



METROPOLITAN  
TRANSPORTATION  
COMMISSION

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November 10, 2015

*Dave Cortese, Chair*  
Santa Clara County

*Alicia C. Aguirre*  
Cities of San Mateo County

*Tom Azumbrado*  
U.S. Department of Housing  
and Urban Development

*Jason Baker*  
Cities of Santa Clara County

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Cities of Alameda County

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City and County of San Francisco

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U.S. Department of Transportation

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Contra Costa County

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San Francisco Bay Conservation  
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Marin County and Cities

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San Jose Mayor's Appointee

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Napa County and Cities

*Jake Mackenzie*  
Sonoma County and Cities

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Association of Bay Area Governments

*Bijan Sartipi*  
California State  
Transportation Agency

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Solano County and Cities

*Adrienne J. Tissier*  
San Mateo County

*Scott Wiener*  
San Francisco Mayor's Appointee

*Amy Rein Worth*  
Cities of Contra Costa County

*Steve Heminger*  
Executive Director

*Alix Bockelman*  
Deputy Executive Director, Policy

*Andrew B. Fremier*  
Deputy Executive Director, Operations



RE: Professional Services Agreement

Dear [REDACTED]:

This letter, effective as of October 30, 2015 ("Effective Date") is the agreement between Scoop Technologies, Inc. ("PARTNER") and the Metropolitan Transportation Commission ("MTC") for the performance of professional services in connection with ridematching ("Agreement").

1. PARTNER shall meet the Requirements for Partnership specified in Attachment 1, attached hereto and incorporated herein by this reference.
2. Partner's work under this Agreement will be performed under the direction of Barbara Laurenson or a designated representative (herein "MTC Project Manager") who will approve a work plan prior to PARTNER beginning work.
3. PARTNER will not be monetarily compensated by MTC for its services. MTC will instead contribute the services described in Attachment 2, MTC Contribution.
4. The term of the Agreement shall begin on the Effective Date and conclude on **October 29, 2016** unless either party terminates the Agreement earlier as provided below. By mutual agreement, the partnership may be extended beyond the initial term in increments of MTC's choosing.



of the PARTNER or its officers, employees, subconsultants or agents or any of them, under or in connection with this Agreement; or (b) based on an allegation that materials or services provided by PARTNER under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party. The foregoing obligation shall apply only if MTC (i) notifies PARTNER of any such Claim within a reasonable amount of time, (ii) reasonably cooperates, at PARTNER's expense, in the defense and settlement thereof, and (iii) provides PARTNER with the exclusive right, at its own cost, expense and risk, to defend and negotiate the settlement of such Claim. This indemnification shall survive the termination or expiration of this Agreement.

9. All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("MTC Data") made available to PARTNER by MTC for use by PARTNER in the performance of its services under the Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of the Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by your use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by PARTNER in the context of the Project shall be the property of MTC and subject to the provisions of the following paragraph.
10. Either party (the "Disclosing Party") may be required to make available to the other party (the "Receiving Party") certain confidential, non-public or proprietary information ("Confidential Information") for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as "Confidential" or with a similar notice, or information that should reasonably be recognized as proprietary. As between MTC and PARTNER, Confidential Information shall remain the sole and exclusive property of the Disclosing Party, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby other than as expressly set forth herein. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of the Receiving Party; b) the Receiving Party can demonstrate to have had rightfully in its

possession prior to disclosure by the Disclosing Party or its contractors, vendors or licensors; c) the Receiving Party rightfully obtains from a third party who has the right to transfer or disclose it; or d) is independently developed by the Receiving Party. The Receiving Party may make disclosures required by law or court order provided the Receiving Party uses diligent reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows the Disclosing Party to participate in the proceeding at the Disclosing Party's expense. The Receiving Party agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, or except as authorized in writing by the Disclosing Party. The Receiving Party further agrees to disclose Confidential Information only to its directors, officers, employees and consultants who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of the Disclosing Party, at any time and for any reason, the Receiving Party shall destroy or return to the Disclosing Party, at the Disclosing Party's option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by the Disclosing Party.

