



# City of Palo Alto

## City Council Staff Report

(ID # 7704)

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**Report Type: Consent Calendar**

**Meeting Date: 2/13/2017**

**Summary Title: TMA Funding Agreement Amendment**

**Title: Amendment of an Existing Funding Agreement With the Palo Alto Transportation Management Association (PATMA) and Silicon Valley Community Foundation Extending the Term of the Agreement for Two Years (to December 2018) and Providing \$100,000 per Year**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **Recommendation:**

Staff recommends that the City Council approve and authorize the City Manager or his designee to amend the existing funding agreement between the City of Palo Alto, the Silicon Valley Community Foundation, and the Palo Alto Transportation Management Association (PATMA), extending the term of the agreement for two years and providing an additional \$100,000 per year for use by the PATMA in reducing single occupant vehicle (SOV) commute trips to/from Downtown Palo Alto.

### **Background & Discussion**

Following direction from City Council in 2013, staff worked to develop Transportation Demand Management (TDM) strategies to encourage alternatives to solo driving as part of a multi-faceted effort to address traffic and parking concerns. The development of a Transportation Management Association (TMA) for Palo Alto was seen as a key component of this approach.

The Palo Alto TMA (PATMA) was formed and incorporated as a nonprofit in January 2016. In June, 2016, Council authorized the City Manager to formalize the provision of City funding for TMA programs by executing a Funding Agreement between the City of Palo Alto, the Silicon Valley Community Foundation (SVCF), and the Palo Alto Transportation Management Association (PATMA). SVCF holds and administers a fund restricted to specific charitable purposes and has legal discretion and control over the restricted account. The Agreement expires on July 1, 2017. Under the Agreement, the City transferred the sum of \$100,000 to

SVCF, to be deposited into the restricted account for "pilot projects" intended to reduce single occupancy vehicle trips by downtown workers, as mutually agreed upon by the City Manager and PATMA.

As part of the Fiscal Year 2016 Adopted Operating Budget, \$100,000 was allocated for TMA pilot projects. Several Councilmembers expressed concern regarding the use of the funding and transparency, and expressed a desire for the City to maintain an oversight role in the use of the funding. As a result, the City Council authorized the City Manager (Staff Report 6823) to enter into a Funding Agreement between the City of Palo Alto, the Silicon Valley Community Foundation, and the Palo Alto Transportation Management Association.

The agreement governs the use of the \$100,000 provided by the City of Palo Alto in FY16. The agreement limits the use of the City-provided funds to "pilot projects" conducted by the TMA with the intent to reduce single-occupancy vehicle trips by downtown commuters. The agreement makes funding for pilot programs contingent on the TMA providing reports twice annually to the City Council, with updates on the implementation and effectiveness of the pilot programs, conducting open meetings, and providing documents created by the TMA to the public. Representatives of the TMA are currently scheduled to provide a report to the City Council on March 6, 2017.

In 2016, the TMA Board of Directors, at City Council request, developed a two year business plan that identified the resources required to fund activities. The budget included a baseline scenario denoting potential achievements with a minimum of continued funding of \$100,000 annually. In anticipation, staff requested an additional \$100,000, which Council approved as part of the Fiscal Year 2017 Adopted Operating Budget.

Separately, the City supports the PATMA through a contract with MIG consultants which supports a part-time staff person, and supports the TMA's annual survey of commuters to gauge the program's effectiveness. Funds available under the MIG contract will be exhausted later this year, and the PATMA will need to identify additional funds to hire and support a permanent staff person.

With the recommended action, staff is requesting that City Council approve an extension of the City's existing agreement with the PATMA and SVCF for two years (to December 2018), provide an additional \$100,000 in funding from the City that was budgetted in FY2017, and commit to an additional \$100,000 in FY2018. Under the terms of the agreement, the funding would be used for pilot projects agreed upon by the City Manager.

## **Policy Implications**

The support of the Palo Alto TMA is consistent with the following Comprehensive Plan Policies:

- Goal T-1: Less Reliance on Single-Occupant Vehicles
- Policy T-3: Support the development and expansion of comprehensive, effective programs to reduce auto use at both local and regional levels.

### **Resource Impact**

Staff is requesting an amendment of the Funding Agreement to include an additional \$200,000: \$100,000 for Fiscal Year 2017 and \$100,000 for Fiscal Year 2018. The Fiscal Year 2017 Approved Operating Budget includes \$100,000 for TMA pilot programs. Staff will explore alternative funding sources beyond the General fund for the \$100,000 necessary in Fiscal Year 2018 and anticipates bringing forward recommendations as part of the Fiscal Year 2018 annual budget process.

### **Environmental Review**

The requested action is exempt from review under the California Environmental Quality Act (CEQA) since it can be seen with certainty that there is no possibility of a significant impact on the environment (State CEQA Guidelines Section 15061(b)(3)).

