



CONTRACTING FOR MOBILITY

A CASE STUDY IN THE LOS ANGELES AND PUGET SOUND REGIONS



Contracting for Mobility:

A Case Study in the Los Angeles and Puget Sound Regions

OCTOBER 2019

Contact: publicaffairs@enotrans.org
www.enotrans.org | 202.879.4700

Authors

Alice Grossman, *Senior Policy Analyst, Eno Center for Transportation*

Paul Lewis, *Vice President of Policy and Finance, Eno Center for Transportation*

Acknowledgments

The report authors would like to thank the staff at LA Metro, King County Metro, and Sound Transit as well as representatives from Lyft and Via for their review and input. Thank you also to the research collaborators, Anne Brown, Mark Hallenbeck, and Michael Manville for their assistance in project development.

About the Eno Center for Transportation

The Eno Center for Transportation is an independent, nonpartisan think tank whose vision is for an American transportation system that fosters economic vitality and improves the quality of life for all. The mission of Eno is to shape public debate on critical multimodal transportation issues and build an innovative network of transportation professionals. As an organization, Eno values integrity, independence, objectivity, quality, and relevance. These core values are reflected in everything we do.

Table of Contents

About the Federal Mobility on Demand Project	4
1. Introduction.....	5
2. Background.....	6
2.1 <i>Federal Laws and Regulations</i>	6
2.2 <i>Local Laws and Regulations</i>	8
3. Case Study: Los Angeles and Puget Sound MOD Pilot.....	9
3.1 <i>Project Organization</i>	9
3.2 <i>The MOD Service Provider</i>	10
3.3 <i>Primary Contract Provisions</i>	13
3.4 <i>Statements of Work</i>	16
3.5 <i>NDA</i> s.....	19
4. Recommendations	20
5. Conclusion	22
Appendix.....	23
Endnotes.....	25



About the Federal Mobility on Demand Project

Mobility on demand (MOD) refers to transportation services that can be hailed in real-time for an impending trip. MOD integrates data such as location tracking and traffic conditions, with user-entered destination and payment information. Though most MOD services are designed for users to interface using a smartphone, MOD can be requested through a web browser or call center, which can increase accessibility and equity of the service for people without access to a smartphone, people with vision impairments, people who require non-English communication, and others. While MOD is not a new concept, recent technological advancements facilitate its deployment in a new way. Its role in the future of transit systems is yet to be determined.

In May 2016, the Federal Transit Administration (FTA) announced \$8 million in funding for its Mobility on Demand Sandbox Demonstration Program. The program is part of FTA's support of transit agencies, government entities, educational institutions, and communities as they experiment with on-demand mobility tools such as smart phone applications and shared mobility services to augment and enhance existing transit agency services. MOD Sandbox was developed to test new ways to encourage multimodal, integrated, automated, accessible, and connected transportation. Among the key features of the program is its focus on local partnerships and demonstrated solutions in real-world settings.

Some of the eligible activities applicants could propose to advance MOD and transit integration were new business models for planning and development, the acquisition of new equipment, services, software and hardware, and operation of the project in a real-world setting. Eligible partners included public transportation providers, state and local departments of transportation, federally recognized Indian tribes, private for- and not-for-profit organizations, transportation service operators, state or local government entities, consultants, research institutions and consortia, and not-for-profit industry organizations. In October 2016, 11 projects were selected for funding (see the Appendix.)

The largest project awarded was a two-region partnership between Los Angeles and the Puget Sound Region. The Los Angeles County Metropolitan Transportation Authority (LA Metro) collaborated with King County, Washington Metro Transit (King County Metro) and the Central Puget Sound Regional Transit Authority (Sound Transit) on a project to contract with a transportation network company (TNC) to provide first/last mile service to select transit stations near disadvantaged communities. This proposal included evaluation and reporting by the Eno Center for Transportation and local research universities. The FTA awarded the team a grant of \$1.35 million for the pilot and corresponding research.

The stated overall goal of the Los Angeles/Puget Sound project is to: 1) define how TNC services can be aligned with existing transit service to serve an effective first-mile/last-mile solution; 2) define how key partners can cost-effectively ensure equal access for individuals with disabilities and low incomes; 3) demonstrate payment integration across transit operator and TNC platforms, specifically to enable service to lower income and unbanked populations.

1. Introduction

New privately-run mobility services are now ubiquitous in many urban regions. These include ride-hailing (e.g., Uber, Lyft, and Via) as well as on-demand micro-mobility services such as shared electric scooters and bicycles. While these services are private ventures, companies and public entities can partner to deliver services that augment or enhance public transit.¹ The formal basis for these relationships are often codified in a legal contractual agreement. These contracts are essential, allowing cross-sector partnership and goal setting, as well as legal assignment of risks, liabilities, requirements, and payments.

Of course, public transportation agencies contracting with private entities for services is not a new concept. Agencies routinely form agreements for services, ranging from information technology to station cleaning to bus and paratransit operations. Lessons and best practices for those traditional agreements abound.²

What is different with the new mobility on-demand (MOD) services is that they are often run by startup companies with different business models and expectations. Public agencies and MOD companies alike have limited experience contracting on these types of services. Startups rely on venture capital to subsidize service and attract riders, and often operate at a loss to establish market share and lure customers. Some studies have suggested that these services compete directly with public transit, further incentivizing transit agencies to explore partnerships.³ However, policies and best practices for service partnerships between public transit agencies and private ride-hailing companies are still nascent. Existing regulations do not necessarily line up with the kinds of services offered by MOD companies, often creating conflicts or misunderstanding regarding eligibility, data sharing, and project mission.⁴

A clear, robust contract is thus fundamental to any MOD partnership. However, aligning actions, data sharing, and risk allocation between parties with distinct goals and operating procedures is time-consuming and difficult. Agreeing in writing to the duties of each party involved establishes roles and responsibilities, leading to a clear relationship and understanding of each party's goals and intentions. If done effectively, establishing data sharing agreements, assigning risks, and stipulating performance metrics guides both parties towards desired outcomes throughout the term of the agreement. A good contractual relationship also allows for fine-tuning and flexibility if changes occur or new information arises.

Best practices and lessons learned from existing contracts and partnerships can facilitate knowledge sharing and produce improved processes and greater odds of program success. The MOD Sandbox project in the Los Angeles and Puget Sound regions provides a valuable case study for contracting as the project includes public, private, and research organizations as well as two distinct local contexts under the same national program.

This paper covers the process that developed the contracts for the MOD Sandbox pilot projects in the Los Angeles and Puget Sound regions. It discusses the nuances of interactions between private companies and public agencies, including non-disclosure agreements, data sharing, and the challenges and opportunities faced between the transit agencies and the MOD provider as well as between the other entities involved in the service provision and evaluation of the project. It compares and contrasts how contracts developed between transit agencies, private sector providers, and researchers. It concludes with recommendations for how the contracting process can be improved to ensure better project outcomes.

