

## COOPERATIVE TAP PARTICIPANT AGREEMENT

This COOPERATIVE TAP PARTICIPANT AGREEMENT ("**Agreement**") is entered into as of September 1, 2014 (the "**Effective Date**"), by and between the Los Angeles County Metropolitan Transportation Authority, a California county transportation authority existing under the authority of §§ 130050.2 *et seq.* of the California Public Utilities Code ("**LACMTA**"), and the City of Carson ("**Participant**"). LACMTA and Participant are sometimes hereinafter referred to individually as "**Party**" or collectively as "**Parties**".

### RECITALS

A. The Transit Access Pass ("**TAP**") program is a regional smart card program developed as a cooperative effort amongst participating public transit operators ("**TAP Participants**") in Los Angeles County (the "**Region**") providing for the electronic payment of inter- and intra- fares via the use of TAP devices on such TAP Participants' buses and railcars (the "**TAP System**");

B. The TAP System was approved by LACMTA Board Action on May 28, 1997 to serve as the Region's universal fare system, enabling TAP Participants to share a common fare media for use amongst public transit patrons riding on TAP Participants' buses and/or rail system;

C. The back-office operations of the TAP System are managed by the Regional TAP Service Center (the "**RTSC**");

D. LACMTA is (i) the contracting entity responsible for the daily operations of the RTSC; (ii) the owner and distributor of any application that resides on the TAP card; and (iii) the owner of the software and data stored on the TAP cards or devices that are used for all transit fare collection purposes;

E. LACMTA has established a regional third party TAP vendor network for the sale and reloading of TAP fare products to TAP cards;

F. LACMTA and TAP Participants recognize that a one-fare media for transit payment among TAP Participants has a beneficial impact on the customers served, and on the ability of TAP Participants to improve service with enhanced data;

G. As such, TAP Participants (including LACMTA) have created a TAP Operating Group ("**TOG**"), comprised of one primary representative and one alternate from each TAP Participant, and a TAP Working Group to work towards, among other things, unifying fare media into the TAP program;

H. The rules for participation in the TOG and TAP System are outlined in the Regional TAP Program and Service Center Operating Rules and the TAP Financial Positions/Settlement,



Agreement (collectively, the “**TAP Regional Operating Rules**”) which, among other things, set forth the process for reconciling the revenues and costs of participating in the TAP System, including the monthly clearing and settlement process by which TAP Participants receive fare revenue from the Region or make a payment to the Region for the sale of regional or other TAP Participant fare products (the “**Positions and Settlement Process**”);

I. Amendments to the TAP Regional Operating Rules can only be approved by majority ruling of TAP Participants’ General Managers, with concurrence of the LACMTA CEO;

J. LACMTA (as the contracting entity responsible for the daily operations of RTSC) has agreed to license mobile validator TAP devices (one or more, collectively, “**Mobile Validator**”) to TAP Participants who (a) meet the requirements set forth in the TAP Regional Operating Rules and (b) agree to the terms of (i) a TAP Mobile Validator License Agreement and (ii) this Agreement;

K. Concurrently herewith, LACMTA and Participant are entering into that certain TAP Mobile Validator License Agreement dated of even date herewith, substantially in the form attached hereto as Exhibit A (the “**MV License Agreement**”);

L. LACMTA and Participant each desire to agree to the terms and conditions under which the Participant shall participate in the TAP System.

NOW, THEREFORE, in consideration of the above Recitals, and the agreements, representations, warranties, covenants, and conditions contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, LACMTA and Participant, intending to be legally bound hereby, agree as follows:

## **AGREEMENT**

1. PURPOSE. The Parties agree that this Agreement, among other things, establishes the respective roles and responsibilities of the Parties in connection with Participant’s participation in the TAP System.

2. TERM. The term (“**Term**”) of this Agreement shall commence on the Effective Date and shall terminate on the date on which this Agreement is terminated pursuant to Section 5 of this Agreement.

