

AGREEMENT
BETWEEN THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY AND THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR COUNTYWIDE TRANSPORTATION MODEL

This AGREEMENT (“Agreement”), effective _____, 2020, is entered into by and between the City/County Association of Governments of San Mateo County, (“C/CAG”) and the Santa Clara Valley Transportation Authority, a public transportation agency serving as the designated congestion management agency for Santa Clara County (“VTA”).

WHEREAS, for use as an advance transportation planning tool, VTA has developed a software forecasting model of the transportation system of the San Francisco Bay Area that is centered on Santa Clara County but accounts for transportation impacts from neighboring counties and regional commute sheds (the “VTA Model”); and

WHEREAS, C/CAG is the designated Congestion Management Agency responsible for the development and implementation of the Congestion Management Program for San Mateo County; and

WHEREAS, C/CAG needs a transportation forecasting model in order to develop travel demand analyses for San Mateo County; and

WHEREAS, C/CAG and the VTA are parties to an agreement originally dated March 18, 2011 that allows C/CAG to license from VTA a software forecasting model of the transportation system of the San Francisco Bay Area that is optimized for Santa Clara and San Mateo counties and accounts for transportation impacts from neighboring counties and regional commute sheds; and

WHEREAS, C/CAG desires to execute a new contract due to VTA’s administrative policies; and

WHEREAS, C/CAG and VTA desire to continue the C/CAG-VTA Model Agreement to retain the VTA to provide maintenance, update, and on-call services for the C/CAG-VTA Model; and

NOW, THEREFORE, C/CAG and VTA agree as follows:

1. Terms of License.

- a. For the term provided in this Agreement, VTA grants to C/CAG a nonexclusive and, except as provided herein, nontransferable license to use the Model, which includes the following:

- Base year 2015 model and datasets;
- Forecast year 2040 model and datasets;
- TP+/CUBE scripts;

- Standalone programs required to execute the models;
 - Traffic Analysis Zone (TAZ) boundary shape files; and
 - Model documentation;
- b. Within 30 days of receipt by VTA of the final Agreement signed by both parties, VTA shall provide C/CAG with a working copy of the VTA Model (including modifications pursuant to paragraph 1 g., below) and supporting model documentation.
 - c. C/CAG (including C/CAG staff and employees), its Member Agencies, C/CAG Planning partners including Caltrain JBP, SamTrans, the San Mateo County Transportation Authority, and consultants under contract with C/CAG or its Member Agencies (collectively the “C/CAG Users”) intend to and are granted the right to, adapt the VTA Model solely for the purpose of developing and running a travel demand analysis for San Mateo County (the “C/CAG Model”)
 - d. C/CAG shall not make electronic or other copies or reproduction of any part of the VTA Model except for those purposes necessary to complete travel demand analysis, and will not distribute the VTA Model or any of its derivative components to any person, department, agency or firm other than to C/CAG Users. The total allowable number of copies being used concurrently shall not exceed 10 unless authorized in writing by VTA. If any such distribution is made to the C/CAG member agencies or consultants, C/CAG shall obtain a written agreement from those parties to abide by the conditions of this license.
 - e. Except as provided herein, no copying, reproduction, publication, modification, adaptation, reverse-engineering, distribution or transfer is allowed. The VTA Model (including the software scripts, files, documentation, and datasets) is proprietary, protected by copyright, and is the intellectual property of VTA. VTA retains all rights, title, and interest in said intellectual property. C/CAG shall take affirmative steps as necessary to prevent misappropriation or misuse of the VTA Model by C/CAG Users.
 - f. In the role of providing configuration control, all enhancements to the VTA Model will be done by the VTA. The VTA will provide archival and nominal technical support for the C/CAG Model and variations thereto developed under Section 1c. Minor changes made to the VTA Model by a C/CAG consultant to perform specific model runs will be provided to the VTA for incorporation into the archived VTA Model. Incorporation of the minor changes to the most recent archived VTA Model, consisting of networks and socioeconomic data revisions, will be mutually agreed to by VTA and C/CAG prior to inclusion.

3. Maintenance and update Services.

VTA will provide routine updates of the VTA Model for an annual fee of \$25,000 per year or \$50,000 for the three-year term of this Agreement. These updates include any major updates of input data, model scripts, structural changes to the mode choice programs and/or procedures

implemented by VTA staff to improve the VTA Model and would be major enhancements over and above minor revisions such as networks and socioeconomic data revisions considered as configuration control identified under Section 1f. Routine updates to the VTA Model will, at a minimum, be provided once per year. C/CAG will authorize the maintenance services on a task order basis.

4. On-Call Modeling Services.

- a. VTA staff will provide On-call travel demand modeling services to C/CAG based on a task order basis with a mutually agreed upon scope of services, budget, and schedule. On-call modeling services will include but not be limited to the following activities:
 - i. Base year model calibration and validation model runs,
 - ii. Development of general travel demand forecasts to support highway and/or transit corridor studies,
 - iii. Development of detailed traffic output volumes for site-specific development traffic impacts analysis,
 - iv. Implementation of FTA SUMMIT User Benefits procedures for transit cost-effectiveness analysis,
 - v. Development of base and alternative land use scenarios for input into travel demand forecasts,
 - vi. Calculation of air quality analysis impacts to support Greenhouse Gas (GHG) emissions reduction strategies, and
 - vii. Development of advanced modeling applications for HOV Toll Modeling and Congestion Pricing analysis.
- b. Annual on-call modeling services are estimated at approximately \$100,000 per year, but may go up or down depending on schedule, need and scope.