2. Background

The federal government, states, localities, and transit agencies all have rules and regulations that govern how public entities procure and contract with each other and with the private sector to provide a range of services. This section covers some of the laws and regulations that are most applicable to contracts between transit agencies and private providers of MOD type services. Certain regulations might be waived through FTA research grant-funded pilots, but most will apply to future ongoing service agreements undertaken beyond the pilot period.

Contracting and procurement of services is crucial to the success of any public agency. The American Public Transportation Association (APTA) calls it the “single most important factor for a public transit agency’s bottom line.”⁵ For MOD services, the contract is a legally binding relationship between the transit agency and the private provider and includes all the types of commitments that obligate both parties to execute a successful partnership. When successful, contracts can reduce costs, improve safety, increase quality, and enhance a transit system’s reputation.⁶

2.1 Federal Laws and Regulations

National laws govern how federal transit funds should be used when an agency contracts with a private entity. The requirements define eligibility, agency responsibilities, and procedures while also providing guidance for contract language, disputes, modifications, and other factors relating to contracting. Fortunately, comprehensive and insightful guidance exists and agencies looking to contract should work with their legal offices and familiarize themselves with the details of federal and industry resources.⁷ Contract and procurement laws are constantly changing, so modifications to regulatory requirements may not be reflected in the most current guidance. Current federal or local laws always supersede any guidance, as guidance is not legally binding.⁸

The following three guides—summarized below—provide a review of, and best practices for, federal requirements for services contracts:

- Federal Transit Administration Circular 4220.1F
- Federal Transit Administration’s Best Practices Procurement & Lessons Learned Manual
- American Public Transportation Association’s Procurement Handbook

Before starting the process of contracting, an agency should determine whether the services they are interested in acquiring are eligible for federal assistance.⁹ In the case of the MOD Sandbox project, agencies developed projects to fit the requirements around the federal assistance available. But projects still had to abide by current federal transit laws.¹⁰ For example, Section 5307 Urbanized Area Formula Grants can be used for capital projects, planning, specifically defined job access and reverse commute projects, and for operating costs in very small cities and towns. Agencies must also comply with all parts of the Americans with Disabilities Act.¹¹ Agency staff need to check federal eligibility requirements for the portion of funding they intend to use for their project.

Federal civil rights laws and regulations often affect the types of services that can be acquired using FTA assistance. Examples include:

- *Title VI of the Civil Rights Act.* No recipient of federal funds is allowed to discriminate on the basis of race, color or national origin.¹²
- *Environmental Justice laws.* Minority and low-income populations are protected against disproportionately high and adverse effects of federally assisted programs.¹³
- *Limited English Proficiency rules.* Recipients of federal financial assistance are required to assist transit users that are not proficient in English.¹⁴
- *Nondiscrimination on the Basis of Disability.* Each third-party contractor and each subrecipient at any tier of the project are required to comply with the applicable laws and regulations for nondiscrimination on the basis of disability, including specific requirements on public and private providers of transportation. This includes requirements (and exceptions for) for design, construction, usability for wheelchairs, complementary paratransit services, and equal opportunity.¹⁵
- *Disadvantaged Business Enterprise (DBE) program.* Agencies must have a plan that describes how it will encourage firms that are majority owned and operated by women and minorities to bid and win contracts or subcontracts associated with the work.ⁱ

While the specifics of each of these laws should be analyzed in the context of each individual project, they broadly mean that agency staff need to design their service such that: 1) it serves a diverse geography of the region; 2) the service does not discriminate or limit access to people that do not speak English or that use a wheelchair; and 3) contracts include or attempt to include disadvantaged businesses in the procurement.^{ii,16}

Federal labor laws are also important to consider when creating contracts for transit services. Federal grants require that agencies and contactors pay prevailing wage rates to

ⁱ A recipient required to have a Disadvantaged Business Enterprise (DBE) program may not structure its operations expenditures so that an unreasonable proportion of contracts that could be performed by DBEs are removed from its DBE program.

ⁱⁱ Federal requirements for the MOD Sandbox program vary from other federally funded public transportation projects in that Title VI fare equity analysis is only required at the close out of the pilot, and there are no preferences for disadvantaged business inclusion.

employees, although it does not stipulate whether those jobs should be unionized or not.¹⁷ Federal labor laws also subject all mass transit systems that receive federal financial aid to labor protection requirements intended to protect the rights of incumbent workers and applies whether the agency is contracting or using in-house employees for service operations.¹⁸

Federal law also restricts the types of contracts that agencies can use with private sector entities. For example, “cost plus a percentage of cost” contracts and subcontracts that automatically provide more money to private entities when costs escalate are prohibited under federal law. This form of contract enables profits to increase in proportion to dollars spent, providing an incentive to be inefficient.¹⁹

The FTA best practices manual provides guidance for contracts for agencies using federal dollars. However, FTA regulations only apply to third party contracts that are funded when they utilize federal assistance.²⁰ Yet even within federal regulations myriad exceptions exist to allow the federal government to create pilot programs—like MOD Sandbox—that enable transit agencies to use federal dollars to test and evaluate innovative services without requiring them to meet all federal contracting and procurement rules.

For example, USC Section 5312 of Title 49 allows the Secretary of Transportation to make grants and enter into contracts, cooperative agreements, and other agreements for research, development, demonstration, and deployment projects, and evaluation of public transportation research and technology. U.S. DOT created FTA’s MOD Sandbox Program out of this section, allowing agencies to submit ideas on how to test new forms of transit services. The law gives the Secretary broad discretion on how these pilots meet federal requirements but note that long-term deployment of a MOD service will have to comply with all regulations.

2.2 Local Laws and Regulations

Many agencies fund their operations with local dollars, allowing them to create their own procurement and contracting rules. Myriad regulations exist in each state, locality, and transit agency, although many simply follow federal rules for their own local dollars. Agency staff should consult their legal team and review local rules and regulations to evaluate whether their contracting and procurement is in compliance. Some local laws and regulations have room for interpretation. Agency legal teams can provide recommendations and guidance, but ultimately procurement teams have to use discretion in developing a project that falls within legal bounds, allows for innovation, and responds to the local context.

FTA Circular 4220.1F states that if local laws do not address a particular aspect of procurement adequately, federal direct procurement principles can provide useful guidance. However, if federal requirements conflict with local rules—for example with regard to the competitive bidding process—FTA will work to try and find a way to proceed

with the project but still reserves the right to amend or terminate assistance if federal rules are not appropriately addressed.²¹

Local or agency-based procedures for contracting also vary and can lead to different agreements and timelines for approval and finalization. For example, despite being on the same proposal, there were differences in agency requirements for sole sourcing service procurement in Los Angeles and the Puget Sound region. This led to varied timelines and delays in the roll out of the MOD Sandbox pilot.

3. Case Study: Los Angeles and Puget Sound MOD Pilot

The Los Angeles Metro and Sound Transit/King County Metro MOD Pilot project involves complicated contractual agreements between different levels of government, agencies, institutions, and private companies. This section discusses the process from proposal to signing to mid-project revisions, highlighting elements of the contract as well as supporting documentation. In this pilot, contracting necessarily went beyond a standard legal agreement, and included detailed statements of work and non-disclosure agreements.