3. PARTICIPANT RESPONSIBILITIES. Participant acknowledges and agrees to the following terms and conditions at all times during its participation in the TAP System:

a. Participant shall abide by the latest approved TAP Operating Rules.

b. Participant shall comply with the Positions and Settlement Process by timely making and accepting payments as required and set forth in the Positions and Settlement Process.



c. Participant acknowledges and agrees that LACMTA, as set forth in the TAP Operating Rules, is (i) the contracting entity responsible for the daily operations of the RTSC; (ii) the owner and distributor of any application that resides on the TAP card; and (iii) the owner of the software and data stored on the TAP cards or devices that are used for all transit fare collection purposes.

d. Participant authorizes LACMTA to contract with third party vendors, in its sole discretion, for the sale of prepaid TAP cards, TAP stored value, TAP pass products, TAP rides, and other transit fares/products (“**TAP Fare Products**”), and, upon Participant’s request and agreement of a third party vendor, any prepaid Participant-specific fare products (“**Participant Fare Products**”) (the TAP Fare Products and the Participant Fare Products may be referred to collectively hereafter as the “**Fare Products**”).

e. Participant authorizes LACMTA, as the contracting entity responsible for the daily operations of the RTSC, to:

i. manage and operate all of the functions of the RTSC, as set forth in the TAP Operating Rules, in its sole discretion, including the ability to contract RSTC functions to third parties;

ii. remit funds collected from any third party vendor for the sale of TAP Fare Products and/or Participant Fare Products, as applicable, to Participant, consistent with the Positions and Settlement Process, and Participant shall not hold LACTMA liable for any funds deemed uncollectable from such third party vendor.

f. Participant acknowledges and agrees that the TAP System is a fare collection system, and under no circumstances shall LACMTA be responsible for Participant’s operation of its public transit services.

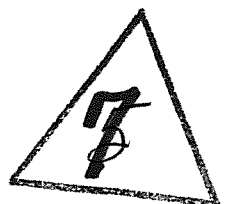
#### 4. LACMTA RESPONSIBILITIES.

a. LACMTA shall make Participant Fare Products available for sale/reload at select third party vendor locations upon written request of the Participant and upon agreement of such third party vendor.

b. LACMTA shall remit all TAP funds collected from a third party vendor selling TAP Fare Products to the Participant through the Positions and Settlement Process, but shall not be held liable for any funds deemed uncollectable.

5. TERMINATION. This Agreement shall terminate upon the occurrence of any of the following:

a. Thirty (30) days after written notice from a Party that such Party intends to terminate this Agreement, without cause;



b. Thirty (30) days after written notice from a Party that such Party intends to terminate this Agreement because of a breach of the Agreement by the Party receiving the notice if such breach is not cured within said thirty (30) day period; provided, however, that, in the event that the breach is of a nature which cannot reasonably be cured within thirty (30) days, the Agreement shall not terminate so long as the breaching Party has commenced to cure the breach within the thirty (30) day period and diligently prosecutes the completion of the cure to conclusion thereafter; or

c. The bankruptcy or insolvency of a Party or the commencement of proceedings of any kind by or against a Party under the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act.

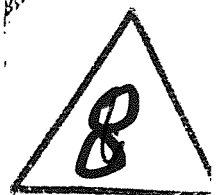
6. INDEMNIFICATION. Participant shall indemnify, defend (with counsel acceptable to LACMTA) and hold harmless LACMTA and its subsidiaries and their respective officers, agents, employees, and directors (collectively, "**LACMTA Parties**") harmless from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of risk of property, any environmental obligation, any legal fees and any claims for damages of any nature whatsoever (collectively, "**Claims**") arising out of Participant's actions pursuant to this Agreement and/or Participant's participation in the TAP System, except as caused by LACTMA's gross negligence. LACMTA shall, under no circumstance, be liable for special, incidental, exemplary or consequential damages suffered by Participant in connection with Participant's actions pursuant to this Agreement and/or Participant's participation in the TAP System, including, but not limited to loss of projects, anticipated revenue, interest, loss of use or other such claims arising from any causes whatsoever, whether or not such loss or damage is based on contract, warranty, tort (including negligence), indemnity or otherwise.

## 7. MISCELLANEOUS.

a. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be performed wholly within the State of California.

b. Attorney's Fees. Should any Party institute any action or proceeding to enforce or interpret this Agreement or any provision hereof, for damages by reason of any alleged breach of this Agreement, or for a declaration of rights hereunder, the prevailing Party in any such action or proceeding shall be entitled to receive from the other Party all costs and expenses, including reasonable attorneys' and other fees, incurred by the prevailing Party in connection with such action or proceeding. The term "attorneys' and other fees" means and includes attorneys' fees, accountants' fees, and any and all other similar fees incurred in connection with the action or proceeding and preparations therefore. The term "action or proceeding" means and includes actions, proceedings, suits, arbitrations, appeals and other similar proceedings.

c. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been delivered, if hand delivered or deposited with a reputable overnight courier (such as Federal Express, UPS, DHL, or similar courier), postage



prepaid, return receipt required, or three business days after deposit into U. S. Mail, certified or registered, postage prepaid and return receipt requested, and shall be addressed as follows, unless otherwise notified in writing of change of address:

If to Participant: City of Carson  
701 East Carson Street  
Carson, CA 90745  
Rickey C. Lovely  
310-952-1779  
[rlvely@carson.ca.us](mailto:rlvely@carson.ca.us)

If to LACMTA: Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, Mail Stop 99/04/03  
Los Angeles, CA 90012  
ATTN: David Sutton, Deputy Executive Officer, TAP  
Telephone: (213) 922-5633  
Email: [SuttonD@metro.net](mailto:SuttonD@metro.net)  
Fascimile: (213) 922-4036

d. Time of Essence. Time is of the essence of this Agreement and each and every term and provision hereof.