11. All right, title, and interest, including copyright interests and any other intellectual property, in and to the software and any other programs, systems, data, or materials produced or provided by PARTNER under this Agreement shall be vested in and be the property of PARTNER. PARTNER agrees to provide MTC with a royalty-free, nontransferable internal use license in such software deliverables for the duration of the project. Any and all data collected as part of this project shall be shared as legally allowed with full respect to then current Terms and Conditions of each other's offerings. MTC will retain a perpetual, royalty free license to any aggregate data, and user information, provided to MTC under this Agreement. MTC, and PARTNER, and their employees, agree to be bound by the 511 Privacy Policy (<http://511.org/privacy.asp>) and Terms of Use (<http://511.org/terms.asp>).
12. PARTNER agrees to retain all documents, working papers, records, accounts and other materials relating to its performance under the Agreement for four years following the fiscal year of the last expenditure under the Agreement or until completion of any litigation, claim or audit, whichever is longer, and MTC may inspect and audit such records during that period of time.

13. No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, PARTNER further covenants that it has made a complete disclosure to MTC of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of MTC (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.
14. PARTNER shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement. PARTNER shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor, or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement. If at any time during the term of this Agreement, PARTNER becomes aware of an organizational conflict of interest in connection with the work performed hereunder, PARTNER shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. PARTNER's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with PARTNER's performance of the work hereunder, MTC shall similarly notify PARTNER. In the event a conflict is presented, whether disclosed by PARTNER or discovered by MTC, MTC will consider the conflict presented and any

alternatives proposed and meet with PARTNER to determine an appropriate course of action.

MTC's determination as to the manner in which to address the conflict shall be final.

15. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between MTC and PARTNER that cannot be resolved through the informal, good faith efforts of the parties may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. PARTNER must file a government claim pursuant to Government Code section 910 et seq. in order to initiate a civil action. The prevailing party in any dispute shall be entitled to payment of its attorneys' fees and costs. This section shall survive the termination or expiration of the Agreement.
16. All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State.
17. PARTNER will not assign or subcontract any part of the Agreement without the prior written consent of MTC, and any attempt to do so will be void and unenforceable, provided that PARTNER may assign this Agreement without consent to a successor to all or substantially all of its assets or business to which this Agreement relates.
18. This Agreement constitutes the complete agreement between the parties and supersedes any prior written or oral communications. Any amendment of the Agreement must be in writing, specifically identified as an amendment to the Agreement, and signed by both PARTNER and the Executive Director of MTC, or his designated representative. The Project Manager is not a designated representative, for purposes of approving an amendment.

If you agree, please sign both copies of this letter in the space provided below and return one to us. The other copy is for your files.

Very truly yours,

DocuSigned by:  
**Steve Heminger**  
021DA2847D43405...  
Steve Heminger  
Executive Director

Accepted and Agreed to:

DATE: 11/11/2015  
\_\_\_\_\_

DocuSigned by:  
*Rob Sadow*  
4DC41D872CBE41D  
\_\_\_\_\_

Robert Sadow, Scoop Technologies, Inc.

SH: bl

**ATTACHMENT 1, REQUIREMENTS FOR PARTNERSHIP**

Partners must meet all of the following requirements to maintain the partnership established by this agreement.

- 1) Offer an existing, operational, mobile ridematching service in the San Francisco Bay Area;
- 2) Offer the service via iPhone and/or Android application (the “App”);
- 3) Offer the App free to individuals and/or employers. In the case of employer tools, the offer of the free ridematching service must be not to be tied to the purchase of another product or service offered by the vendor;
- 4) Utilize drivers who:
  - a. Would be making the trip *regardless* of driving riders via the app, or
  - b. Provide rides to multiple passengers and who’s service can support commute trips (i.e., ridesplitting); and
- 5) Offer a ridematching service that offers at least five of the following characteristics:
  - a. Facilitates rider/driver contact and on-going communication through the app rather than requiring phone or email contact between parties,
  - b. Automates payment, directions, and pick-up/drop-off locations through the app,
  - c. Provides automated rider/driver arrival timing and location information,
  - d. Confirms occupancy via cell phone location,
  - e. Vets drivers’ records,
  - f. Facilitates both real-time trips and advance-planned trips,
  - g. Provides users the flexibility to use different pools within the course of the same day,
  - h. Eliminates the need to “select” from a list but rather provides a “ride/drive appointment”,
  - i. Rates passengers/drivers,
  - j. Provides photos of vehicles, or
  - k. Other characteristics that make it less intimidating and more convenient to carpool.
- 6) Provide and maintain a project contact.
- 7) Respond to MTC communication (emails, phone calls, etc.).
- 8) Support and maintain the App for download via iPhone and/or Android stores (“App Stores”).
- 9) Maintain and honor a privacy policy; provide the policy to customers on the product website, the App Stores, and/or within the App.