3.1 Project Organization

LA Metro initially formed a partnership with a private MOD provider, Lyft, and took the lead on the proposal to FTA during initial planning stages. The agency reached out to Sound Transit and King County Metro to develop a unique and research-oriented proposal comparing two distinct urban regions. The proposal built in a research team for each region to analyze the project from an external perspective. That team included the Eno Center for Transportation, the University of California-Los Angeles, the University of Washington, and later the University of Oregon. The transit agencies contracted out customer surveying to private companies. As the project evolved, changes and additions were made to the project team as well as additional subcontracted entities.

Although much of the focus on the MOD Sandbox project lies in collaboration between public agencies and private companies, partnerships between public agencies also bring unique contracting and procurement challenges. When different local and state laws come into play, as well as differences in agency goals, rules, and demographic and geographic contexts, parallel operations can become even more complicated. Provisions in the contract between a transit agency and MOD provider, such as wheelchair accessible services, varied slightly within the Los Angeles and Puget Sound regions, resulting in differing service agreements.

In addition, many aspects of the contracting, such as data sharing, had to go through all agencies and research members. The Seattle Department of Transportation contributed to the project by agreeing to pay King County Metro for longer service hours and additional service areas, which work towards shared objectives of the City and both transit agencies.

Each institution added a necessary service and/or expertise to conduct and assess the MOD pilot in the context of the FTA MOD Sandbox. As of Spring 2019 the team conducted pre-pilot data collection, launched the service, and by Fall 2019 is in the midst of further data collected and analysis. However, the contracting process took over two years to finalize.ⁱⁱⁱ

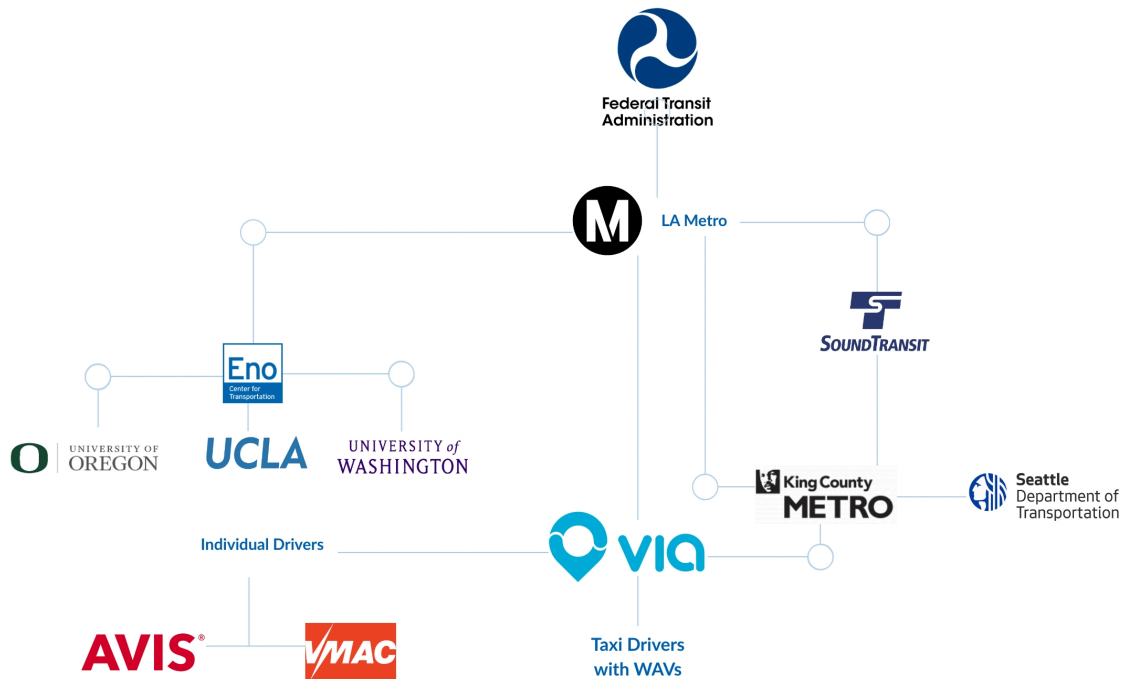


Figure 1: Contractual Agreements Between Key Actors

3.2 The MOD Service Provider

The MOD Sandbox project is designed to foster partnerships between public agencies and private MOD providers to augment existing public transit services. As a part of the original proposal, LA Metro and Sound Transit identified Lyft as the MOD service provider. During the proposal process, Lyft agreed in principle to basic service provisions, including providing wheelchair accessible vehicle service within the platform, likely through sub-contracting arrangements, and data sharing provisions.²² The contract between LA Metro and FTA was finalized in January 2017 and referred to Sound Transit and King County Metro as partner agencies and Lyft as the service provider (see Figure 2).

ⁱⁱⁱ The long contracting process is not unique to this project. The MOD Sandbox project for TriMet in Portland Oregon for integrated trip planning with transit and MOD providers also spent over two years in the contracting process and dropped Lyft from the contract in the end.

