a BTI of 0.5 would need to leave 10 extra minutes to be confident of an on-time arrival.”

CONSULTANT shall calculate the Buffer Time Index (BTI) for the March – May 2019 time period. The BTI methodology will be consistent that used by the MTC but adapted given the time period. The methodology is based on the determination of the 95th percentile average speed for each hour of the AM and PM peak periods.

5. Calculate Congested Delay

CONSULTANT shall calculate the Congested Delay for the March – May 2019 time period. The Congested Delay methodology will be consistent with that used by the MTC but adapted given the time period. Congested Delay for the freeways will be calculated both using a 35-mph threshold as done by MTC and the posted speed limit as used with the C/CAG CMP.

The congestion threshold for the arterials will be determined within the first two weeks of notice to proceed. In performing these calculations, the average speed for each hour will be determined and tabulated.

6. Volumes

CONSULTANT shall conflate the peak period model volumes, provided by C/CAG, for each corresponding TMC. For those TMC segments that are not coincident with the model links, consecutive TMC segments will be assigned the same volume between intersections and gore points.

7. Crash Analysis

CONSULTANT shall collect data from the California Highway Patrol database, perform a crash analysis of, and prepare a summary of the findings using figures and narrative. The analysis will include iterative progress discussions with the TA to discuss performance measures, draft findings, and illustrations.

8. Reporting

CONSULTANT shall prepare and deliver the TMC level results in Excel (tabular and raw digital summaries) or database form along with an ESRI GIS map file (including summary peak period TMC segment figures) and geodatabase that can be used to visualize and query the results. The TA, CONSULTANT, and C/CAG will identify summary segments, the combination of contiguous TMC segments, within the first 2 weeks after notice to proceed to avoid duplication of effort later in the conflation and processing stage. The performance measure methodology limits the simple summation of results (i.e. travel time is $TT X + TT Y + TT Z$ vs. buffer time index is not the results of $BTI X + BTI Y + BTI Z$). Therefore, the calculations must be performed over a known segment and not just sum TMC results together.

The CONSULTANT will develop and custom tool for the use by the TA that will allow the user to calculate and compare all performance measures between locations identified by the user in GIS. The tool will be developed in close coordination with the TA with frequent discussions related to the conceptual logic and function.

The final deliverable will be coordinated with C/CAG and the TA in order to match the deliverable with the staff and planned users. The C/CAG and TA staff will be trained on the use of the deliverable.

The scope includes travel and expenses for one in-person meeting / presentation.