

FISCAL YEAR 2018-2019 TFCA FUNDING AGREEMENT
BETWEEN
THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS
AND
PENINSULA TRAFFIC CONGESTION RELIEF ALLIANCE

This 2018-2019 TFCA Funding Agreement (“Agreement”) effective as of _____, 2018 (“Effective Date”) is made and entered into between the City/County Association of Governments (C/CAG), a joint powers agency hereinafter referred to as "Program Manager," and Peninsula Traffic Congestion Relief Alliance (also referred to as Commute.org), a joint powers authority, hereinafter referred to as "Project Sponsor."

SECTION I

RECITALS:

- 1) The Bay Area Air Quality Management District, hereinafter referred to as "Air District," is authorized under Health and Safety Code Sections 44223 and 44225 to levy a fee on motor vehicles. Funds generated by the fee are referred to as the Transportation Fund for Clean Air (TFCA) and are used to implement projects to reduce air pollution from motor vehicles.
- 2) Health and Safety Code Section 44241 limits the expenditure of collected revenues to specified transportation control measures included in the plan adopted by the Air District pursuant to Health and Safety Code Sections 40233 and 40717 and limits the allocation of the funds to public agencies within the Air District's jurisdiction.
- 3) Health and Safety Code Section 44241(d) stipulates that forty (40) percent of funds generated within a county where the fee is in effect shall be allocated by the Air District to one or more public agencies designated to receive the funds.
- 4) The Air District has been notified, in a communication dated July 29, 1992, that the Program Manager is the duly authorized recipient of forty (40) percent of the funds collected in San Mateo County, and has been so designated by resolutions adopted by the San Mateo County Board of Supervisors and by the City Councils of a majority of the cities representing a majority of the population in the incorporated area of the County. The resolutions specify the terms and conditions for the expenditure of funds by the Program Manager.
- 5) The role of the Program Manager is to administer the Transportation Fund for Clean Air (TFCA) County Program Manager funds. This includes the preparation of an expenditure plan for approval by the C/CAG Board of Directors and the Air District Board of Directors, project sponsor oversight, preparation and submittal of the Funding Status and Final Reports, and TFCA County Program Manager fund audit support.

- 6) On May 8, 2018, the Program Manager approved this project for TFCA funding, including the expenditure of \$375,000 to fund the San Mateo County Carpool Incentives Program 2.0 for Fiscal Year 2018-2019 funds as set forth in Attachment A and incorporated herein (hereinafter referred to as “Project”).
- 7) The Program Manager and Project Sponsor, pursuant to Health and Safety Code Section 44241, hereby enter into this Agreement to implement the Project to improve air quality in the San Francisco Bay Area Air Basin.

SECTION II

PROJECT SPONSOR AGREES:

- 1) To apply all funds received under this Agreement to the Project, consistent with the mutually agreed to terms and conditions contained in this Agreement.
- 2) To maintain, at all times during the Term of this Agreement, a separate account or sub-ledger for all funds received under this Agreement and to withdraw funds from this separate account.
- 3) To maintain, or cause to be maintained, adequate records to document and demonstrate to the Program Manager, Air District staff, and auditors the receipt and expenditures of TFCA funds.
- 4) To allow the Program Manager and the Air District to audit all expenditures relating to the Project funded through this Agreement. For the duration of the Project as described in Attachment A and for five (5) years following completion of the Project, Project Sponsor will make available to the Program Manager, Air District staff, or to an independent auditor selected by the Air District all records relating to Project performance and expenses incurred in implementing the Project.
- 5) To maintain employee time sheets or another method for documenting the labor and other costs incurred in implementing, and charged to, the Project under this Agreement.
- 6) All TFCA funds allocated to Project Sponsor will be distributed on a cost reimbursement basis, on the basis of documented legitimate expenditures for the intended purpose of the Project. Documented legitimate expenditures shall be defined as those described in Attachment B and incorporated herein. Costs will be reimbursed only to the amount of the TFCA funds authorized by this Agreement. In no event shall the Program Manager be required to provide any funding to the Project Sponsor under this Agreement unless such funds are first provided to the Program Manager by the Air District.
- 7) To keep necessary records of the performance of the Project in order to expedite evaluation of emissions reductions achieved from implementation of the Project.
- 8) To submit reports to the Program Manager as follows:

- a) Annual Report: The Project Sponsor shall submit an annual report to the Program Manager within four (4) months of the end of each fiscal year. The annual report shall itemize (a) the expenditure of the funds, (b) progress to date in the implementation of the Project, and (c) the results of the monitoring of the performance of the Project. The Program Manager shall submit the annual reports on Air District-approved report forms until the Project is completed.
- 9) To use both the Air District's and C/CAG's approved logos for the Project implemented directly by the Project Sponsor under this Agreement, as specified below:
 - a) the logos will be used on signs posted at the site of any construction;
 - b) the logos will be displayed on any vehicles operated with or obtained as part of the Project;
 - c) the logos will be used on any public information material relating to the Project, such as websites and printed materials, including transit schedules, brochures, handbooks, maps and other promotional materials; and
 - d) Project Sponsor will demonstrate to the Program Manager through photographs of vehicles and copies of press releases that Air District and C/CAG logos are used and displayed as required.
- 10) To acknowledge the Air District as a funding source in any related articles, news releases, and other publicity materials for the Project that are implemented directly by the Project Sponsor.
- 11) Project Sponsor shall provide Program Manager certificates and/or other evidence of the insurance coverage required below. Project Sponsor shall obtain and maintain in full force and effect insurance as set forth below. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements shall be deemed a material breach of this Agreement.
 - a) Liability insurance with a limit of not less than \$1,000,000 per occurrence. Such insurance shall be of the type usual and customary to the business of the Project Sponsor and to the operation of the vehicles, vessels, engines, or equipment operated by the Project Sponsor.
 - b) Property insurance in an amount of not less than the insurable value of Project Sponsor's vehicles, vessels, engines, or equipment funded under the Agreement and covering all risks of loss, damage, or destruction of such vehicles, vessels, engines, or equipment.
- 12) All funds received under this Agreement shall be expended only in accordance with all applicable provisions of law for the Project that is implemented directly by the Project Sponsor.

- 13) To return to the Program Manager all funds that are not expended in accordance with applicable provisions of law.
- 14) To the extent not otherwise prohibited by law, and to the extent required by the California Public Records Act (California Government Code section 6250 et seq.), to place in the public domain any software, written document, or other product developed with funds received through this Agreement.
- 15) If TFCA funds are used for the purchase of any vehicle(s), Project Sponsor must either obtain approval from the Program Manager for any use of the vehicle(s) other than for the Project or return to the Program Manager any funds realized from the sale of any vehicle(s) purchased with TFCA funds if such reuse or sale occurs within the industry standards for the useful life from the date of purchase of the vehicle(s). The amount of funds returned to the Program Manager shall be proportional to the percentage of TFCA funds originally used to purchase the vehicle(s).
- 16) Project Sponsor will complete the Project on or before June 30, 2020.
- 17) Project Sponsor must sign this Agreement within sixty (60) days after the Program Manager has transmitted it to Project Sponsor in order to remain eligible for the granted TFCA funds. Program Manager may grant a one-time extension of thirty (30) days to the applicant for just cause.
- 18) Unless otherwise authorized by the Program Manager, if no status reports and/or reimbursement requests are received from the Project Sponsor within one (1) year from the date of execution of this Agreement, the Project will be considered for cancellation and the funds reprogrammed.

SECTION III

PROGRAM MANAGER AGREES:

- 1) To distribute TFCA funds allocated to the Project Sponsor on a cost reimbursement basis, on the basis of documented legitimate expenditures for the intended purpose of the Project. Costs will be reimbursed only to the amount of the TFCA funds authorized by this Agreement. In no event shall the Program Manager be required to provide any funding to the Project Sponsor under this Agreement unless such funds are first provided to the Program Manager by the Air District.
- 2) To reimburse costs from the execution of this Agreement through June 30, 2020.
- 3) To provide timely notice prior to conducting an audit.
- 4) To provide the Project Sponsor, and any other requesting party, a copy of the fiscal and performance audits as specified in Section 44242 of the Health and Safety Code.