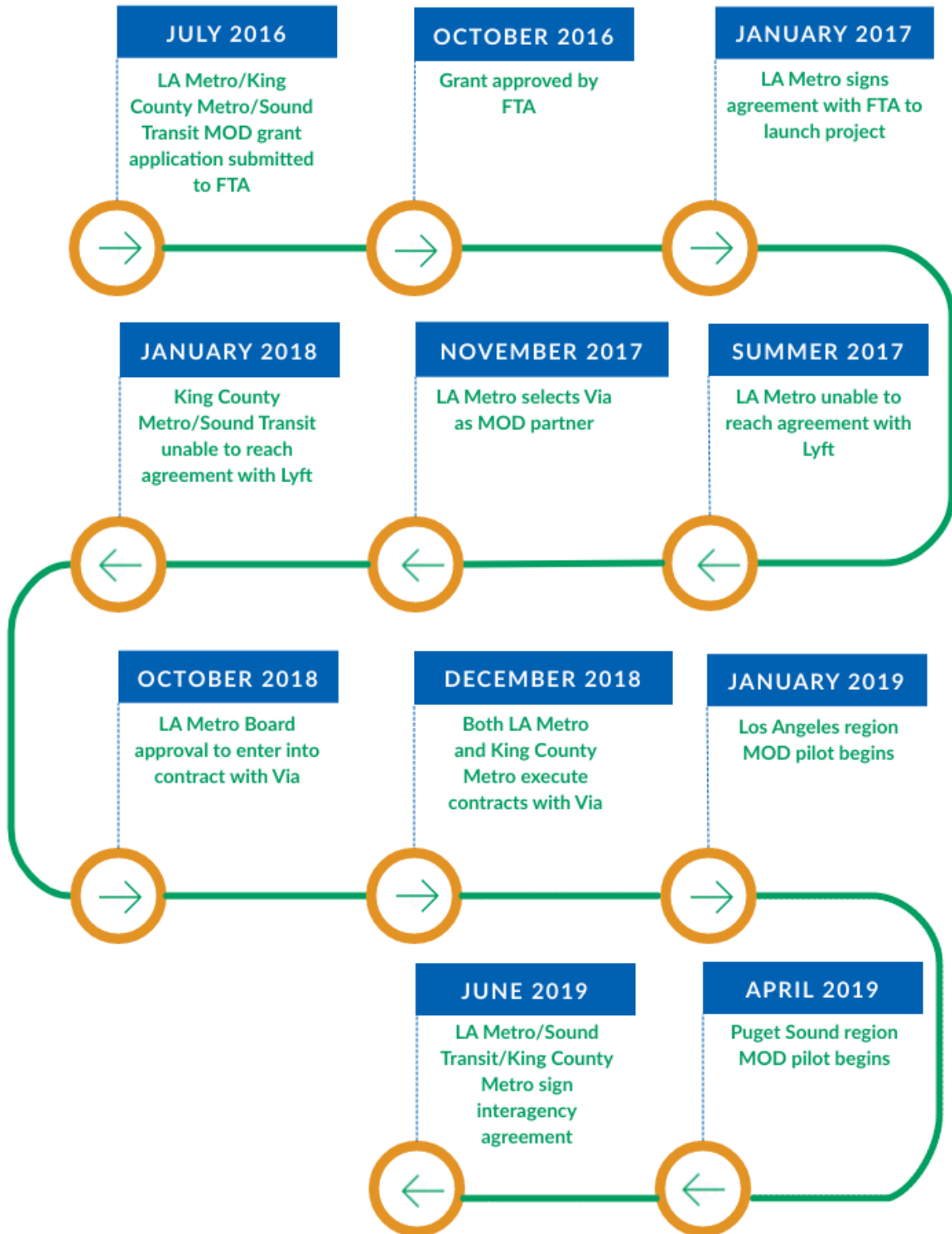


Figure 2: Project Timeline, Select Events

By the time of the award, the transit agencies had not yet finalized the scopes of work and contracts with Lyft or the other partners in the project. Before finalizing the contract, the agencies began to identify the parameters that would define the service provided by Lyft. This included wheelchair accessible vehicle availability, fare integration methods, and data sharing agreements, though at this stage service level requirements and specific data requests had not yet been decided. As those discussions went on, it became clear that Lyft was unable to meet the requirements of the project as outlined within the proposal.

When the LA Metro project team realized that the negotiations with Lyft had stagnated, they received approval from the FTA to consider another provider. They also sought counsel from their standing Advisory Board of transportation academics and practitioners from California and across the country. The Advisory Board then created a Subcommittee on New Mobility to guide the decision-making process and recommended the agency abandon the partnership with Lyft and seek out a new MOD provider.

Through a competitive invite-only procurement process, LA Metro reviewed five new proposals from MOD providers and selected Via in November 2017. In order to manage expectations, LA Metro developed a “term sheet” to serve as a baseline collaboration agreement. The term sheet allowed the agency and the MOD provider to continue time-sensitive planning and work during the formal contract negotiation. The term sheet included a general agreement on the provision of wheelchair accessible vans (WAVs) and data sharing and, while not a binding legal document, was signed by the chief executive of each party.

However, negotiations over site selection, fare integration, data sharing agreements, liability, risk-sharing, and more took over a year. An official contract between Via and LA Metro was not signed until December 2018 due, in part, to the evolving scope of the project and the need for exact cost estimates before the agency's board would approve it. Although Via intended to use independent contractors from the start, LA Metro and Via also engaged in legal discussions about the use of independent contractors as drivers.^{iv,23}

A complicating factor in the contract negotiations was the involvement of the project research team led by Eno, and the FTA evaluation team led by a consultant with a university partner to examine all 11 MOD sandbox projects. In order to properly monitor and assess the project, the transit agencies, Eno, and the FTA evaluators needed specific data from Via. Developing a data sharing agreement that was acceptable to all these parties took significant coordination. The data sharing agreement process included provisions on data ownership, variables to be provided, levels and aggregations, and data storage and access means. The initial draft of the agreement was prepared in March 2018 but the final contract between Via and LA Metro was not signed until December of that year.

^{iv} California AB5, legislation in progress as of the publication of this document, is designed to impede many companies from claiming workers are independent contractors. The law will take effect in 2020.

The Puget Sound region transit agencies similarly encountered an inability to reach an agreement with Lyft on basic project requirements such as data sharing and WAV service. The MOD project team wanted to maintain a common provider to enable a two-market comparison between Los Angeles and the Puget Sound. After exploring FTA requirements for what a lead-grantee Los Angeles County Metropolitan Transportation Authority (LACMTA) change in service provider means for sub-recipients (Sound Transit and King County Metro), Sound Transit realized that in order to maintain the same service provider as LA Metro, Sound Transit would not be able to hold the contract with that service provider. Without the FTA stating that Sound Transit “shall” rather than “should or could” utilize the same service provider as the lead grantee, Sound Transit was not able to justify that Via was the only service provider that could meet the project requirements and thus was not able to sole source the contract.

Concurrently, another partnership opportunity began to emerge. King County Metro had already been trying to work with the City of Seattle to boost transit service in the city's Rainier Valley area. However, King County Metro was not able to do so with its existing vehicle/driver fleet. King County Metro suggested to utilize the MOD Sandbox project to meet the service need. An interagency agreement was signed providing that King County Metro would procure the service provider for the project with both agencies as equal partners in the grant. Subsequently, Sound Transit, King County Metro, and LA Metro developed and worked to execute a tri-agency agreement on the proper payment and reimbursement between the parties to deliver the Puget Sound portion of the two-market deployment with Via.

King County Metro brought on Via through a sole source procurement. With Seattle's sponsorship, the contract expanded from approximately \$550,000 to more than \$3,000,000. In late 2018, King County Metro undertook contract negotiations with Via. The contracting process between King County Metro and Via proceeded relatively quickly, as nondisclosure agreements (NDAs) and data sharing agreements had already been ironed out by the LA Metro contracting process and shared with the Puget Sound area transit agencies. Additionally, King County Metro was able to leverage lessons learned from a previous contract negotiation with Ford Smart Mobility for contracting a similar turnkey first/last mile service. Contracting between Via and King County Metro concluded in December 2018 after four months of negotiations.

3.3 Primary Contract Provisions

The contracts between LA Metro and Via, as well as King County Metro and Via (with Via operating through a subsidiary, “NoMad Transit, LLC”), include details on payment, liability, and data sharing. Much of the language is standard for public agency contracts, but several provisions are relevant to other MOD projects:

Payment. The FTA awarded \$1.35 million to LA Metro for the MOD Sandbox project. This was combined with a \$400,000 local match that was included in the proposal, as well as other local funds. LA Metro’s contract provides up to \$2,506,410 to Via for service

provision. Approximately one-quarter of the \$1.35 million from FTA (\$350,000) was allocated to the Puget Sound region that had a local match from Sound Transit, and King County Metro of \$100,000 each. Seattle contributed upwards of \$2.7 million for the Via service. Via is paid in monthly installments by both agencies throughout the project.

