

STAFF REPORT



MEETING DATE:	April 25, 2017
SUBJECT:	Approve Contract with Citilabs for Renewal of Enterprise License Agreement
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, authorizing the executive director to enter into a sole-source Enterprise Software License Agreement with Citilabs, for a three-year term ending June 30, 2020, not to exceed \$19,800, and the authority to make minor, non-budgetary amendments.

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 cost of the new agreement would increase from \$6,000 to \$6,600 annually, for a total of \$19,800 over a three-year period. This represents a 3% annual cost increase over the previous agreement. Staff considered the option of purchasing individual licenses on a year-to-year basis, but does not recommend this approach because it's more expensive, at a total of \$56,000 for three years. Staff recommends SRTA enter into the lower cost three-year Enterprise Software License 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.

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).

Daniel S. Little, AICP, Executive Director

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

Attachment A

RESOLUTION



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

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; and

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

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.

(f) “Proprietary Rights” shall mean all rights in the Licensed Programs and Citilabs’ Confidential Information, including, but not limited to, patents, copyrights, author’s rights, trademarks, tradenames, know-how and trade secrets, irrespective of whether such rights arise under U.S. or international intellectual property, unfair competition or trade secret laws, and including, but not limited to, all such rights in translations, copies, partial copies, compilations or modifications of the Licensed Programs.

(g) “Territory” shall mean the geographical territory described in Exhibit A.

(h) “Updates” shall mean new maintenance releases of the Licensed Programs that contain bug fixes, error corrections and minor enhancements, but not containing major enhancements or significant new functionality, as determined in Citilabs’ reasonable discretion, and any related documentation.

(i) “Use” shall mean the installation and internal use of the Licensed Programs on any number of servers, workstations or machines owned, leased or controlled by Licensee, on an enterprise-wide basis.

2. **License.**

(a) **License Grant.** Citilabs hereby grants to Licensee, on the terms and conditions set forth in this Agreement, a non-exclusive, non-transferable (except as set forth in Section 14(c)) license and right to use, copy and install the Licensed Programs on an unlimited number of servers, workstations or machines (including employee laptops) owned, leased or controlled by Licensee. Licensee may also make copies of the Documentation for use only with the Licensed Programs.

(b) **Scope of Use.** Licensee may use copies of the Licensed Programs throughout Licensee’s facility within the Territory as described in a purchase order accepted by Citilabs. Licensee may also install and use the Licensed Programs on computer file server(s) within Licensee’s internal network in the Territory and on Licensee’s employee laptops.

(c) **Limitations on Use; Prohibited Uses.** Licensee, and its users, may not rent, lease, sell or otherwise transfer or distribute copies of the Licensed Programs or Documentation to others outside Licensee’s company. Licensee may not modify, translate, convert or merge the Licensed Programs with any other software unless prior written approval is obtained from an authorized representative of Citilabs. Licensee and its users may not reverse assemble, reverse compile or otherwise attempt to create the source code from the Licensed Programs. Licensee and its users may not release the results of any performance or functional evaluation of the Licensed Programs to any third party without prior written approval of Citilabs for each such release. The license rights granted herein are limited to Licensee’s own internal use.

By way of example and without limitation, Licensee may not install or access (either directly or through commands, data or instructions) the Licensed Programs: (i) for enabling web hosted workgroups or services available to the public; (ii) by an individual or entity to use,

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.

(c) **Proprietary Notices.** Licensee will ensure that all copies of the Licensed Programs will incorporate copyright and other proprietary notices in the same manner that Citilabs incorporates such notices in the Licensed Programs or in any manner reasonably requested by Citilabs. Licensee will also permit Citilabs to enter any of Licensee's premises during regular business hours to inspect the Licensed Programs in any reasonable manner.

(d) **Use of Trademarks.** Nothing herein will grant to Licensee any right, title or interest in Citilabs' trademarks. Licensee will not challenge any intellectual property rights claimed by Citilabs in such trademarks.

6. **Records. Audits.**

Citilabs shall, at any time during the term of this Agreement, be entitled to audit Licensee's use of the Licensed Programs, upon ten (10) days written notice to Licensee in order to confirm the accuracy of Licensee's conformance with the terms and conditions of this Agreement; provided, that no more than one (1) such audit may be conducted in any one hundred and eighty (180) day period. Any such audit shall be performed at Citilabs' expense during the Licensee's normal business hours.

