

DRAFT
AMBAG – TAMC
Cost Sharing Agreement for the Preparation of the
2045 MTP/SCS/RTP Environmental Impact Report

THIS AGREEMENT is both a project cost reimbursement and collaborative project agreement between the Association of Monterey Bay Area Governments hereinafter referred to as “AMBAG,” and the Transportation Agency for Monterey County, hereinafter referred to as “TAMC.”

WHEREAS, AMBAG and TAMC have a long-standing relationship and mutual responsibility for transportation planning in Monterey County; and

WHEREAS, AMBAG and TAMC are each responsible for the development of, at a minimum, a 20-year long-range transportation plan outlining anticipated projects and policy direction for their respective areas of responsibility; and

WHEREAS, the Metropolitan Transportation Plan (MTP), including the Sustainable Communities Strategy (SCS), and TAMC’s Regional Transportation Plans (RTP) are each considered a project under the California Environmental Quality Act (CEQA); and

WHEREAS, it has been determined that an environmental review of the 2045 MTP/SCS and RTP will need to be prepared; and

WHEREAS, TAMC agrees to designate AMBAG as the Lead Agency pursuant to CEQA for the preparation of the collective environmental review; and

WHEREAS, AMBAG and TAMC agree that joint development of the environmental review is desirable and each agrees to participate in the selection of a consultant to conduct environmental review on their 20 plus-year long-range transportation plans and enlist CEQA services from that consultant; and

WHEREAS, the parties hereto desire to enter into an Agreement calling for the mutual development of one environmental review covering TAMC’s 2045 Regional Transportation Plan in addition to AMBAG’s 2045 Metropolitan Transportation Plan/Sustainable Communities Strategy (such collective environmental review referred to hereinafter as “Project”); and

WHEREAS, AMBAG shall also enter into separate cost sharing agreements with the Regional Transportation Planning Agencies for Santa Cruz and San Benito Counties allowing for their 2045 Regional Transportation Plans to also be covered by the same environmental review as TAMC’s 2045 RTP and AMBAG’s 2045 MTP/SCS.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto agree to the following:

1. Scope of Work

AMBAG shall secure separate cost sharing agreements with the Regional Transportation Planning Agencies (RTPAs) for Santa Cruz and San Benito Counties that stipulates the same scope, term, payment procedures, and EIR revision clauses as this agreement to cover those agencies' proportionate share of the Project to be completed under this agreement. AMBAG shall submit executed copies of those agreements to TAMC prior to the issuance of a Notice to Proceed on environmental analysis for the Project and prior to the issuance of any invoice by AMBAG to TAMC under this agreement.

TAMC shall furnish its proportionate share of personnel, materials, services and facilities necessary for collaboration on the Project and will work collectively with AMBAG and the Regional Transportation Planning Agencies for Santa Cruz and San Benito Counties on developing a Request for Proposals for an environmental review consultant, including the Project's Scope of Work.

AMBAG shall produce a scope of work collectively with all of the participating agencies for the combined MTP/SCS/RTP EIR that meets all of the appropriate state requirements and needs of all of the participating agencies and shall conduct a procurement process collectively with all of the participating agencies meeting state and federal procurement requirements to secure an environmental consultant for the combined MTP/SCS/RTP EIR.

AMBAG shall enter into an agreement with an EIR consultant selected mutually by all the participating agencies and require the consultant to produce the combined MTP/SCS/RTP EIR that meets State requirements for such a document and the TAMC's and other RTPA's needs and requirements.

2. Term

This Agreement is effective July 31, 2019 and shall end on August 31, 2022, or 30 days after the Lead Agency files the Project's Notice of Determination, whichever occurs last. The period of performance may be extended by six months upon written agreement of all the parties.

3. Project Cost and Payments

The Project costs for consultant services shall not exceed the amount of \$300,000 except as provided below. AMBAG and TAMC agree to pay the Project costs shown below, as follows:

<u>Agency</u>	<u>Cost</u>
AMBAG	\$140,000
TAMC	\$ 60,000
Other RTPAs	<u>\$100,000</u>
Total Project Cost	\$300,000

AMBAG will provide overall Project management and will receive Project consultant invoices and pay the invoices upon satisfactory completion of consultant work. TAMC agrees to the following payment schedule:

January 1, 2021	\$30,000
January 1, 2022	\$30,000

The intent of this payment schedule is to provide for the timely payment of consultant invoices by AMBAG through partial prepayment, without imposing significant burden on TAMC through total prepayment. At the end of the Project, if the Project consultant invoices less than the aforementioned Project cost, AMBAG shall return to TAMC its share of the remaining non-invoiced amount.

All costs incurred under this Agreement shall be based on actual costs and are subject to audit. Substantiating documents (e.g., travel receipts, invoices, etc.) shall be retained by AMBAG and AMBAG shall keep an accurate accounting of all costs incurred in the performance of the Project for this Agreement, including providing summary reporting information to TAMC. No additional amounts shall be required of TAMC unless proposed increased costs are first approved by TAMC in writing.

