

STAFF REPORT



MEETING DATE:	April 25, 2017
SUBJECT:	Approve Contract with Citilabs for Renewal of Enterprise License Agreement for Travel Demand Modeling Software
AGENDA ITEM:	5-9
STAFF CONTACT:	Sean Tiedgen, AICP, Senior Transportation Planner

STAFF RECOMMENDATION:

It is recommended that the board of directors approve Resolution 17-08 (Attachment A), authorizing the executive director to enter into a sole-source Enterprise Software License Agreement with Citilabs for travel demand modeling software, for a three-year term ending June 30, 2020, not to exceed a total of \$19,800.

DISCUSSION:

The regional activity-based travel demand model, ShastaSIM, requires Citilabs' CUBE software to operate. SRTA's software license expires June 30, 2017. A new agreement is needed to maintain current licenses. The annual cost of the new agreement is \$6,600, for a total of \$19,800 over a three-year period. This represents a 3% annual cost increase over the previous agreement.

Purchasing a different software product would require redesigning the entire model and is cost prohibitive. This was known when SRTA started development of the new model and is typical for modeling software. Section 806 of SRTA's Financial and Accounting Policies and Procedures defines this agreement as a "sole source" procurement, which requires approval by the SRTA Board of Directors. Resolution 17-08 provides the necessary findings for this sole source procurement, per policy.

Staff considered the option of purchasing individual licenses on a year-to-year basis, but this approach is more expensive, at a total of \$56,000 over the same three-year period. Staff recommends SRTA enter into the lower cost three-year Enterprise Software License Agreement (Attachment B).

ALTERNATIVES:

The board of directors may request more information and defer this item to the June 27, 2017, meeting.

FINANCING:

The total contract cost is \$19,800, which will be paid over three years in equal payments of \$6,600 for FYs 2017/18, 2018/19 and 2019/20. Federal Highway Administration Planning carryover funds have been budgeted in SRTA's Overall Work Program under Work Element 705.05 (Regional Modeling and Forecasting Tools).

A blue ink signature of Daniel S. Little, AICP, Executive Director, written over a horizontal line.

Daniel S. Little, AICP, Executive Director

Attachments: Resolution 17-08: Awarding Sole Source Contract to Citilabs
Citilabs Enterprise Software License Agreement (Draft)

RESOLUTION

Attachment A



RESOLUTION NUMBER:	17-08
SUBJECT:	Awarding Sole Source Contract to Citilabs

WHEREAS, the Shasta Regional Transportation Agency (SRTA) is the designated Metropolitan Planning Organization (MPO) for the Shasta County region; and

WHEREAS, SRTA developed and adopted a regional activity-based travel demand model, called ShastaSIM, on June 24, 2014; and

WHEREAS, ShastaSIM supports regional planning and programming activities in accordance with federal requirements under Title 23 CFR §450 and state requirements under California Government Code §14522.2(a) and §65080(b) for MPOs; and

WHEREAS, ShastaSIM requires the use of computer software to operate and was designed to function using CUBE software, which is developed by Citilabs; and

WHEREAS, SRTA currently maintains an Enterprise Software License Agreement with Citilabs, which expires June 30, 2017; and

WHEREAS, SRTA researched options for purchasing CUBE software and determined the software is not sold through distributors or resellers, but is only available through Citilabs; and

WHEREAS, ShastaSIM cannot operate without software, there are limited software products available for travel models and acquiring other software products is not cost effective because it would require an extensive and costly redesign of the model; and

WHEREAS, SRTA requested cost estimates for a new agreement with Citilabs based on software license needs; and

WHEREAS, Citilabs provided costs estimates for different software licensing scenarios that meet SRTA's minimum needs; and

WHEREAS, SRTA reviewed the cost estimates and determined that a new Enterprise Software License Agreement at an annual cost of \$6,600 for three years is reasonable; it represents only a 3% annual cost increase over the previous agreement; it fixes costs to the agency regardless if Citilabs increases costs during the term of the contract; and it provides greater benefits to the agency, such as unlimited use of licenses on SRTA-owned devices; and

WHEREAS, entering into a new contract with Citilabs is defined as a “sole source” procurement under Section 806 of SRTA’s Financial and Accounting Policies and Procedures and requires approval by the SRTA Board of Directors or SRTA’s Fiscal Committee.