#### **Attachments:**

**Attachment A 2016-01-30 Amendment No 1 TMA Funding Agmt (DOCX)**

**Attachment B June 2016 TMA Funding Agreement FINAL (PDF)**

**AMENDMENT NO. 1 TO AGREEMENT  
AMONG CITY OF PALO ALTO, SILICON VALLEY COMMUNITY  
FOUNDATION, AND THE PALO ALTO TRANSPORTATION  
MANAGEMENT ASSOCIATION TO PROVIDE FUNDING FOR  
TRANSPORTATION DEMAND MANAGEMENT SERVICES**

This Amendment No. 1 (“Amendment”) to the Agreement to provide funding for transportation demand management services (“Agreement”) is entered into February 13, 2017, by and among the City of Palo Alto, a California chartered municipal corporation (“CITY”), the Palo Alto Transportation Management Association, a California nonprofit public benefit corporation (“PATMA”), and Silicon Valley Community Foundation, a California nonprofit public benefit corporation (“SVCF”) (collectively, “the parties”).

**RECITALS**

A. The Agreement was entered into among the parties to provide funding for transportation demand management services for the Palo Alto Transportation Management Association.

B. The parties wish to amend the Agreement to extend its term and increase the contribution provided by CITY.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 1. Section 2, Term, is hereby amended to read as follows:

“**2. Term.** The term of this Agreement shall be from the Effective Date through December 31, 2018.”

SECTION 2. Section 3, City Deposit, is hereby amended to read as follows:

“**3. City Deposit.** The City shall annually transfer the sum of \$100,000 (“City Funds”) to SVCF, to be deposited into the Restricted Account for use for the purposes described in this Agreement. The total amount of City Funds to be provided during the term of this Agreement shall not exceed \$300,000.”

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SECTION 3. Except as herein modified, all other provisions of the Agreement, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives executed this Amendment on the date first above written.

**PALO ALTO TRANSPORTATION MANAGEMENT ASSOCIATION:**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SILICON VALLEY COMMUNITY FOUNDATION:**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF PALO ALTO:**

\_\_\_\_\_

James Keene  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_

Albert S. Yang  
Senior Deputy City Attorney

AGREEMENT AMONG CITY OF PALO ALTO, SILICON VALLEY COMMUNITY  
FOUNDATION AND THE PALO ALTO TRANSPORTATION MANAGEMENT  
ASSOCIATION TO PROVIDE FUNDING FOR TRANSPORTATION DEMAND  
MANAGEMENT SERVICES FOR PALO ALTO TRANSPORTATION MANAGEMENT  
ASSOCIATION

This Agreement to provide funding for transportation demand management services (this "Agreement") is made effective as of June 20, 2016 ("Effective Date"), by and between the City of Palo Alto, a California chartered municipal corporation ("City"), the Palo Alto Transportation Management Association, a California nonprofit public benefit corporation ("PATMA"), and Silicon Valley Community Foundation, a California nonprofit public benefit corporation ("SVCF"), on the following terms and conditions.

RECITALS

1. Since 2013, the City has been actively engaged in developing Transportation Demand Management (TDM) strategies to encourage alternatives to solo driving to address Palo Alto's growing traffic and parking concerns.
2. The City engaged Moore Iacofano Goltsman, Incorporated ("MIG"), a consultant group with significant experience designing Bay Area Transportation Management Associations (TMA's), to assist in forming a TMA. The Palo Alto Transportation Management Association (PATMA) was incorporated on January 1, 2016.
3. The City has an interest in the success of the PATMA, and has made funding available for technical support during the start-up phase of the organization using the funds set aside for the MIG contract. The City has also provided funding for a survey of Downtown employee commute patterns, and seeks to support pilot programs of the PATMA through this agreement.
4. SVCF has entered into that certain Customized Philanthropy Services Agreement with PATMA (the "CPS Agreement"), pursuant to which SVCF holds and administers a fund restricted to specific charitable purposes set forth in such agreement ("Restricted Account"). SVCF has legal discretion and control over the Restricted Account.
5. The PATMA intends to seek funding from public and private foundations, private businesses, public agencies and other financial supporters.
6. The mission statement of the PATMA is to reduce Single Occupancy Vehicle (SOV) trips, traffic congestion and demand for parking by delivering targeted transportation solutions to the Downtown area's diverse range of employers, employees, visitors and residents. It also serves as a one-stop transportation information resource for the broader community, provides a forum for community dialogue, and is an active voice in local and regional transportation issues. While the primary focus of the PATMA is the Downtown population whose travel choices have the highest impacts, its programs and services may extend beyond these constituents.