Contract provisions: Sound Transit, King County Metro, and LA Metro all conducted and developed independent contracts and agreements between various entities in the project. The contracts include a payment provision that transferred the risk of ridership to Via, present in the payment structure between Via and LA Metro. Specifically, Via and LA Metro agreed on a target of three passengers per vehicle per hour and included a financial incentive for Via to meet that target.

The revenue arrangement has LA Metro pay Via monthly for the service, including fixed and variable costs for the actual number of driver hours of service. Via collects all fare revenue for the MOD service and is required to cap fare costs at \$1.75 per rider per trip if riders use their electronic Transit Access Pass (TAP) card and \$3.75 if they do not. Via can choose to charge less, and throughout the project Via promoted both \$1 and free rides. Via then pays LA Metro a fixed agreed upon monthly amount, illustrated in Figure 3.

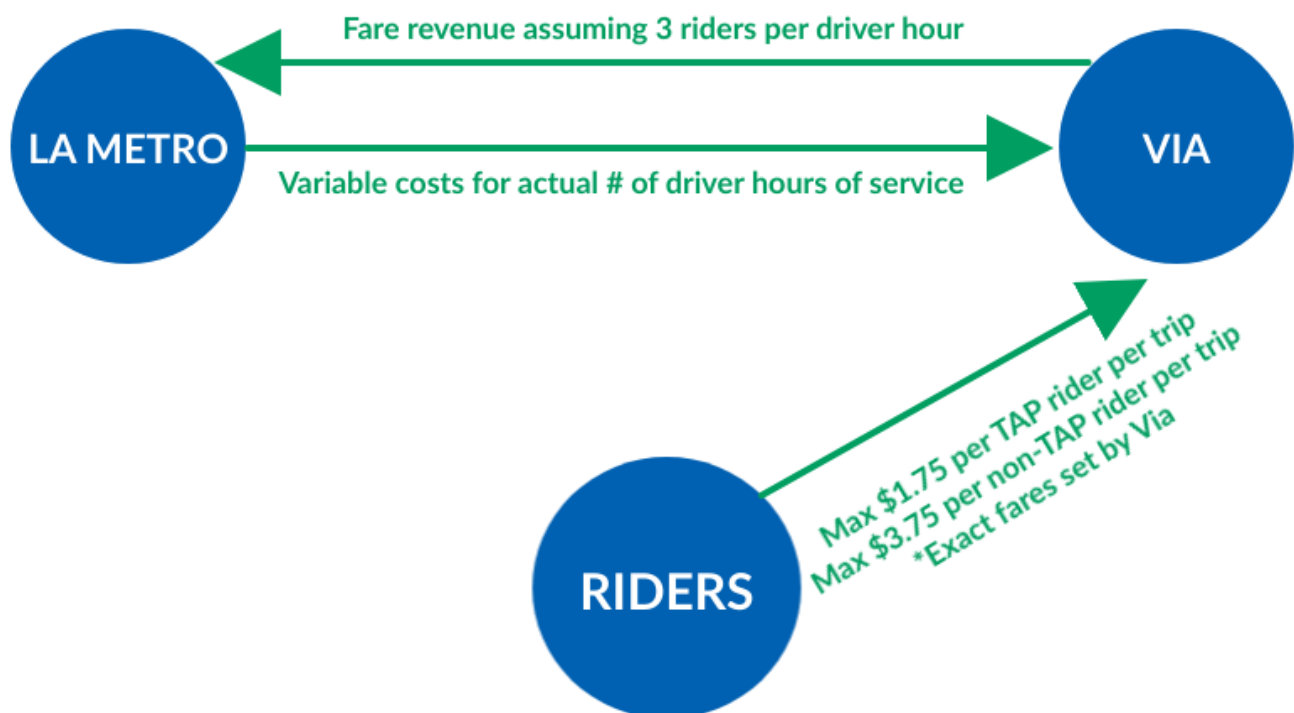


Figure 3. Ridership Risk-Sharing Payment Flow (Example from LA Metro)

If Via provides more service and has more than three riders per vehicle per hour, they will receive a financial bonus. If Via falls short of ridership goals, they bear the financial risk. The Puget Sound pilot also sets 2.5 riders per driver hour as a performance target. Per the contract, King County Metro gave Via funds at the start of the project towards pre-launch expenses. This money was credited back to King County Metro apportioned over each monthly invoice for 12 months. Figure 4 shows the payment flow in the Puget Sound region.

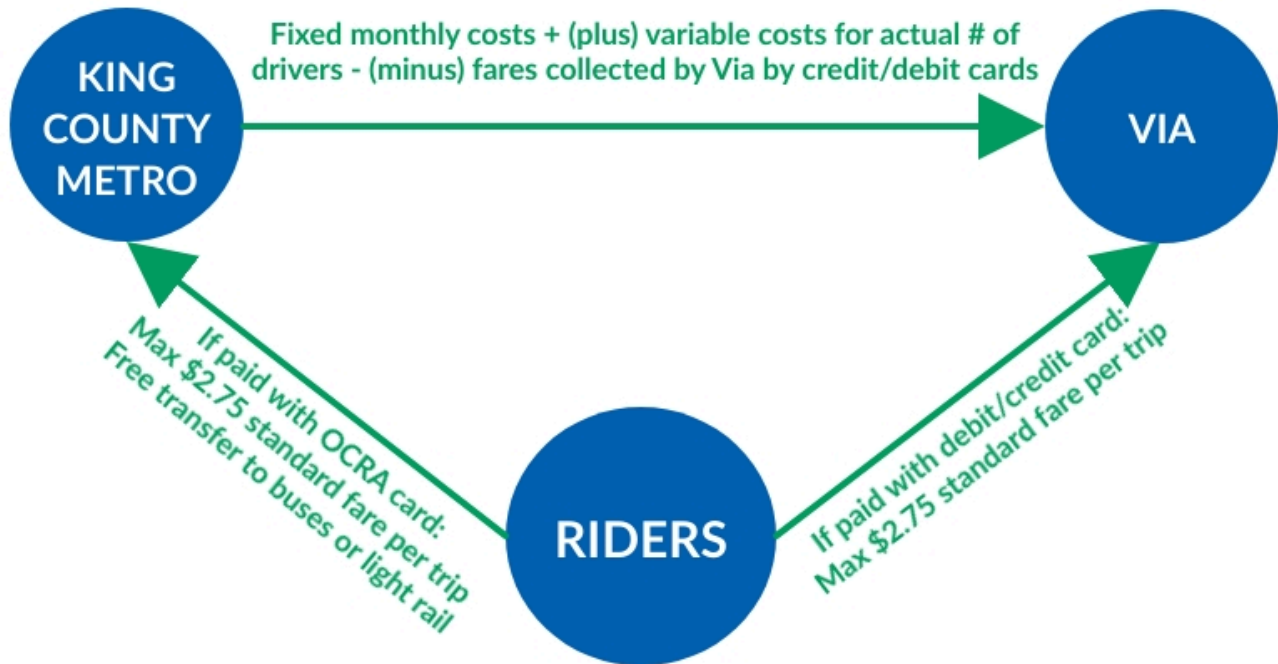


Figure 4. Ridership Payment Flow (Example from Puget Sound)

Contractor equipment. In Puget Sound, Via is responsible for entering into an agreement with a vehicle provider who ensures the maintenance and procurement of vehicles and equipment. Drivers in the Puget Sound region rent WAVs and non-WAVs from the car rental company Avis. In Los Angeles, Via is responsible for sourcing and registering drivers who use their own personal vehicles, as well as facilitating the process for drivers to rent WAVs from an outside rental company. Via also holds a contract with a taxi wheelchair service in both regions to provide accessible rides if needed. None of the transit agencies are responsible for supplying any vehicles to Via or to independent contractor drivers.