NOW, THEREFORE, BE IT RESOLVED that in accordance with Section 806 of SRTA’s Financial and Accounting Policies the Shasta Regional Transportation Agency finds:

1. It is necessary for the agency to purchase CUBE software licenses to maintain and operate the agency’s regional travel demand model;
2. CUBE software is only available directly from a single source, Citilabs;
3. Purchase of the CUBE software is a sole source procurement; and
4. There is no other feasible alternative to purchasing this software product;

BE IT FURTHER RESOLVED that the SRTA Board of Directors hereby approves entering into an Enterprise Software License Agreement with Citilabs for a three-year period, ending June 30, 2020, not to exceed \$19,800 and authorizes the executive director to execute said contract with Citilabs and any amendments thereof, so long as there are no changes to contract costs.

PASSED AND ADOPTED this 25th day of April, 2017, by the Shasta Regional Transportation Agency.

Greg Watkins, Chair
Shasta Regional Transportation Agency

Attachment B

CITILABS, INC.

ENTERPRISE SOFTWARE LICENSE AGREEMENT

This Enterprise Software License Agreement ("Agreement") is made and entered into as of May 1st 2017 (the "Effective Date"), by and between Citilabs, Inc., a Delaware corporation ("Citilabs"), and Shasta Regional Transportation Agency a California Public Agency ("Licensee").

RECITALS

Citilabs develops, licenses, and supports certain software products, including the Licensed Program (as defined below). Licensee desires to acquire, and Citilabs desires to provide, a license to the Licensed Program on an enterprise-wide basis, subject to the terms and conditions set forth in this Agreement.

AGREEMENT

1. Definitions.

The following terms are defined for the purposes of this Agreement:

(a) "Confidential Information" shall mean any information disclosed by one party to the other pursuant to this Agreement that is in written, graphic, machine readable or other tangible form and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature, including but not limited to information related to the respective parties' business, products, proposed new products, customers or related information. Confidential Information may also include oral information disclosed by one party to the other pursuant to this Agreement, provided that such information is designated as confidential at the time of disclosure and is reduced to writing by the disclosing party within a reasonable time (not to exceed thirty (30) days) after its oral disclosure, and such writing is marked in a manner to indicate its confidential nature and delivered to the receiving party. Notwithstanding any failure to so identify, however, the Licensed Program shall be Citilabs Confidential Information for purposes of this Agreement.

(b) "Documentation" shall mean any printed supporting documentation and the on-line read-me and help files accompanying the Licensed Program.

(c) "License Fees" shall mean the fees charged by Citilabs for Use of the Licensed Program. Such fees shall be as set forth on Exhibit A.

(d) "Licensed Programs" shall mean the computer software programs, in machine readable object code form only, specified in Exhibit A. Upon payment of the Maintenance fees described herein (if applicable), the term, "Licensed Programs" shall also include any Updates of Licensed Programs made generally available by Citilabs to its Licensees; and it may also include third party programs provided to Citilabs with the Licensed Programs.

(e) "Maintenance" shall mean the maintenance activities described in Exhibit B.

download, copy or otherwise benefit from the functionality of the Licensed Programs unless licensed to do so by Citilabs; (iii) as a component of a system, workflow or service accessible by more than the permitted number of users; or (iv) for operations not initiated by an individual user (e.g., automated server processing). Licensee may not use the Licensed Programs to develop commercial data products or a commercial service platform without prior written consent of Citilabs. Licensee may not use the Licensed Programs outside the Territory; and Licensee may not permit its employees to use the Licensed Programs outside the Territory either.

(d) **Licensee Responsible for Users.** Licensee shall be responsible for any breach of the terms of this Agreement by its users, including without limitation, the terms of the license rights granted to Licensee hereunder. Any breach by a user shall be deemed a breach by Licensee.

3. **Backup and Transfer.** Licensee may make one copy of the Licensed Programs for backup purposes if Citilabs' copyright notice is included. Licensee may not sublicense, assign, delegate, rent, lease, time-share or otherwise transfer this license or any of the related rights or obligations to any third party for any reason. Any attempt to make any such sublicense, assignment, delegation or other transfer shall be void.

4. **Copyright.** The Licensed Programs and related Documentation are protected by United States and foreign copyright laws and by international copyright treaties.