7. **Ordering; Payments; Taxes.**

(a) **Purchase Orders. Delivery and Deployment.**

(i) Licensee shall issue a purchase order upon execution of this Agreement and annually thereafter in accordance with the fee schedule in Exhibit A. These fees will be due and payable (30) days prior to the anniversary date of the Effective Date, with the initial payment due at execution of this Agreement.

(ii) Upon receipt of the initial purchase order from Licensee, Citilabs shall deliver to Licensee the Licensed Programs listed in Exhibit A. Delivery of updates/new versions of the Licensed Programs will be made in the same manner. If requested by Licensee, Citilabs will deliver a limited number of sets of backup media to the ship-to address identified in purchase order, FOB destination with shipping charges prepaid. Licensee may purchase additional backup media sets at the prices in effect at the time of purchase. Delivery or receipt of tangible media could cause prior and future license fees to be subject to taxes. Licensee acknowledges that Citilabs has a right to invoice, and Licensee agrees to pay any such sales or use tax associated with receipt of tangible media.

(iii) Licensee shall provide registration/authorization numbers or access codes, as applicable, to activate the nondestructive copy protection program that enables the Licensed Programs to operate or allow access.

(iv) Any purchase orders issued by Licensee will reference, incorporate, and be subject to the terms and conditions of this Agreement. No additional, conflicting, or different terms contained in a purchase order or ordering document will be binding. All orders and deliveries pertaining to this Agreement will be processed through Licensee's centralized point of contact.

(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

restriction, from a source other than Citilabs without breach of this Agreement by Licensee and otherwise not in violation of Citilabs' rights; (vi) is disclosed generally to third parties by Citilabs without restrictions similar to those contained in this Agreement; or (vii) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that Licensee shall use all reasonable efforts to provide prompt, written, and sufficient advance notice thereof to Citilabs to enable Citilabs to seek a protective order or otherwise prevent or restrict such disclosure. Licensee agrees that Licensee will take appropriate action by instruction, agreement, or otherwise with Licensee's employees to satisfy Licensee's obligations under this Agreement with respect to use, copying, modification, protection and security of Confidential Information.

(d) **Return of Confidential Information.** Upon expiration or termination of this Agreement, each party shall return all Confidential Information received from the other party.

(e) **Confidentiality of Agreement.** Each party shall be entitled to disclose the existence of this Agreement, but agrees that the terms and conditions of this Agreement shall be treated as Confidential Information and shall not be disclosed to any third party; provided, however, that each party may disclose the terms and conditions of this Agreement: (i) as required by any court or other governmental body; (ii) as otherwise required by law; (iii) to legal counsel of the parties; (iv) in confidence, to accountants, banks, and financing sources and their advisors; (v) in connection with the enforcement of this Agreement or rights under this Agreement; or (vi) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction.

9. **Limited Warranty.**

(a) **Warranty.** Citilabs warrants that for a period of ninety (90) days from receipt of Licensed Programs by Licensee, (i) the media on which the Licensed Programs are recorded will be free from defects in materials and workmanship, and (ii) the Licensed Programs will perform substantially in accordance with the Documentation, provided that such Licensed Programs are properly used by Licensee. Citilabs makes no warranty as to the Licensed Programs after such ninety (90) day period. Citilabs does not warrant that the Licensed Programs will meet Licensee's requirements or will operate in combination with other software which may be selected for use by Licensee, or that the operation of the Licensed Programs will be uninterrupted or error-free.

(b) **Remedies.** Citilabs' sole and exclusive liability and Licensee's sole and exclusive remedy under this Limited Warranty shall be, at Citilabs' election, either (i) replacement of the applicable Licensed Program, if defective, (ii) Citilabs' reasonable effort to make the Licensed Program perform substantially in accordance with the Documentation, or (iii) return of the License Fees paid by Licensee for the applicable Licensed Program, on a pro rated basis accounting for previous Use. The above remedies are available only if Citilabs is promptly notified in writing, within the ninety (90) day warranty period. This limited warranty is VOID if failure of the Licensed Programs is due to accident, abuse or misapplication by Licensee. Any replacement Licensed Programs will be warranted for the remainder of the original warranty period, or for thirty (30) days, whichever is longer.

(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

with Licensee's specifications. Citilabs shall have no obligation to defend Licensee or to pay costs, damages or attorney's fees for any claim based upon: (A) use of other than a current unaltered release of the Licensed Programs; or (B) the combination, operation or use of any Licensed Program furnished hereunder with non-Citilabs programs or data if such infringement would have been avoided but for the combination, operation or use of the Licensed Program with such programs or data.