7. The Parties agree to enter into this Funding Agreement to facilitate the immediate implementation of pilot programs to reduce single occupancy vehicle (SOV) trips by downtown workers in Palo Alto.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are hereby incorporated into this Agreement in their entirety.
2. **Term.** The term of this Agreement shall be from the Effective Date through July 1, 2017.
3. **City Deposit.** The City shall transfer the sum of \$100,000 ("City Funds") to SVCF, to be deposited into the Restricted Account for use for the purposes described in this Agreement.
4. **Use of City Funds.** SVCF shall hold and administer the City Funds pursuant to the terms of the Restricted Account. SVCF and PATMA shall use the City Funds for the general purposes of the Restricted Account, as defined in the CPS Agreement, as further restricted for "pilot projects" intended to reduce single occupancy vehicle trips by downtown workers, as mutually agreed upon by the City Manager and PATMA. SVCF shall track the City Funds separately from other amounts held in the Restricted Account.
5. **Strategic Plan and Budget.** Within 90 days of the Effective Date, PATMA shall provide a detailed strategic plan and budget to the City. The strategic plan may utilize scenarios to illustrate the return on investment associated with different funding levels.
6. **Reporting Requirement.** PATMA shall provide the City Council with bi-annual written reports on the implementation and effectiveness of pilot programs funded by the City, including quantitative measures and cost per employee mode shift.
7. **Public Meeting Requirement.** The funding is expressly contingent on PATMA's agreement to provide 72 hours written advance notice to the public of all Board of Director meetings and to allow members of the public to attend all such Board of Director meetings.
8. **Work Product.** PATMA, shall ensure any written document or other work product developed with funds received through this Agreement is made available to the public to the extent not otherwise prohibited by law.
9. **Audits.** PATMA and SVCF will make available all financial records related to the funds and the use of the funds during the term of this Agreement and for three (3) years thereafter. PATMA and SVCF further agree to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

**10. Indemnity.** To the fullest extent permitted by law, PATMA shall protect, indemnify, defend and hold harmless CITY and its Council members, SVCF, and each of the City's and SVCF's officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by PATMA, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

Notwithstanding the above, nothing in this section shall be construed to require PATMA to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

The provisions of this section shall survive the expiration or early termination of this Agreement.

**11. Insurance.** PATMA, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "A". PATMA and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of PATMA retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

**12. Other Requirements:**

(a) **Strategic Planning Session.** PATMA shall conduct a strategic planning session within 90 days of the date of this Agreement, producing 3-year goals and objectives and funding requirements, and a budget with projected metrics (cost per mode shift, ROI, etc.).

(b) **Business Registry Data.** The City may elect to share certain data from its Business Registry with PATMA for PATMA's exclusive use in program development and marketing. PATMA agrees not to share any non-public data with others and will take steps to ensure the continued confidentiality of any such non-public data.

(c) **Performance Monitoring.** The City may implement its own performance monitoring of City funded programs to determine effectiveness of provided funds.

(d) **Additional Use Restrictions.** The City Funds will not be used for anything other than project management and program costs of the agreed to projects until the funds are expired.



(e) Board Members. The City may request that the PATMA Board be expanded to include additional members, possibly including residents and additional City representation.

**13. Notices.**

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY:

Office of the City Clerk  
City of Palo Alto  
Post Office Box 10250  
Palo Alto, CA 94303  
With a copy to the Purchasing Manager

To PATMA:

Palo Alto Transportation Management Association  
c/o Wendy Silvani  
791 Mandana Blvd.  
Oakland, CA 94610

To SVCF:

Silicon Valley Community Foundation  
Attn: Michelle Fries on behalf of PATMA, Fund #5495  
2440 West El Camino Real, Suite 300  
Mountain View, CA 94040

**14. Authority to Bind.** The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

**15. Counterpart Signatures.** This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.

**16. Applicable Law.** This Agreement will be governed by the laws of the State of California.

**17. Venue.** In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

**18. Amendments.** This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

**19. Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**PALO ALTO TRANSPORTATION MANAGEMENT ASSOCIATION:**

Robert George

Name: Robert George

Title: Chair, Palo Alto TMA

**SILICON VALLEY COMMUNITY FOUNDATION:**

Mari Ellen Loijens

Name: Mari Ellen Loijens

Title: Chief Business, Development and Brand Officer

**CITY OF PALO ALTO:**

James Keene  
City Manager

**APPROVED AS TO FORM:**

Cara Silver  
Senior Asst. City Attorney

19. **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

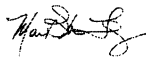
**PALO ALTO TRANSPORTATION MANAGEMENT ASSOCIATION:**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SILICON VALLEY COMMUNITY FOUNDATION:**

 \_\_\_\_\_

Name: **Mari Ellen Loijens**

Title: **Chief Business, Development and Brand Officer**

**CITY OF PALO ALTO:**

DocuSigned by:

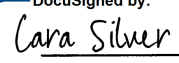
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**James Keene**

**City Manager**

**APPROVED AS TO FORM:**

DocuSigned by:

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**Cara Silver**

**Senior Asst. City Attorney**

## EXHIBIT "A" INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

- I. INSURANCE COVERAGE MUST INCLUDE:
  - A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
  - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
  - C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.
- II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"
  - A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**NOTICES SHALL BE MAILED TO:**

**PURCHASING AND CONTRACT ADMINISTRATION  
CITY OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303**