Labor provisions. Via operates with drivers that are independent contractors, but several provisions in the contracts outline specific rules. The contract with LA Metro does not allow operators to exceed total shift time of more than 15 hours total, and requires operators not work a 10 to 15 hour shift without having a minimum of eight hours of consecutive rest time beforehand. LA Metro requires that Via pay all subcontractors and independent contractors within seven days of when Via receives its payment from LA Metro. King County Metro stipulates a minimum gross hourly rate for drivers.

Liability. The liability agreements in both regions include provisions for indemnities, limitation of liability, and procurement of insurance. Liability provisions between agencies can vary due to agency requirements, local laws, and negotiations between the needs and costs of risk.

3.4 Statements of Work

The contracts between the agencies and Via hinge on other key documents. The main supplemental piece is a statement of work (SOW) between the transit agencies and the MOD provider that outline the project set up, project goals, and the specific tasks for the MOD provider, including a list of deliverables. The SOW between King County Metro and Via is based off the LA Metro/Via SOW and lays out similar plans and requirements with a few regional- and programmatic-specific differences.

The parties agreed upon the following six goals (with slight differences in wording between Los Angeles and Puget Sound) to guide this project:

1. Improve mobility by increasing ridership for the agency through the pilot service.
2. Provide a reliable, high quality customer experience.
3. Ensure optimal utilization of pilot vehicles through efficient aggregation of riders.
4. Ensure access for disadvantaged populations.
5. Ensure comparable access to customers requiring ADA-compliant accessible vehicle service.
6. Create cost efficiency for the agency and the contractor.

The Puget Sound region agencies added a seventh goal for the agencies to:

7. Develop efficient tools for measuring and implementing trip linking between the pilot service and fixed-route transit.

The tasks assigned to Via and the tasks assigned to the transit agency flow directly from the goals and vary slightly between agencies (Table 1). Essentially, the transit agencies provide oversight and support, and Via provides operations and outreach including payment management. In the Los Angeles region, Via is responsible for the majority of marketing and communications, while in the Puget Sound Region, King County Metro is leading those tasks.

Table 1: Task Assignment for MOD Projects

Task	LA Metro	Sound Transit and/or King County Transit	Via
Project management	X	X	X
Access for unbanked customers	X	X	X
Technology tools (Puget Sound scope only)			X
Fare payment configuration	X	X	X
Fare collection (Puget Sound scope only)		X	X
Customer service/call center			X
Marketing and communications	X	X (lead in Puget Sound)	X (lead in LA)
Service for passengers with disabilities			X
Data sharing and research cooperation			X
Driver acquisition and onboarding			X
Vehicle supply and maintenance			X
Technology localization and systems			X
Testing of the service prior to launch			X
Pilot operation			X
Performance management (Los Angeles scope only)	X		
Location selection and service parameters	X (lead)	X (lead)	X
Pick-up and drop-off locations at stations	X	X	
Providing ADA guidance to Via	X	X	

The SOWs also outline 11 key performance indicators (KPIs) that are designed to evaluate the contractor’s performance throughout the duration of the 12 month contract. The transit agencies and Via worked together to develop the KPIs and associated targets before launching the project (Table 2). Via was reluctant to agree to specific KPI targets

prior to service launch due to the uncertainty of the service in both regions. First-mile/last-mile connection MOD had not yet been tested in either region and Via did not have any regionally specific data to support the targets.

For example, a change in service area during the project could affect the proper target for ridership. Via suggested waiting until six months in to define the targets, and noted that target setting will become easier in the future as more MOD pilots are implemented throughout the country. In the end, the agencies preferred to begin the pilot with specific targets in the contracts that could be adjusted as the project progresses by agreement from all parties. Both regions settled on the same indicators and targets despite the distinctly different geographies, ridership, and project parameters.

Table 2: LA Metro/King County Metro/Via Initial Key Performance Indicators

Key Performance Indicator	Target
Ridership	1,000 trips per week
Average wait time	10 minutes or less
Rider feedback	Average ride rating of 4.5
Percent demand met	80%
Average riders per driver hour	2.5 rides per driver per hour
Percent demand met for call center users	80%
Average wait time for rides booked through call center	10 minutes or less
Percent demand met for ADA requests	80%
Average wait time for ADA requests	10 minutes or less
Percent rides “shared”	30%

Source: LA Metro/NoMad Transit, LLC Contract

The SOWs include a data sharing agreement and a requirement that the involved parties sign NDAs. Via agreed to share trip-level data as well as report aggregated data weekly for selected variables. The trip-level data includes information about the vehicle, pick-up and drop-off, details about the request, wait time, trip characteristics such as cost and distance, and a de-identified passenger identification, among others. The weekly data includes information about Via ridership and ride requests, and vehicle characteristics and service details such as detailed vehicle-miles traveled.

Most of the discussion over the data sharing agreement focused on which variables to include in aggregated reports and which ones to include at the trip-level. The scope identifies specific data fields as “trade secret” and accounts for rider privacy in all data fields. The SOW requires published data to be aggregated at the week-level (at minimum). Researchers and transit agency staff created a compelling case for access to specific data, outlining how each variable would help analyze the project and measure success. Notably, the variables denoted as trade secrets were only shared because they were deemed essential in pilot outcome evaluation.

Both the transit agencies and the researchers have access to certain levels of data for a period limited to five years, though the transit agency can keep aggregated data indefinitely. The project team accesses the data as a downloadable comma separated value (CSV) file through a secure online portal to facilitate data cleaning and analysis at each researcher’s home institution. The Puget Sound region data is also accessible through a dashboard, as specified in the contract with Via, for ease in data visualization in certain performance areas. After the pilot launch in Los Angeles, LA Metro also requested a dashboard to allow for ease of data visualization, and Via obliged even though this was not specified in the contract.

The SOWs were designed to allow for flexibility in project aspects such as service area but maintained funding structures. The transit agencies agreed to subsidize the MOD service for the 12-month pilot period, regardless of overall ridership.^v The transit agencies also included the explicit option to renew with Via for a second year. Within these provisions, the MOD provider can determine how many vehicles to place in service based on demand and can negotiate service area as long as the changes are in line with the stated project goals of increasing equitable first-mile last-mile access to transit stations.

3.5 NDAs

Companies that provide MOD services for transit agencies are often start-ups fighting for market share. In order to protect trade secrets and other private business information, companies require NDAs, as well as other contracts, to safeguard their data and intellectual property.