- 5) To provide the Project Sponsor with all Project Sponsor reporting forms required for the Project Sponsor to submit pursuant to this Agreement, including the Semi-Annual Funding Status Report and Annual Report required pursuant to Section II.8 above.

SECTION IV

IT IS MUTUALLY AGREED:

- 1) Term: This Agreement shall be in effect as of the Effective Date and remain in effect for three (3) years after the completion of the Project, unless the Agreement is terminated as provided below.
- 2) Termination: Either party may terminate this Agreement at any time by giving written notice of termination to the other party which shall specify the effective date thereof. Notice of termination under this paragraph shall be given at least ninety (90) days before the effective date of such termination. This Agreement will also terminate at the end of the fiscal year during which the City/County Association of Governments loses designation as Program Manager for San Mateo County.
- 3) Indemnity: Project Sponsor shall indemnify and hold harmless the Air District, its employees, agents, representatives, and successors-in-interest against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of their performance of the project or operation or use of the equipment that is subject to this Agreement. Project Sponsor shall indemnify and hold harmless the Program Manager, its employees, agents, representatives, and successors-in-interest against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of their performance of the Project or operation or use of the equipment that is subject to this Agreement. Program Manager shall indemnify and save harmless the Project Sponsor from all claims, suits or actions resulting from the performance by Program Manager of its duties under this Agreement. In the event that, for any reason other than Program Manager's sole misconduct, the Air District seeks return of funds already distributed to the Project Sponsor pursuant to this Agreement, the Project Sponsor shall indemnify and reimburse the Program Manager in the amount the Program Manager is required to return to the Air District under the funding Agreement between the Program Manager and the Air District.
- 4) Notices: Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, by U.S. Postal Service mail, or by certified mail (return receipt requested), to the address set forth below, or to such addresses which may be specified in writing to the parties hereto.

John Ford
Commute.org
400 Oyster Point Blvd, Suite 409
South San Francisco, CA 94080
650-588-8170

John Hoang
City/County Association of Governments
555 County Center, 5th Floor
Redwood City, CA 94063
650-363-4105

- 5) Additional Acts and Documents: Each party agrees to do all things and take all such actions, and to make, execute, and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent, and purpose of this Agreement.
- 6) Non-discrimination: The Project Sponsor shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state, or local laws.
- 6) Integration/Merger: This Agreement, including Exhibits A and B attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this Agreement are not binding. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibit A or Exhibit B attached hereto, the terms, conditions, or specifications set forth herein shall prevail.
- 7) Amendment: This Agreement may not be changed, modified, or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of the Agreement shall be void and of no effect. Any change in the Project scope shall constitute an amendment under this Agreement.
- 8) Independent Contractor: Project Sponsor renders its services under this Agreement as an independent contractor. None of the Project Sponsor's agents or employees shall be agents or employees of the Program Manager. This paragraph does not apply to elected officials serving concurrently on the governing boards of the Project Sponsor, Program Manager, or the Air District.
- 9) Assignment: This Agreement may not be assigned, transferred, hypothecated, or pledged by any party without express written consent of the other party.
- 10) Severability: Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, reasonably be interpreted to reflect the intentions of the parties.

11) Force Majeure: Neither the Project Sponsor nor the Program Manager shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of the Project Sponsor or Program Manager.

12) Governing Law: This Agreement shall be construed and interpreted, and the legal relations created thereby shall be determined, in accordance with the laws of the State of California, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.

IN WITNESS WHEREOF, Project Sponsor and Program Manager have entered into this 2018-2019 TFCA Funding Agreements of the Effective Date set forth above.