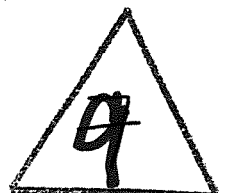
e. No Assignment. Participant shall not assign this Agreement, or any part thereof, without prior approval of the LACMTA Chief Executive Officer or his/her designee, and any assignment without said consent shall be void and unenforceable.

f. Successors and Assigns. This Agreement shall inure solely to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns (Participant's assigns, as approved by pursuant to Subsection 7e of this Agreement).

g. Entire Agreement. This Agreement supersedes all prior agreements between the Parties with respect to its subject matter and constitutes (along with the MV License Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

h. Modification. The Agreement shall not be amended, except in writing signed by the Parties who agreed to the original Agreement or the same level of authority.

i. Further Assurances. Subject to agreement by the Parties of the terms thereof, the Parties each agrees to execute any and all other documents and to take any further actions reasonably necessary to consummate the transactions reasonably contemplated hereby.



j. Remedies. The obligations and duties of the Parties hereunder, including their representations, warranties, covenants and agreements, may be enforced by any and all available remedies, including without limitation, specific performance, injunction, damages and declaratory relief.

k. Several Liability. The Parties acknowledge and agree that this Agreement is not an agreement pursuant to or subject to Government Code Section 895 et seq., and that (a) Participant shall have liability hereunder only for those obligations of the Participant in connection with its participation in the TAP System and shall have no liability with respect to LACMTA's responsibilities in connection with the TAP System and (b) LACMTA shall have liability hereunder only for the obligations of LACMTA, and shall have no liability with respect to Participant's operation of its public transit services or Participant's obligations in connection with its participation in the TAP System.

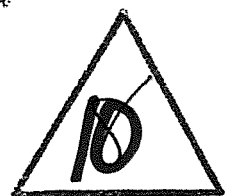
l. Nonwaiver of Rights. No failure or delay of a Party in the exercise of any right given to such Party hereunder shall constitute a waiver thereof unless the time specified herein for exercise of such right has expired, nor shall any single or partial exercise of any right preclude other or further exercise thereof or of any other right.

m. Construction. Headings at the beginning of each paragraph or subparagraph are solely for the convenience of the Parties and not a part of this Agreement. Except as otherwise provided in this Agreement, all exhibits referred to herein are attached hereto and are incorporated herein by this reference. Any reference to a Section herein includes all subsections thereof. This Agreement shall not be construed as if it had been prepared by only one Party, but rather as if all Parties had prepared the same.

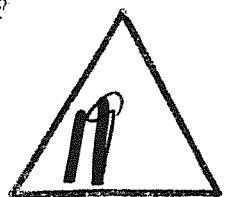
n. Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed severed from this Agreement, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable provision had never been part of this Agreement.

o. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals, all of which shall be of equal legal force and effect. Additionally, this Agreement may be executed in counterparts which, when taken together, shall form the entire Agreement of the Parties.

p. Relationship. Participant, in the performance of the work described in this Agreement, is not a contractor nor an agent, partner or employee of LACMTA. Participant attests to no organizational or personal conflicts of interest and agrees to notify LACMTA immediately in the event that a conflict, or the appearance thereof, arises. Participant shall not represent itself as an agent, partner, employee of LACMTA and shall have no powers to bind LACMTA in contract or otherwise.



[Signatures on Next Page]



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the dates indicated below:

**LACMTA:**

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Arthur T. Leahy  
Chief Executive Officer

APPROVED AS TO FORM:

MARY C. WICKHAM  
County Counsel

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Deputy

**PARTICIPANT:**

CITY OF CARSON

By: \_\_\_\_\_ Date: \_\_\_\_\_  
KENNETH C. FARSING  
CITY MANAGER

APPROVED AS TO FORM:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
SUNNY SOLTANI  
CITY ATTORNEY





**Exhibit A**

**Form of  
Mobile Validator License Agreement**

[Attached]