(d) **Sole and Exclusive Liability.** THIS SECTION 11 SETS FORTH THE SOLE AND EXCLUSIVE LIABILITY OF CITILABS FOR INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

12. **Limitation of Liability.** Licensee agrees that Citilabs' liability hereunder for damages arising from performance or nonperformance of the Licensed Programs, including but not limited to liability for patent and copyright infringement, shall be as set forth above in Section 11, and shall in no event exceed the amount paid by Licensee pursuant to this Agreement. Licensee further agrees that **IN NO EVENT SHALL CITILABS, ITS AFFILIATES OR RESELLERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR OTHER ECONOMIC LOSS, ARISING OUT OF YOUR POSSESSION OF, USE OF, OR INABILITY TO USE THE LICENSED PROGRAMS OR DOCUMENTATION, EVEN IF LICENSEE HAS ADVISED CITILABS OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM LIABILITY OF CITILABS, ITS AFFILIATES AND ITS RESELLERS SHALL NOT EXCEED THE SUM OF THE LICENSE FEES PAID BY LICENSEE FOR THE LICENSED PROGRAMS. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES OR LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND THIS SECTION WILL NOT APPLY TO THE EXTENT THAT APPLICABLE LAW REQUIRES LIABILITY NOTWITHSTANDING THE FOREGOING LIMITATION OR EXCLUSION.**

13. **Term and Termination.**

(a) **Term.** The term of this Agreement and the license granted hereunder shall commence on the Effective Date set forth at the beginning of this Agreement and shall continue for the term indicated in Exhibit A unless terminated earlier as provided herein.

(b) **Termination.**

(i) Either party may, at its option, terminate this Agreement upon notice to the other party if the other party materially fails to comply with any of the terms and conditions of this Agreement and if such default has not been cured within thirty (30) days after written notice to the other party.

(ii) This Agreement shall terminate, without notice, (i) upon the institution by or against either party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of such party's debts, (ii) upon either party's making an

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.

(e) **Independent Contractor.** Neither party shall, for any purpose, be deemed to be an agent of the other party and the relationship between the parties shall only be that of independent contractors. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

(f) **Force Majeure.** In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement (other than a payment obligation) due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, material unavailability, or any other cause beyond the reasonable control of the party invoking this section, and if such party shall have used its best efforts to mitigate its effects, such party shall give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences. Notwithstanding the foregoing, if such party is not able to perform within 30 days after the event giving rise to the excuse of force majeure, the other party may terminate the Agreement.

(g) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Each of the parties to this Agreement consents to the exclusive jurisdiction and venue of the state and federal courts located in Santa Clara County, California.

(h) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded, and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(i) **Waiver.** The waiver of any particular breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.

(j) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.

(k) **Headings.** The headings of the several sections of this Agreement are intended for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(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:

LICENSEE:

CITILABS, INC.

SHASTA REGIONAL TRANSPORTATION AGENCY

(Signature)

(Signature)

Katie Brinson

Daniel S. Little, AICP

(Print Name)

(Print Name)

Global Account Director

Executive Director

(Title)

(Title)

Address: 1605 East Plaza Drive, STE 102

Address: 1255 East Street, Suite 202

Tallahassee, FL 32308

Redding, CA 96001

Facsimile Number: 888-771-2823

Facsimile Number: 530-262-6189

EXHIBIT A

A. Licensed Programs: Cube Base, Cube Voyager, Cube Avenue, Cube Analyst, Cube Cargo, Cube Cluster, Cube Land

B. Territory: The United States of America

C. Enterprise License Fee: \$19,800.00 USD plus applicable taxes/VAT.

D. Maintenance Fee: Included in Enterprise License Fee

E. Payment Terms: Licensee shall issue a purchase order upon execution of this Agreement and annually thereafter in accordance with the following fee schedule: \$19,800 total
to be divided in three equal annual payments of \$6,600.00

These fees will be due and payable thirty (30) days prior to the start of SRTA's fiscal year, with each \$6,600 payment due May 31, 2017, May 31, 2018, and May 31, 2019.

F. Term of Agreement and License: 7/01/2017-6/30/2020

EXHIBIT B

CITILABS SOFTWARE MAINTENANCE AGREEMENT

(For Enterprise Software License Agreements)

This Software Maintenance Agreement ("Agreement") is between the licensee indicated on the attached Invoice ("Licensee") and Citilabs, Inc., a Delaware corporation having a place of business at 1211 Miccosukee Road, Tallahassee, Florida 32308 USA ("Citilabs").

