

FISCAL YEAR 2020-2021 TFCA FUNDING AGREEMENT
BETWEEN
THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS
AND
SAN MATEO COUNTY TRANSIT DISTRICT

This 2020-2021 TFCA Funding Agreement (“Agreement”), effective as of July 1, 2020 (“Effective Date”), is made and entered into between the City/County Association of Governments or C/CAG, a joint powers agency hereinafter referred to as "Program Manager," and the San Mateo County Transit District (SamTrans), a special district, 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 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 February 13, 2020, the Program Manager approved projects for TFCA funding including \$300,000 to fund the SamTrans Shuttle Program for Fiscal Year 2020-2021 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 documenting those hourly labor costs incurred in the implementation of the Project, which are paid with funds received under this Agreement, or to establish an alternative method to document staff costs charged to the Project.
- 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. Legitimate documented 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:

Annual Report: The Project Sponsor shall submit an annual report to the Program Manager within (4) months of the end of each fiscal year which itemizes (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 annually until the Project is completed.

- 9) To use both the Air District's and C/CAG's approved logos for the TFCA project implemented directly by the Project Sponsor under this Agreement, as specified below:
 - a) the logo will be used on signs posted at the site of any construction;
 - b) the logo will be displayed on any vehicles operated with or obtained as part of the Project;
 - c) the logo will be used on any public information material relating to a 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 or other publicity materials for the Project which 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 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 the 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 alternative use of the vehicle(s) 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 by June 30, 2021.
- 17) Project Sponsor must sign this Agreement within sixty (60) days after the Program Manager has transmitted it to them 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 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 the 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 only 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, 2021.
- 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 will remain in effect for three (3) years after the completion of the Project, unless it 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 Government 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 save harmless Program Manager and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Project Sponsor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including Project Sponsor or its employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from Project Sponsor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of Program Manager and/or its officers, agents, employees, or servants. However, Project Sponsor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which Program Manager has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct. The duty of Project Sponsor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code. 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.

This indemnification provision will survive termination or expiration of this Agreement.

- 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.

Peter Skinner
SamTrans
1250 San Carlos Ave
San Carlos, CA 94070
650-508-6476

Kim Wever
City/County Association of Governments
555 County Center, 5th Floor
Redwood City, CA 94063
650-599-1451

- 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) Integration: This Agreement represents the entire agreement of the parties with respect to the funds initially allocated to be spent in FY 2020-2021 described in this Agreement, and no representation, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.
- 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.

IN WITNESS WHEREOF, Project Sponsor and Program Manager have entered into this 2020-2021 TFCA Funding Agreements of the Effective Date set forth above.

FOR PROJECT SPONSOR:

FOR PROGRAM MANAGER:

By: _____
Jim Hartnett, General Manager/CEO
San Mateo County Transit District

By: _____
Marie Chuang, Chair
City/County Association of Governments

Attested by:

Approved as to form:

By: _____

By: _____
C/CAG Legal Counsel

Approved as to form:

By: _____
San Mateo County Transit District
Legal Counsel

ATTACHMENT A

PROJECT INFORMATION

- A. Project Number: 21SM02
- B. Project Title: SamTrans Shuttle Program
- C. TFCA Program Manager Funds Allocated: \$300,000
- D. TFCA Regional Funds Awarded (if applicable) 0
- E. Total TFCA Funds Allocated (sum of C and D): \$ 300,000
- F. Total Project Cost: \$ 1,500,000
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

Project Sponsor will use TFCA funds to operate shuttles to connect BART stations to employers in San Mateo County. This project supports the SamTrans Shuttle Bus Program, a peak commute period shuttle bus service from BART stations to major employment sites in San Mateo County. These employment sites are not served conveniently by existing transit service. The SamTrans Shuttle Bus Program includes five (5) previously approved shuttle routes that are currently operating as part of the SamTrans Shuttle Bus Program. The shuttles operate in excess of 80 combined daily trips. BART stations served include Balboa Park, Millbrae, and South San Francisco.

<u>Shuttle Name</u>	<u>Service Area</u>	<u>BART Station</u>
<i>Crocker Park</i>	<i>Brisbane</i>	<i>Balboa Park</i>
<i>North Foster City</i>	<i>Foster City</i>	<i>Millbrae</i>
<i>Oyster Point</i>	<i>South San Francisco</i>	<i>South San Francisco</i>
<i>Sierra Point</i>	<i>Brisbane</i>	<i>Balboa Park</i>
<i>Utah-Grand</i>	<i>South San Francisco</i>	<i>South San Francisco</i>

This service generates approximately 1,037 (FY 2018-2019) boardings per day on public transportation to about 150 companies. Since the average car driver lives 26.5 miles from the station, this service removes approximately 27,500 miles of SOV trips a day from Bay Area freeways. All shuttle vehicles operated with TFCA funds meet the California Air Resource Board (CARB) particulate matter standards for public transit fleets.

- B. Final Report Content: Final Report form and final Cost Effectiveness Worksheet *Form for Ridesharing, Shuttles, Transit Information, Rail/Bus Integration, Smart Growth, and Traffic Calming Projects.*

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.