Via required NDAs from all entities involved in the MOD Sandbox project which requested access to service data, i.e. the public agencies, research institutions, and Eno. For example, Eno signed an initial NDA under the assumption it would cover all of the research partners, but Via later requested separate NDAs with each of the universities in order grant the researchers access to their data. The bureaucratic university legal process is notoriously slow, and the NDA negotiations that began in August 2018 finally resulted in completed signed documents in March 2019.

^v As with all LA Metro contracts, this contract includes the possibility of "termination for convenience" which allows the agency to terminate the contract at any time for any reason.

NDAAs are often designed to protect private entities, yet public agencies also need them to provide transparency and accountability to the general public. Thus, it is difficult to write and agree upon an NDA that balances both public demand for transparency and private interests. Complicating matters, the Federal Freedom of Information Act (FOIA) requires federal agencies to make information available to the general public, some by timely publishing and some upon request.²⁴

All fifty states have their own version of public records act laws, also known as “sunshine laws,” some of which pre-date FOIA. The California Public Records Act requires the disclosure of information unless there is a specific reason not to, such as a company entering into competitive disadvantage due to the disclosure.²⁵

Washington state has a series of sunshine laws that cover what information should be published, how public outreach meetings should be conducted, and what people can request from public agencies.²⁶ But a recent case determined that even though Washington also has state laws to protect trade secrets, public agencies might be required to reveal trade secrets under the state sunshine laws.²⁷ A May 31, 2018 state Supreme Court decision determined that records containing trade secrets are *not* categorically excluded from public disclosure under the Public Records Act. This decision means that the public can request data, including sensitive trade secrets, from private transportation companies when the data is in possession of the city. This results in a lack of willingness by some startups to share data directly with public entities.²⁸

All parties were eventually able to reach an agreement with Via for nondisclosure, the details of which cannot be discussed in this research. But the agreements do enable protection of sensitive data while still allowing for research and analysis to be published that communicate the outcomes of the pilot project.

4. Recommendations

The following recommendations are intended to provide guidance to the FTA, private contractors, and agency staff and leadership when developing programs and contractual partnerships for MOD services. These recommendations will help agencies secure reasonable terms, enable collaboration with other entities, and manage expectations for negotiations and timelines.

Public agencies should balance the benefits of multi-organization collaboration with the benefits of speedier implementation. Multi-agency collaboration creates complex projects. Although this collaboration can add capacity and inter-regional context, it can also protract timelines. Each additional agency or organization has its own contracting, bidding, and procurement processes that require additional time and resources for the project. LA Metro took over two years from the MOD Sandbox award to launching the pilot due, in part, to the many agencies and organizations involved. As sub-grantees, Sound Transit and King County Metro faced even greater challenges and delays. However, collaboration can also create some efficiency: setting up a contractual relationship between entities can make future

contracting simpler, as a paperwork template and a working relationship already exists. Under the MOD Sandbox, the flexibility at the federal level led some local agencies to streamline their procurement through sole-sourcing contracts.

Public agencies should be aware that MOD service providers require quick turnaround, while MOD service providers need to recognize that contracting with public agencies takes time. Contracting between the public and private sectors requires give-and-take on both sides. The timeline that public agencies are accustomed to can seem long to private companies who do not have the same public outreach, board approval, and documentation requirements as public agencies. Furthermore, private companies may require additional steps such as NDAs that research and public agencies are not accustomed to. When agencies are aware from the beginning that there may be major differences, negotiations could potentially move forward more smoothly and clearly.

Public agencies should be resolute with service and data needs in contracting with private companies. Particularly when they are subsidizing on-demand type services with taxpayer dollars, public agencies have tremendous leverage in negotiating contract terms. Of course, all contracting requires compromise, but competition among MOD service providers often means that agencies can find a partner that is willing to meet most, if not all, of their needs. The fact that the LA Metro and Puget Sound agencies were competing for federal grant money, rather than pursuing the pilots internally, added substantial length to the process. Both pilots switched MOD service providers after initial project development moved to the contracting phase, bringing up irreconcilable issues. Regardless, service provisions and data sharing needs should be agreed upon in project planning, written down in a signed term sheet, and included in the final contract.

Public agencies and the FTA should recognize that special funding sources for testing and pilots can streamline procurement but can also introduce unique challenges. Due to the parameters of the MOD Sandbox, the LA Metro project team named a service provider in their proposal, cutting out a procurement step of the project. However, while flexibility allowed for sole sourced procurement, it turned out that the organizations were a poor fit for the specific project and the agencies had to go back to find a MOD provider after spending time planning with the initial pick. Some of the leniency in the language from FTA led to the need to reorganize contract agreements in the Puget Sound region when the switch of MOD providers took place and bypassing procurement for a change in providers was not an option for Sound Transit.

Public agencies can design MOD contracts to have flexibility to allow for adaptable projects but understand that flexibility opens up opportunities for further deliberation. Flexibility from the federal government as well as within the project team led to lengthy conversations about service elements, especially during the contracting period. At the same time, allowing for adaptability based on quantitative data and qualitative experience can help work towards project goals. The LA Metro contract with Via allows for service areas to be expanded during the pilot to adapt to the outcomes of the initial few months of service. Customers may change, marketing and service may have an impact on demand or perception and

being able to adjust elements of the project outlined in a contract may be best for all parties involved. Contract deliberations can result in a much better project, and project sponsors should be ready to invest the time needed to create a meaningful project.

5. Conclusion

Mobility on Demand partnerships between public transit agencies and private companies involve thorough planning and negotiation during inception to produce a service that can meet both sides' goals. Public agency staff and private companies alike should recognize that the contracting process may be lengthy, especially when it includes detailed plans and information and depends on funding sources and federal, state, and regional context. But understanding each party's motive, assigning expectations early, and negotiating contentious topics in a clear contract will provide a solid framework for implementation.

The case study of the Puget Sound and Los Angeles regions' contracting processes with MOD providers provides valuable lessons learned for future similar partnerships. While many aspects of the MOD Sandbox program are unique, other funding mechanisms such as U.S. DOT's 2019 Integrated Mobility Integration (IMI) Demonstration program have similar structure and federal requirements.²⁹ Furthermore, many elements of the procurement process are transferrable regardless of the funding mechanisms.