WHEREAS, Citilabs is owner of certain software and documentation packages and Citilabs has the right to combine selected components and operating system versions of such software and documentation into a comprehensive system, and to license and sublicense the system; and

WHEREAS, Citilabs has licensed to Licensee a system as set forth on the attached Enterprise Software License Agreement (hereinafter referred to as the "ESLA"); and

WHEREAS, Citilabs and Licensee wish to provide for the maintenance of the system by Citilabs.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. Subject and Assignment.

1.1. The specifications for the system which is the subject of this Agreement (hereinafter referred to as "System") are defined in the ESLA and incorporated herein by reference. The System for which maintenance is being purchased under this Agreement is set forth in the ESLA, which is attached hereto and hereby incorporated by reference herein. All terms and conditions of the ESLA shall remain in effect.

1.2. Neither party shall assign this Agreement without prior written consent of both parties, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Citilabs may assign this Agreement to any successor in interest resulting from a merger, acquisition, sale of the business or other corporate reorganization.

2. Technical Contact.

The technical contact(s) for Licensee shall be as set forth below Licensee's signature at the end of this Agreement (hereinafter, each a "Technical Contact"). If, subsequent to execution of this Agreement, Licensee wishes to transfer Technical Contact designation to another individual, Licensee shall notify Citilabs in writing of the name, mailing address, e-mail address and phone number of the newly designated Technical Contact.

3. Responsibilities of Citilabs.

3.1. Citilabs shall provide all labor and pay all direct expenses necessary to maintain the System. At times, remedies may consist of temporary procedures to be followed by Licensee during the period when a permanent remedy is being sought. Citilabs shall maintain a current version of the System in digital format, and emergency program maintenance will be provided by telephone, fax, e-mail and/or digital media interchange, at Citilabs' option.

3.2. Citilabs shall perform all maintenance provided pursuant to this Agreement during the Citilabs prime period of maintenance (hereinafter "PPM"), defined as 8:30 AM to 5:00 PM EDT, Monday through Friday, and shall respond promptly to a request for remedial maintenance made by the Technical Contact or coordinated with the Technical Contact during the PPM. Labor and/or travel and other direct expenses, provided at Licensee's request for the Licensee's convenience outside the PPM, will be invoiced as per Section 7.2 of this Agreement.

3.3. Citilabs shall also maintain the System by taking all reasonable actions necessary to prepare updates which ensure performance to original product specifications as such updates become available.

3.4. Citilabs shall provide the Technical Contact with all System updates as they become available at no additional cost to Licensee.

3.5. Maintenance for the System consists of updates and other benefits such as access to technical support. Citilabs supports licensed users under maintenance with the installation and maintenance of Citilabs Software, assistance in solving problems arising from the use of the Software, hardware interfacing of peripheral devices, and reporting of enhancement requests and bugs reports submitted by the user.

4. Responsibilities of Licensee.

4.1. Licensee shall apply all appropriate fixes and updates received from Citilabs in a timely fashion, and make and distribute copies of the System updates to all other licensed sites of Licensee.

4.2. Licensee shall provide Citilabs access to the System to perform maintenance at any reasonable time requested by Citilabs.

4.3. If on-site work is required, Licensee shall provide working space, utilities and facilities within a reasonable distance from the System as required by Citilabs personnel.

4.4. Licensee shall provide access to, and use of, all information and facilities determined necessary by Citilabs to maintain the System. If such information and facilities contain proprietary or classified information, Citilabs shall use its commercially reasonable efforts not to divulge such information to any other person, unless compelled to do so by judicial or administrative process.

4.5. If on-site work is required, Licensee shall provide operating supplies and consumables, including, but not limited to paper, ink/toner and digital media.

5. Prerequisite to Maintenance Agreement.

In order to enter into this Agreement at a date subsequent to warranty expiration as provided for in the ESLA, Licensee must, at Licensee's expense, first bring the System completely current by applying all fixes issued by Citilabs from the date of warranty expiration to the date of execution of this Agreement.

6. Conditions of Service.

6.1. Citilabs shall be under no obligation to furnish any maintenance service under this Agreement, if repair is required because of any occurrence over which Citilabs has no control, including, but not limited to, the following: 1) improper use of the System; 2) natural disaster, including but not limited to, flood or earthquakes; 3) strikes, riots, acts of war or nuclear disaster; 4) program changes and modifications made by other than Citilabs personnel; 5) improper functioning of the hardware on which the System is run; 6) improper operation of the System by operators; 7) failure of the operators to follow all instructions given by Citilabs; and 8) unusual shock or electrical damage, accident, fire or water damage, neglect, air-conditioning failure, humidity control failure, damage during transportation by Licensee or other causes other than ordinary use. If maintenance service is requested by Licensee as a result of the causes stated above, such service shall be provided, if at all, and invoiced separately with labor invoiced at Citilabs' then effective standard rates and direct expenses invoiced at actual cost.