5. **Ownership; Title and Proprietary Rights.**

(a) **Acknowledgement of Citilabs' Rights.** The Licensed Programs and Documentation belong to Citilabs and/or its licensors. Licensee agrees that it neither owns nor hereby acquires any claim or right of ownership to the Licensed Programs and Documentation or to any related patents, copyrights, trademarks or other intellectual property. Citilabs and its licensors retain all right, title and interest in and to the Documentation and all copies and the Licensed Programs at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. This license is not a sale of the original or any subsequent copy. All content accessed through the Licensed Programs is the property of the applicable content owner and may be protected by applicable copyright law. This license gives Licensee no rights to such content.

(b) **No Other Rights.** The use by Licensee of the Proprietary Rights is authorized only for the purposes herein set forth and upon termination of this Agreement for any reason, such authorization will cease. Licensee may not, directly or through any person or entity, in any form or manner, copy, distribute, reproduce, incorporate, use or allow access to the Licensed Programs or modify, prepare derivative works of, decompile, reverse engineer, disassemble or otherwise attempt to derive source code or object code from the Licensed Programs, except as explicitly permitted under this Agreement or otherwise agreed in writing by Citilabs. Licensee shall not merge the Licensed Program with another program. Licensee will take appropriate steps with end users of the Licensed Program, as Citilabs may request, to inform them of and assure their compliance with restrictions set forth herein.

(v) The following information will be included in each purchase order: (1) Citilabs customer number and the ship-to address; (2) purchase order number; (3) applicable payment due; and (4) on the face of the purchase order, print the following statement: "Governed by and subject to Citilabs' Enterprise Software License Agreement."

(vi) At each anniversary of the Effective Date and ninety (90) days prior to the expiration date of this Agreement, Licensee shall provide a written report detailing all Deployments made. The report will be subject to audit by an authorized representative of Licensee.

(b) **Payments.** Licensee shall pay to Citilabs the License Fees set forth on Exhibit A upon execution of this Agreement, and shall pay additional fees specified on Exhibit A for Maintenance in accordance with the payment terms and schedule set forth herein and in Exhibit A.

(c) **Taxes.** Licensee shall pay or reimburse Citilabs for all taxes, duties and assessments imposed on Licensee or Citilabs in connection with the license or Use of Licensed Programs under this Agreement or any services provided hereunder, including without limitation all sales, use, excise and other taxes and duties, excluding only taxes based upon Citilabs' net income. Licensee shall hold Citilabs harmless from all claims and liability arising from Licensee's failure to report or pay any such taxes, duties and assessments.

8. **Confidential Information.**

(a) **Limited Access.** Licensee agrees not to provide or otherwise make available any Licensed Program or other Confidential Information of Citilabs to any person other than employees, consultants, contractors or agents of Licensee with a need to use such Licensed Program or Confidential Information.

(b) **Confidentiality.** Licensee shall treat as confidential all Confidential Information of Citilabs, shall not use such Confidential Information except as set forth in this Agreement, and shall use reasonable efforts not to disclose such Confidential Information to any third party. Without limiting the foregoing, Licensee shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by Citilabs under this Agreement. Licensee shall promptly notify Citilabs of any actual or suspected misuse or unauthorized disclosure of Citilabs' Confidential Information.

(c) **Exceptions.** Licensee agrees not to disclose or otherwise make such Confidential Information available to third parties without Citilabs' prior written consent except to the extent that the Confidential Information (i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of Licensee; (ii) was known to Licensee, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of Citilabs; (iv) was independently developed by Licensee without any use of Confidential Information, as demonstrated by files created at the time of such independent development; (v) became known to Licensee, without

(c) **Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY STATED ABOVE, CITILABS MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO ANY LICENSED PROGRAM, INCLUDING ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, OR THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND CITILABS SPECIFICALLY EXCLUDES AND DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

10. **Maintenance.** Upon payment of the Maintenance fees, Citilabs will provide Licensee and its users with Maintenance as described in Exhibit B. Licensee shall name the individuals and alternates to such individuals set who will act as liaisons between Licensee's users and Citilabs for purposes of requesting and obtaining Maintenance (collectively, "Technical Contacts"). Licensee's initial Technical Contact shall be identified and their contact information given, in Exhibit B; provided however that Licensee may change the Technical Contact from time to time by written notice to Citilabs, and such changes shall be effective following Citilabs' receipt of such notice. Such Technical Contact may obtain support from Citilabs as described in Exhibit B. Citilabs shall use reasonable efforts to provide Technical Contact with answers and solutions to problems encountered by Licensee in the course of Licensee's normal and proper Use of the Licensed Programs. Only Technical Contacts may contact Citilabs in connection with matters relating to technical support, and Citilabs shall have no obligation to answer questions or assist Licensee personnel other than Technical Contacts.