4. MTP/SCS/RTP EIR Manager

AMBAG designates Ms. Heather Adamson as the 2045 MTP/SCS/RTP EIR Manager who shall be responsible for the professional conduct of the Project covered by this Agreement and liaison between the Project consultant and TAMC. AMBAG shall promptly notify TAMC of any change in 2045 MTP/SCS/RTP EIR Manager.

5. Responsible Agency Representatives

TAMC designates Mr. Michael Zeller as the TAMC Representative responsible for the participation in, response to, review and oversight of the products of the Project, and for amendments to this Agreement. TAMC shall promptly inform AMBAG of any change to its Representative.

6. Scope of Work Revisions

Any significant changes in the performance of this Agreement as outlined in the Project Scope of Work incorporated herein shall be in writing and require mutual authorization by the 2045 MTP/SCS/RTP EIR Manager and the TAMC Representative.

7. Administrative Representative

AMBAG designates Ms. Maura Twomey as the Administrative Representative who shall be responsible for the contractual and administrative aspects of the Agreement. Questions and correspondence of an administrative nature shall be directed to the Administrative Representative at AMBAG, 24580 Silver Cloud Court, Monterey, CA 93940.

8. Allowability of Costs

There shall not be any deviation from the project budget without prior written approval by AMBAG and TAMC. The allowability of costs shall be determined in accordance with the OMB Circular 2 CFR Chapter I and II, Part 200 et al. as of December 2013. All requests for budget amendments approval shall be in writing and mutually agreed to by AMBAG and TAMC boards. AMBAG shall carefully monitor costs and performance of the consultant, takes such steps as necessary to ensure that the Project be completed on time and on budget, and shall alert TAMC on an expedited basis of any questions or concerns in the costs or timely completion of the Project.

9. Termination

Either of the parties may terminate this Agreement at any time with or without cause, through a written Notice of Termination. Such Notice by one party will result in the termination of this Agreement among both parties. Such Notice will provide not less than forty-five (45) calendar days for AMBAG to refund to TAMC any remaining funds held for completion of this Agreement which are no longer required to pay consultant work for work performed prior to the date of receipt of the Notice of Termination.

10. Indemnification

Each party shall defend, indemnify, and save harmless each of the other parties against all claims, demands, suits, damages, costs, expenses, losses, or liability, in law or in equity, of every kind and nature whatsoever, arising out of or resulting from the negligent acts or omissions of the indemnifying party (which shall include the indemnifying party's officers, agents, employees or volunteers) in the performance of this agreement.

11. Disputes

In the event of a dispute arising out of the performance of this Agreement, any of the parties shall send a written Notice of Dispute to the other parties. Within five working days of receipt of such notice, the notified parties shall respond and agree to a meeting for the purpose of discussing the dispute and the facts giving rise to the dispute. In the event of a dispute arising out of the performance of this Agreement, the party alleging this dispute shall send a written Notice of Dispute to the other parties. Within five working days of receipt of such notice, the notified parties shall respond and agree to a meeting for the purpose of the dispute if possible. If resolution of the dispute cannot be reached, the affected parties may file appropriate litigation within six months thereafter.

12. Project Records

Financial records, supporting documents and other records pertinent to this Agreement shall be retained by AMBAG for a period of three (3) years from the date of submission of the final expenditure report, except that records pertaining to audit, appeals, litigation or settlement of claims arising out of performance of this Agreement shall be retained until such audits, appeals, litigation or claims have been disposed of.

All Project records, including but not limited to original data and primary data-yielding materials, secondarily derived tables and figures, and statistical tabulations and other summaries, pertinent to this Agreement, shall be made available by Project consultant to AMBAG and TAMC for a period of four (4) years from the termination date of this Agreement.

13. Nondiscrimination

To the extent provided by law and any applicable agency regulations, this Agreement and any program assisted thereby are subject to the policies against discrimination:

- Title VI of the Civil Rights Act of 1964 and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794; and
- The provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat 327, as amended) and the U.S. DOT implementing regulations (49 CFR 27, 37, and 38); and
- The implementing regulations issued pursuant thereto by the California Department of Transportation, the Federal Highway Administration and the Federal Transit Administration; and
- Any assurance of compliance which AMBAG and TAMC have filed in accordance with any applicable agency regulations.

14. Severability

If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

15. General Provisions and Certifications

AMBAG and TAMC certify that it is in compliance with all applicable federal and state laws and regulations.

16. Entire Agreement

This Agreement constitutes the entire agreement and understanding between AMBAG and TAMC and supersedes any prior or contemporaneous agreement or understandings if any. Any changes

or modifications shall be accomplished by a written amendment to this Agreement executed by the duly authorized representative of each party.

17. Choice of Laws

This Agreement shall be interpreted and applied according to the laws of California and shall be deemed to have been entered into in California as of the effective date set forth in Paragraph 2 above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the month, day and year specified below.

Maura Twomey
Executive Director
Association of Monterey Bay Area Governments

Date: _____

APPROVED AS TO FORM

Don Freeman, AMBAG Legal Counsel

Date: _____

Debbie Hale
Executive Director
Transportation Agency for Monterey County

Date: _____

APPROVED AS TO FORM

Kathryn Reimann, TAMC Legal Counsel

Date: _____