6.2. Citilabs shall not be required to render service under this Agreement if Licensee has failed to pay any amount due in accordance with Section 8 of this Agreement or is otherwise in breach of this Agreement and/or the ESLA.

7. Charges.

7.1. Licensee shall pay Citilabs (a) an annual fee for PPM service and software updates in the amount set forth on the attached ESLA, which is incorporated herein by reference, or in an invoice provided by Citilabs and (b) other charges as set forth in this Agreement for all other services. The annual fee is subject to change by Citilabs upon each one year anniversary of this Agreement, as will be set forth in any future invoice. Licensee may accept such change by payment or may terminate this Agreement at its normal expiration.

7.2. Charges for services performed outside the PPM and for services not covered by this Agreement, provided at Licensee's request, will be invoiced separately with labor charged at Citilabs' then effective standard rates (which shall be made available upon request by Licensee) and direct expenses invoiced at actual cost; however, Citilabs does not guarantee availability outside the PPM.

7.3. Unless otherwise stated, all charges are exclusive of federal, state or local excise, sales, or similar taxes, now or hereinafter enacted, which apply to the charges, this Agreement, the services rendered, or the parts supplied. Such taxes, when applicable, will be additional charges to Licensee.

8. Payment.

THE ANNUAL FEE SHALL BE DUE AND PAYABLE IN ADVANCE IN FULL IN THE AMOUNT SET FORTH IN THE ESLA OR ON AN INVOICE PROVIDED BY CITILABS. PAYMENT OF SUCH ANNUAL FEE SHALL BE CONCLUSIVELY DEEMED AN ELECTION BY LICENSEE TO ENTER INTO OR RENEW THIS AGREEMENT, AS APPLICABLE, AND THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL THEREAFTER APPLY TO LICENSEE AND CITILABS FOR THE UPCOMING TERM HEREOF. IF SUCH PAYMENT IS NOT RECEIVED IN CITILABS' OFFICES BY THE THIRTIETH (30TH) DAY AFTER THE DATE OF THE INVOICE, LICENSEE SHALL BE CONCLUSIVELY DEEMED TO HAVE ELECTED NOT TO PURCHASE THE SERVICES TO BE PROVIDED BY CITILABS UNDER THIS AGREEMENT FOR

THE UPCOMING TERM, AND THIS AGREEMENT SHALL BE AUTOMATICALLY TERMINATED AND/OR OF NO FORCE OR EFFECT, AND THE PARTIES SHALL HAVE NO OBLIGATIONS TO EACH OTHER HEREUNDER.

9. Term of Agreement.

9.1. The term of this Agreement and the term of the ESLA shall be the same as indicated in Exhibit A of the ESLA. Thereafter, Licensee may elect to renew the term of the ESLA and this Agreement for another fixed period by delivering timely payment of the next Invoice which will be submitted by Citilabs at least thirty (30) days prior to the expiration of the then-current term. If timely payment is not received by Citilabs, Licensee shall be deemed to have elected to terminate this Agreement at the expiration of the then-current term unless Citilabs has agreed to periodic payments in which event Licensee shall be deemed to have elected to terminate this Agreement as of the date that any payment becomes delinquent. Also, after the initial term, this Agreement may be terminated by either party subject to thirty (30) days prior written notice to the second party, and in the event that Citilabs terminates this Agreement for convenience, Citilabs shall refund a pro rata portion of the annual fee based on the number of months elapsed in the then-current term (for example, if the Agreement is terminated in the seventh (7th) month of the term, then Citilabs shall refund to Licensee five-twelfths (5/12) of the annual fee paid by Licensee).

9.2. Notwithstanding the provisions of Section 6.1, if Citilabs is at any time in breach of its obligations pursuant to this Agreement and fails to commence to remedy such breach within ten (10) days after Citilabs has received Licensee's demand in writing to that effect, Licensee's sole remedy shall be to terminate this Agreement and employ such other qualified persons as may be required to perform the services referred to in this Agreement. In such event, a pro rata portion of the annual fee paid by Licensee to Citilabs applicable to the month in which Citilabs receives Licensee's written demand and for any subsequent months will be refunded (for example, if the Agreement is terminated in the seventh (7th) month of the term, then Citilabs shall refund to Licensee five-twelfths (5/12) of the annual fee paid by Licensee).