Appendix

Fiscal Year 2016 Mobility on Demand (MOD) Sandbox Program Projects

Project Sponsor	Description	Funding
Regional Transportation Authority of Pima County, Arizona	The Adaptive Mobility with Reliability and Efficiency project, integrating fixed route, subscription based ride-sharing and social carpooling services into an existing data platform to provide affordable, convenient and flexible service. The project augments transit by addressing first mile/ last mile issues and congestion mitigation by incorporating shared ride-on-demand services, integrated open payment systems and advanced traveler information systems.	\$669,158
Valley Metro Rail, Inc., Phoenix	A smart phone mobility platform that integrates mobile ticketing and multimodal trip planning. The network will include a range of mobility providers, including ride-hailing, bike sharing, and car-sharing companies, allowing all levels of income, age and people with disabilities to have access to an integrated, connected multimodal transportation system.	\$1,001,000
City of Palo Alto, California	The Bay Area Fair Value Commuting Demonstration project, which aims to reduce single-occupant vehicle driving from 75% to 50% in the Bay Area. The project includes commuter trip reduction software, a mobility aggregation multimodal trip planning app, workplace parking rebates and analytics to compare commutes.	\$1,085,000
Los Angeles County Metropolitan Transportation Authority	A two-region mobility on demand partnership with the car-sharing company, Lyft*, in Los Angeles and Puget Sound. The project will explore the viability of first/last mile solutions for trips originating and ending at select transit stops. Customers can use the Lyft* app or call a dispatcher phone number, providing equity to lower income individuals. (*Partnership changed from Lyft to Via since announcement.)	\$1,350,000
San Francisco Bay Area Rapid Transit	An integrated carpool to transit program that will help users find carpool matches as well as match them to their transit destinations. The project will provide a seamless way to reserve and pay for in-demand parking spaces at BART stations, allow preferential parking for carpoolers while increasing transit ridership by improving access to BART stations. The software will include ways to identify drivers with wheelchair-accessible vehicles.	\$358,000

Project Sponsor	Description	Funding
Pinellas Suncoast Transit Authority, Florida	For the Paratransit Mobility on Demand Demonstration, a set of partnerships with a taxi company, a paratransit service and a car-sharing company to develop a model to provide more cost-effective on-demand door-to-door paratransit service. The project will feature a central dispatch software that provides users with a selection of transportation service providers based on an estimated time of pickup, available payment types, and physical limitations.	\$500,000
Chicago Transit Authority	A project that will incorporate the local bike sharing company, Divvy, a 580-station bike share service, into CTA's existing transit trip planning app so users can identify the availability of bikes or docking stations near their transit stops, and pay for bike rentals.	\$400,000
Tri-County Metropolitan Transportation District, Oregon	An Open Trip Planner Share Use Mobility project that will create a platform integrating transit and shared-use mobility options. TriMet will build on its existing trip planning app to incorporate shared use mobility options and more sophisticated functionality and interfaces, including data sharing for shared-use mobility providers. By integrating data, the project will allow users to plan trips that address first/last mile issues while traveling by transit.	\$678,000
Dallas Area Rapid Transit	A project that integrates ride-sharing services into its GoPass ticketing app to solve first and last mile issues. This project will combine traveler applications to create an integrated, multimodal application that leverages ride-sharing services. The project will improve ease of access to DART stations, particularly in non-walkable areas not well served by transit.	\$1,204,000
Vermont Agency of Transportation	A statewide transit trip planner that will enable flex-route, hail-a-ride, and other non-fixed-route services to be incorporated in mobility apps. The online trip planner for both fixed and flexible transit services particularly benefits non-traditional rural transit system users, allowing universal access to transit information, including to people with disabilities.	\$480,000
Pierce County Public Transportation Benefit Area Corporation	The Limited Access Connections project, an initiative connecting Pierce Transit local service, Sound Transit/Sounder regional service, and local ride-share companies in order to increase regional transit use. By providing first/last mile service in and between traditional zones, guaranteed rides home, and rides to park-and-ride lots, the project will extend service hours and provide access to transit for riders who have limited transit options.	\$205,922

Source: Federal Transit Administration

Endnotes

¹ Eno Center for Transportation, "Uprouted: Exploring Microtransit in the United States," 2018.

² Stephanie Lotshaw, Paul Lewis, David Bragdon, Zak Accuardi, "A Bid for Better Transit," Eno Center for Transportation and TransitCenter, 2017; Transportation Research Board, "Contracting for Bus and Demand-Responsive Transit Services: A Survey of U.S. Practice and Experience," Special Report 258, 2001; Diane Quigley, Stephen Reich, and Janet Davis, "Analysis of Contracting for Fixed Route Bus Service," National Center for Transit Research, University of South Florida, 2011.

³ Gregory D. Erhardt¹, Sneha Roy, Drew Cooper, Bhargava Sana, Mei Chen, and Joe Castiglione, "Do Transportation Network Companies Decrease or Increase Congestion?" *Science Advances*, Vol. 5 no. 5, 2019.

⁴ New York Public Transit Association, "Transit & TNCs: How Are Uber and Lyft Working with Public Transportation Authorities?" 2018; Sharon Feigon and Colin Murphy, "Shared Mobility and the Transformation of Public Transit," Transit Cooperative Research Program Report 188, 2016.

⁵ American Public Transportation Association, "Procurement Handbook: A Guide for Transit Industry Executives," 2014.

⁶ *ibid.*

⁷ *ibid.*

⁸ "Procurement Circular 4220.1F," Federal Transit Administration, Revised July 29, 2009.

⁹ Federal Transit Administration, "Best Practices Procurement & Lessons Learned Manual," US Department of Transportation, FTA Report No. 0105, 2016.

¹⁰ Most are codified at USC 49, Chapter 53 as amended by the FAST Act, Public Law 114-94.

¹¹ US Code 49, Chapter 54, Section 5302.

¹² See: "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07

¹³ See: FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07

¹⁴ See: Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. Section 2000d-1 note, and U.S. DOT, "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons," December 14, 2005; FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07

¹⁵ See: U.S. DOT Public Transportation Regulations Implementing Section 504 and the ADA. These regulations include "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27, DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38

¹⁶ Federal Transit Administration, Personal correspondence via e-mail with LA Metro, MOD Sandbox Demonstration Project - LACMTA Request for Waivers - FTA Response, February 1, 2017.

¹⁷ See: USC 49 Chapter 53 Section 5333

¹⁸ Lotshaw and others, 2017.

¹⁹ Federal Transit Administration, 2016.

²⁰ "FTA Procurement Circular 4220.1F, 2009.

²¹ *ibid.*

²² Eno Center for Transportation, "MOD Data Sharing: A Case Study in the Los Angeles and Puget Sound Regions," 2019 (forthcoming); Eno Center for Transportation, "MOD Accessibility under the Americans with Disabilities Act: A Case Study in the Los Angeles and Puget Sound Regions," 2019 (forthcoming).

²³ Nanette Asimov, "AB5 Gig Work Bill: All Your Questions Answered," *San Francisco Chronicle*, September 16, 2019.

²⁴ P.L. 114-185; Note: Exceptions include circumstances where sharing information is illegal or would harm a person or entity

²⁵ California State Code §§ 6250 - §§ 6276.48.

²⁶ Revised Code of Washington, ch. 42.56 RCW.

²⁷ Revised Code of Washington, ch. 19.108 RCW.

²⁸ Supreme Court of the State of Washington. Lyft, Inc. and Raisier LLC, v. City of Seattle and Jeff Kirk. May 31, 2018.

²⁹ Federal Transit Administration, Competitive Funding Opportunity: Integrated Mobility Innovation (IMI) Demonstration Program, 84 FR 20182, May, 2019.



www.enotrans.org



@EnoTrans



/EnoCenterForTransportation



bit.ly/EnoLinkedIn



/EnoTransportation



@EnoCenterForTransportation