- 10) Market the App independent of the relationship with 511 SF Bay to optimize customer service and maximize the participant base.
- 11) In advance of any use of a name or logo associated with MTC (e.g., 511 SF Bay, MTC, BATA, FasTrak®, Bay Area Express Lanes, etc.) that communicates a relationship between the App and any of these entities, seek approval for use from the MTC Project Manager prior to release of the communication and at least two weeks in advance of release. Acknowledge that 511 SF Bay is an entity separate from the App.
- 12) Provide MTC, and/or its 511 Rideshare Program contractor, a quarterly report for product use within the 9-county Bay Area that includes, at a minimum:
  - a. The number of App downloads (new registrants) referred by an MTC promotional effort;
  - b. Total registered users referred by an MTC promotional effort;
  - c. The number of carpool trips taken (all users referred by MTC)
  - d. VMT of carpool trips (all users referred by MTC)
  - e. Average vehicle occupancy (all users referred by MTC)

Data shall be provided in aggregate to protect privacy. MTC will work with the partner to develop the reporting format, which may change over the course of the agreement.

## ATTACHMENT 2, MTC'S CONTRIBUTION

MTC may promote the App primarily through its Rideshare Program and possibly through other programs, such as express lanes as follows. MTC is not obligated to provide all of the items listed below.

- Feature selected private-sector mobile services through 511.(mainly 511.rideshare.org) on a rotational or on-going basis (e.g., image carousel, promo boxes). The 511.rideshare.org page is visited by ten- to fifteen-thousand unique users each month.
- As feasible (based on technology, cost, privacy and other potential constraints), accept the App's data feed to provide potential matches found in the App's database as part of the matches delivered by the rideshare program. Identify those matches as coming from the App and direct 511 users to sign up via the App.
- Feature the App's data, as feasible based on privacy, technology and other potential constraints, in a 511-provided "Kayak" style ridematching tool and/or share 511 data to be featured in another providers "Kayak" style tool.
- Issue a 511 press release at the start of the agreement discussing the partnership.
- Issue press releases at various times, when the App meets certain milestones (e.g., downloads).
- Promote the App through outreach conducted by the rideshare contractor, including distributing collateral material provided by the App firm.\*
- Promote the App through 511 social media on a rotational and newsworthy basis.
- Promote the App through MTC's future express lanes outreach.
- Encourage visitors to 511 Rideshare to "Augment their ridematching capabilities by downloading the App additional ridematching opportunities."
- E-mail commuters in the 511 Ridematch database informing registrants of the App that can be used to supplement and enhance their efforts to find rideshare matches.
- Incentivize commuters in the 511 Ridematch database to register for the App.
- Conduct "placement calls" to commuters in the 511 ridematch database informing registrants of the App that can be used to supplement and enhance their efforts to find rideshare matches.\*
- Add language or links on the 511 ridematch registration page allowing 511 registrants to also register with Apps.
- Work with PARTNER to develop additional ideas for promotion.

- Offer App users incentives (financial or other) to encourage App use.
- Provide future 511 Ridematch registrants the option to have their data shared with Partners at the time a person registers with 511 Ridematch. MTC will notify 511 Ridematching registrants that the data of those selecting this option will no longer be protected by the 511 privacy policy and will be subject to the privacy policy of the various Partners.

\* Not necessarily available after June 30, 2016.

## ATTACHMENT 3, INSURANCE REQUIREMENTS

### PART 1

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONSULTANT'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 CONSULTANT authorizes to work under this Agreement (hereinafter referred to as "Agents.") CONSULTANT 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.

CONSULTANT 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, CONSULTANT 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 CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONSULTANT 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 CONSULTANT's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, CONSULTANT 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 CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONSULTANT 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 operations of CONSULTANT and CONSULTANT'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, 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.

MTC and those entities listed in Part 2 of this Attachment 3 (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT'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. 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. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.

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

6. Property Insurance. Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement AND materials or property to be purchased and/or installed on behalf of MTC (if any). 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.

MTC (and those entities listed in Part 2 of this Attachment 3, if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such

insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

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

C. Self-Insurance. CONSULTANT'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. CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT'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 CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT 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 CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT 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, CONSULTANT 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, CONSULTANT 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 CONSULTANT's personnel, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally

accepted. CONSULTANT 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, CONSULTANT shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant hereto, including, but not limited to, liability assumed pursuant to Section 9 of this Agreement.

## PART 2

The following entities are to be named as Additional Insureds under applicable sections of this Attachment 3 and as MTC Indemnified Parties, pursuant to Section 9 of the Agreement.

NONE