9.3. Citilabs may terminate this Agreement if:

- a. Licensee breaches any of its obligations pursuant to this Agreement and fails to remedy such breach within ten (10) days after Citilabs has made a demand in writing to the effect; or
- b. Licensee violates the terms of the ESLA; or
- c. Licensee fails to make payments hereunder when due and continues to fail to make payments within thirty (30) days after Citilabs has made a demand in writing that such payments be made, provided that Citilabs shall not be required to provide any maintenance services during the period of delinquent payment; or
- d. Licensee has dissolved, liquidated, or permanently terminated its operations.

10. Additions and Deletions.

Licensee may add or delete compatible Citilabs products to the ESLA at any time. The maintenance service rate for any such addition or deletion shall be adjusted accordingly, upon annual renewal.

11. Warranty.

11.1. Citilabs will perform the services herein described using reasonable commercial efforts and exercising reasonable level of skill and expertise.

11.2. The foregoing states the exclusive warranties of Citilabs with respect to all aspects of this Agreement, except copyright and patent infringement as provided for in the ESLA, and are in lieu of all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

12. Limitation on Liability.

12.1. Citilabs liability hereunder for damages shall not exceed one fourth of the annual fee as set forth on the Invoice. Citilabs will not be liable for any lost profits or consequential damages, even if Citilabs has been advised of the possibility of such damages, or any claim or demand against licensee by any other party arising out of licensee's use or inability to use the system. Notwithstanding anything set forth above, Citilabs will not have any liability for any modifications which are made to the System at the request of Licensee (whether made by Citilabs, Licensee, or a third party) or the impact of such modifications on the original system.

12.2. Except for an action for non-payment hereunder, no action, regardless of form, arising out of the transactions under this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

13. Arbitration and Attorneys' Fees.

Except as set forth in the ESLA, in the event that any dispute arises between the parties hereto with regard to any of the provisions of this Agreement or the performance of the terms and conditions hereof by either of the parties hereto, such dispute shall be settled by arbitration to be conducted in the County of Santa Clara, State of California, under the Commercial Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party in any such action or arbitration shall recover all of its costs, including reasonable attorneys' fees.

14. Licensee's Remedies Exclusive.

Licensee's sole remedies are those specified in this Agreement.

15. Miscellaneous.

15.1. Headings. All headings used throughout this Agreement are for reference only and shall not be considered a substantive part of the Agreement.

15.2. Exclusive Agreement. This Agreement is the exclusive agreement between the parties with respect to its subject matter and as of its date supersedes all prior agreements, negotiations, representations, and proposals, written or oral, related to its subject matter, with the exception that all terms and conditions of the ESLA shall remain in effect except as expressly modified herein.

15.3. Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired thereby.

15.4. Waiver. No waiver of any breach of this Agreement shall constitute a waiver of any other breach, whether of the same or any other covenant, term, or condition. The subsequent performance of any of the terms, covenants or conditions of this Agreement shall not constitute a waiver of any preceding breach, regardless of the other party's knowledge of the preceding breach at the time of subsequent performance, nor shall any delay or omission of either party's exercise of any right arising from any such default affect or impair the parties' rights as to the same or future default.

15.5. Governing Law. This Agreement shall be governed by the laws of the State of California. The parties specifically decline to be governed by the United Nations Convention on the International Sale of Goods.

15.6. Binding on Heirs and Assigns. This Agreement shall inure to the benefit of and be binding upon the heirs, successors, and assigns of each of the parties hereto.

15.7. Notices. All notices to be given pursuant to this Agreement must be given in writing, personally or by mail, return receipt requested, and addressed to Citilabs or Licensee at their respective addresses below, or such other address of which the other party has been previously notified in writing. All such notices shall become effective on the date of mailing.

LICENSEE:

By: Shasta Regional Transportation Agency (SRTA), Daniel S. Little

Title: Executive Director

Date: May 1st, 2017

Names and Contact Information for Initial Technical Contacts:

Name: Sean Tiedgen

Contact Information: 530-262-6185; Email: stiedgen@srta.ca.gov

Name: Jennifer Pollom

Contact Information: 530-262-6195; Email: jpollom@srta.ca.gov

CITILABS:

By: Katie Brinson

Title: Global Sales Director

Date: 3-Mar-17