5. Fees and Payment

<u>AGREEMENT SECTION</u>	<u>TASK/ITEM</u>	<u>FEE</u>	<u>PAYMENT DUE DATE</u>
1	Maintenance and update Services	Not to exceed \$50,000 total	\$25k annually**
2	On Call Modeling Services	Not to exceed \$203,000 total	Per Task Order

*** Per Section 2**

**** At the request of C/CAG. C/CAG may choose to not receive annual updates and therefore not be obligated to pay the annual maintenance fee.**

6. **Limited Warranty and Representation.**

- a. The VTA Model is in a constant state of update and improvement. C/CAG acknowledges this state and therefore accepts the VTA Model "as is" at the time of delivery to C/CAG.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, VTA MAKES NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND DISCLAIMS ANY LIABILITY FOR THE VTA MODEL, INCLUDING BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

However, the VTA will ensure that a fully operational version of the most recent VTA Model as of the date of this Agreement will be provided to C/CAG. VTA will provide output files for C/CAG use to verify that the VTA Model results can be replicated on C/CAG computers.

- b. VTA warrants that it is the sole owner of the VTA Model and has all proprietary rights therein. The VTA Model consists of scripts written in TP+/Cube together with data. C/CAG acknowledges that it is aware that it must purchase or otherwise acquire the TP+/Cube software from Citilabs the right to use the correct version of TP+/Cube or related software to run the VTA Model. VTA is under no obligation to supply TP+/Cube or other software or hardware necessary to run the VTA Model.
- c. The VTA Model follows industry-accepted standards for accuracy. However, VTA assumes no liability for its accuracy and or for the use of the VTA Model, its networks, and datasets by the C/CAG.

7. **Limitation of Liability.**

- a. **EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAID BY C/CAG TO VTA HEREUNDER. THE FOREGOING SHALL NOT LIMIT C/CAG'S PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.**
- b. **IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH**

DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

8. Indemnification.

- a. VTA shall indemnify, defend, and hold C/CAG harmless against any claim, demand, suit, or proceeding ("Claim") made or brought against C/CAG by a third party alleging (i) that the use of the VTA Model as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify C/CAG for any damages finally awarded against, and for reasonable attorney's fees incurred by C/CAG in connection with any such Claim; provided that C/CAG (a) promptly gives VTA written notice of the Claim, (b) gives VTA sole control of the defense and settlement of the Claim (provided that VTA may not settle or defend any Claim unless it unconditionally releases C/CAG of all liability), and (c) provides to VTA all reasonable assistance, at C/CAG's expense.
- b. C/CAG shall indemnify, defend, and hold VTA harmless against any Claim, whether arising in tort or contract, brought by any third party for injury to or death of any person or persons, or for loss of or damage to property arising out of or in any way relating to use of the VTA Model or the C/CAG Model by C/CAG, its Member Agencies, or consultants under contract with C/CAG or its Member Agencies, excepting only those Claims caused by the gross negligence or willful misconduct of VTA.

9. Term of Agreement.

This Agreement shall become effective upon full execution of the Agreement and shall remain in effect for until June 30, 2022; provided however this Agreement may be terminated by either party by delivery of a 60-day written notice of termination to the other party. Upon end of the term or termination of this Agreement C/CAG will retain access to the C/CAG Model as then provided with no further support from the VTA.

11. Parties' Representatives.

The General Manager of VTA or his designee is hereby made the representative of VTA for all purposes under this Agreement. The Chairperson of the Board of C/CAG or his/her designee is hereby made the representative of C/CAG for all purposes under this Agreement.

12. No Waiver.

The failure of either Party to insist upon the strict performance of any of the terms, covenant and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either Party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.

13. Notice.

Any notice required to be given by either Party, or which either party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority
John H. Ristow, Chief, Congestion Management Agency
3331 North First Street, Bldg. B-2
San Jose, CA 95134-1906

To C/CAG: San Mateo City/County Association of Governments
Sandy Wong, Executive Director
555 County Center, 5th Floor
Redwood City, CA 94063

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

14. Dispute Resolution.

If a question arises regarding interpretation of this Agreement or its performance, or the alleged failure of a Party to perform, the Party raising the question or making the allegation shall give written notice thereof to the other Party. The Parties shall promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation or binding arbitration, may be pursued by mutual agreement. It is the intent of the Parties to the extent possible that litigation be avoided as a method of dispute resolution.

15. Entire Agreement.

This Agreement constitutes the entire Agreement between the Parties pertaining to the subject matter contained therein and supersedes all prior or contemporaneous agreements, representations and understandings of the Parties relative thereto.

16. Amendments.

Future amendments to this Agreement shall be processed by mutual written agreement of the Parties. Whenever possible, notice of a desire to amend this Agreement shall be provided ninety (90) calendar days prior to the desired effective date of such amendment.

17. Warranty of Authority to Execute Agreement.

Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

18. Severability

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

19. Governing Law.

This Agreement shall be construed and its performance enforced under California law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

**Santa Clara Valley
Transportation Authority**

**City/County Association of Governments
of San Mateo County**

By: _____
Nuria Fernandez
General Manager

By: _____
Marie Chaung
C/CAG Chair

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

VTA Counsel

C/CAG Counsel

Date

Date