FOR PROJECT SPONSOR:

By: _____
Jeffrey Gee, Chair
Commute.org

Approved as to form:

By: _____
Commute.org
Legal Counsel

FOR PROGRAM MANAGER:

By: _____
Maryann Moise Derwin, Chair
City/County Association of Governments

Approved as to form:

By: _____
C/CAG Legal Counsel

ATTACHMENT A

COUNTYWIDE VOLUNTARY TRIP REDUCTION PROGRAM PROJECT INFORMATION

- A. Project Number: 19SM03
- B. Project Title: San Mateo County Carpool Incentive Program 2.0
- C. TFCA Program Manager Funds Allocated: \$375,000
- D. TFCA Regional Funds Awarded (if applicable): \$_____
- E. Total TFCA Funds Allocated (sum of C and D): \$375,000
- F. Total Project Cost: \$400,000
Indicate the TFCA dollars allocated (C, D and E) and total project cost (F). Data from Line E (Total TFCA Funds) should be used to calculate C-E.
- G. Project Description:

Commute.org (the “Project Sponsor”) provides Transportation Demand Management (TDM) programs in San Mateo County as part of a region-wide network of TDM services provided in collaboration and partnership with the Regional Rideshare Program, 511 Contra Costa, San Francisco’s Office of the Environment, Solano Napa Commuter Information, and various transportation agencies in the Bay Area to encourage use of transportation alternatives such as carpools, vanpools and transit. Efforts are targeted primarily at commute trips.

Project Sponsor will use TFCA funds to implement the San Mateo County Carpool Incentive Program 2.0 (“the Project”) as described below:

The Project’s objective is to encourage commuters to carpool or share rides and will focus on commuters traveling to or from San Mateo County. The trips would be tracked through commercially available program applications (apps) such as Commute Tracker, Scoop, or Waze Carpool, or manually entered, through the existing Commute.org STAR platform, powered by RideAmigos and under license with Commute.org. The Project will enable the Project Sponsor and Project Manager, C/CAG, to adjust the incentive accordingly to align with the Project’s goals.

The Project will provide incentives through the form of e-gift cards based on verifiable number of days a commuter carpools. For every 10 days of carpool (verified), a carpooler (either driver or rider) can earn a \$25 e-gift card. The individual can earn up to four \$25 e-gift cards(\$100 maximum in incentives per commuter). This rewards-based incentive caps the amount of incentive a carpooler can received. There will be additional “challenges added to the program where carpoolers can receive extra incentives or prizes. “Challenges” can have varying focuses, for example, emphasizing on the mid-week rideshare or a 3-person rideshare.

The intent of the Project is to capitalize on the STAR platform currently implemented by Commute.org to increase the commuter engagement and encourage ridesharing apps user participation.

Along with partnering with C/CAG, Comute.org will implement the Project by overseeing the Project's day-to-day management

- H. Final Report Content: Final Report form and final Cost Effectiveness Worksheet
Form 1 – Ridesharing, Shuttles, Transit Information, Rail/Bus Integration, Smart Growth, and Traffic Calming Projects. (Includes Transit Bus Signal Priority.)

ATTACHMENT B

GUIDELINES FOR ELIGIBLE TFCA REIMBURSABLE COSTS

The Transportation Fund for Clean Air (TFCA) enabling legislation allows the vehicle registration fees collected for the program to be used for project implementation costs, as well as administrative project costs. This attachment provides guidance on differentiating and reporting these costs. The Air District will use the definitions and interpretations discussed below in the financial accounting of the TFCA program. The Air District conducts audits on TFCA-funded projects to ensure that the funds have been spent in accordance with the program guidelines and policies.

Project Implementation Costs

Project implementation costs are charges associated with implementing a TFCA-funded project including:

- Documented hourly labor charges (salaries, wages, and benefits) directly and solely related to implementation of the TFCA project,
- Capital costs,
- Capital equipment installation costs,
- Equipment maintenance costs,
- Shuttle driver labor costs,
- Labor costs related to capital purchases,
- Operator or personnel training directly related to project implementation,
- Contractor labor charges related to the TFCA project, and
- Travel and training costs only if these costs are directly related to the implementation of the TFCA-funded project (e.g., the cost of training mechanics to service TFCA-funded natural gas clean air vehicles).

The Project Sponsor may seek reimbursement for these costs by providing proper documentation with project invoices. Such documentation must show how the project implementation costs were calculated, for example, by listing the date when the hours were worked, employee job title, employee hourly pay rates, tasks, and total charges. Documentation of hourly charges may be provided with time sheets or any other generally accepted accounting method to allocate and document staff time.