11. **Indemnity for Patent or Copyright Infringement.**

(a) **Indemnity.** Citilabs will defend, at its expense, any action brought against Licensee based upon a claim that the Licensed Programs used within the scope of the license rights granted hereunder directly infringe a U.S. patent or copyright. Citilabs further agrees to pay all damages and costs finally awarded against Licensee attributable to such claim; provided that Citilabs shall have sole control of any such action or settlement negotiations, and provided that Licensee notifies Citilabs promptly in writing of such claim and gives Citilabs all authority, information and assistance, at Citilabs' expense, reasonably necessary to settle or defend such claim. Citilabs shall not be liable for any costs or expenses incurred without its prior written authorization.

(b) **Citilabs Options.** If a Licensed Program becomes, or in the opinion of Citilabs may become, the subject of a claim of infringement of any U.S. patent or copyright, Citilabs may, at its option: (i) procure for Licensee the right to use the Licensed Program free of any liability; (ii) replace or modify the Licensed Program to make it non-infringing; or (iii) remove the Licensed Program, or part thereof, and refund the aggregate payments paid therefor by Licensee, less an amount equal to 20% of the purchase price of the license for such Licensed Program for each year of use.

(c) **Exclusions from Indemnification.** Citilabs assumes no liability hereunder for: (i) any method or process in which the Licensed Programs may be used; or (ii) any compliance

assignment for the benefit of creditors, (iii) upon either party's dissolution or ceasing to do business, or (iv) in the event that Licensee fails to pay the License Fees set forth in Exhibit A.

(c) **Surviving Terms.** Sections 1, 2(c), 4, 5, 8, 11, 12, 13(c) and 14, and all payment obligations incurred prior to termination of this Agreement, shall survive termination of this Agreement. Within thirty (30) days after termination of this Agreement, Licensee shall return to Citilabs, at Licensee's expense, and make no further use of, any property, materials or other items of Citilabs and shall certify, in writing to Citilabs, that the originals and all copies, in whole or in part, in any form, of the Licensed Programs have been destroyed or returned to Citilabs.

(d) **Other Remedies.** Nothing contained herein shall limit any other remedies that Citilabs may have for the default of Licensee under this Agreement nor relieve Licensee of any of its obligations incurred prior to termination of this Agreement.

14. **Miscellaneous.**

(a) **United States Government End Users.** The Licensed Programs and the Documentation are "commercial items," as that term is defined at 48 C.F.R. 2.101 (Jan. 2001), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Nov. 2007). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government End Users acquire only those rights in the Licensed Programs and the Documentation that are provided by this Agreement.

(b) **Amendments and Waivers.** Any term of this Agreement may be amended or waived only with the written consent of the parties or their respective successors and assigns. Any amendment or waiver effected in accordance with this Section 14(b) shall be binding upon the parties and their respective successors and assigns.

(c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party, except that either party may assign or transfer this Agreement, in whole or in part, to its parent or any of its affiliates in which it has greater than fifty percent (50%) ownership or to any successors to substantially all that part of its business to which this Agreement relates, including without limitation, by way of merger, acquisition or a sale of assets. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(d) **Entire Agreement.** This Agreement is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

(l) **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(m) **Advice of Legal Counsel**. Each party acknowledges and represents that, in executing this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation thereof.

The parties have executed this Agreement as of the date first set forth above.

CITILABS:

CITILABS, INC.

(Signature)

Katie Brinson

(Print Name)

Global Account Director

(Title)

Address: 1605 East Plaza Drive, STE 102

Tallahassee, FL 32308

Facsimile Number: 888-771-2823

LICENSEE:

SHASTA REGIONAL TRANSPORTATION AGENCY

(Signature)

Daniel S. Little, AICP

(Print Name)

Executive Director

(Title)

Address: 1255 East Street, Suite 202

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