

FISCAL YEAR 2022-2023 TFCA FUNDING AGREEMENT
BETWEEN
THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS
AND

COMMUTE.ORG

This 2021-2022 TFCA Funding Agreement (Agreement), effective as of July 1, 2021 (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 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 California Health and Safety (Health & Safety) Code Sections 44223 and 44225 to levy a fee on motor vehicles registered within its jurisdiction (Motor Vehicle Fees), a portion of which the Air District receives and dedicates to its Transportation Fund for Clear Air (TFCA) program.
- 2) TFCA program monies may be allocated for projects to reduce air pollution from motor vehicles and to implement transportation control measures included in the plan adopted pursuant to Health and Safety Code Sections 40233, 40717, and 40919.
- 3) In accordance with Health and Safety Code Section 44241(d), the Air District allocates not less than forty (40) percent of the TFCA monies received to implement the TFCA County Program Manager program.
- 4) The Air District has been notified, in a communication dated August 28, 1992, that the Program Manager is the duly authorized recipient of the proportionate share of Program monies for 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 terms and conditions for the expenditure of the County's Program monies by the County Program Manager are set forth in the resolution(s).
- 5) The role of the Program Manager is to administer the 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 March 10, 2022, the C/CAG Board of Directors approved projects for TFCA funding, including the TFCA grant amount of up to \$136,000 to fund the BART Shuttle Program for

Fiscal Year 2021-2022 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, with a contract retention of fifteen percent (15%) pending submission of the final Project report, 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 up 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. The Program Manager will withhold payments in the event the Project Sponsor fails to comply with the requirements of this Agreement.
- 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) Interim Project Report: The Project Sponsor must submit an annual interim project report to the Program Manager within four (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 must submit the annual reports on Air District-approved report forms annually until the Project is completed.
 - b) Final Report: The Project Sponsor must submit a final report to the Program Manager within four (4) months of the Project completion which itemizes (a) the expenditure of the funds, (b) the final results of the monitoring of the performance of the Project, and (c) the Final Cost-Effective (C-E) Worksheet. The Program Manager must submit the final report on Air District-approved report forms. The Program Manager will retain fifteen percent (15%) of total TFCA funds until the final report is submitted.
- 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 logos must be used on signs posted at the site of any construction;
 - b) the logos must be displayed on any vehicles operated with or obtained as part of the Project;
 - c) the logos must 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 must 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) Prior to commencement of any work, Project Sponsor shall deliver to Program Manager all insurance documentation, annual certificates and/or other evidence of the insurance coverage required below, verifying coverages. Project Sponsor shall obtain and maintain in full force and effect insurance as set forth below. All insurance specified below shall remain in force until all work or services to be performed are satisfactorily completed, and the work or services have been formally accepted. Project Sponsor must notify C/CAG if any of the required coverages listed below are non-renewed or cancelled. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements shall be deemed a breach of this Agreement.

The insurance requirements specified in this section shall cover Project Sponsor's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Project Sponsor authorizes to work under this Agreement (hereinafter referred to as "Agents.") Project Sponsor shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the types of insurance indicated below against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

Project Sponsor is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, Project Sponsor shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Project Sponsor's indemnity obligation as to itself or any of its Agents in the absence of coverage.

- 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 will 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, 2023.
- 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 Project Sponsor 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 up 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. The Program Manager will retain fifteen percent (15%) of total TFCA grant amount until the final Project report is submitted. The Program Manager will withhold payments in the event the Project Sponsor fails to comply with the requirements of this Agreement.
- 2) To reimburse Project costs incurred by Project Sponsor from the execution of this Agreement through June 30, 2023.
- 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 Interim Project Report and Final 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.

In addition to the foregoing, Program Manager may terminate this Agreement for cause. In order to terminate for cause, Program Manager must first give Project Sponsor notice of the alleged breach. Project Sponsor shall have five (5) calendar days after receipt of such notice to respond, and a total of fifteen (15) calendar days after receipt of such notice to cure the alleged breach. If Project Sponsor fails to cure the breach within this period, Program Manager may immediately terminate this Agreement without further action.

- 3) **Hold Harmless/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 also 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, 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 the Project Sponsor and 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 the 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 the Program Manager and/or its officers, agents, employees, or servants. However, the Project Sponsor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which the 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 the 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, by certified mail (return receipt requested) or by email, 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@commute.org

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

- 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 2021-2022 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 Fiscal Year 2022-2023 TFCA Funding Agreement as of the Effective Date set forth above.

FOR PROJECT SPONSOR:

FOR PROGRAM MANAGER:

By: _____
Cliff Lentz, Chair
Commute.org

By: _____
Davina Hurt, Chair
City/County Association of Governments

Approved as to form:

Approved as to form:

By: _____
Joan Cassman
Commute.org Legal Counsel

By: _____
Melissa Andrikopoulos
C/CAG Legal Counsel

ATTACHMENT A

PROJECT INFORMATION

A. Project Number: 23SM02

B. Project Title: BART Shuttle Program

C. TFCA Program Manager Funds Allocated: \$150,000

D. TFCA Regional Funds Awarded (if applicable) 0

E. Total TFCA Funds Allocated (sum of C and D): \$ 150,000

F. Total Project Cost: \$ 5,96,800

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 that provide first/last mile connections between BART stations and residential and employment locations in San Mateo County. This project supports three routes of the Commute.org Shuttle Program, a peak commute period shuttle bus service from public transit stations to major employment sites in San Mateo County. The three routes currently have 36 combined daily trips. BART stations served include Balboa Park and South San Francisco.

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

Pre-COVID (FY18/19), these three routes generated approximately 640 boardings per day. Ridership in April 2022 was approximately 325 per day. Ridership is expected to approach pre-pandemic levels in FY22/23. Assuming the average shuttle rider has a commute distance of 20 miles, this program has the potential to remove approximately 25,600 miles of daily SOV trips 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.