

FUNDING AGREEMENT
between the
CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN
MATEO COUNTY
and
SAN MATEO COUNTY ECONOMIC DEVELOPMENT
ASSOCIATION
for the
PRE-PROJECT INITIATION DOCUMENTS PHASE
of the
DUMBARTON ROADWAY IMPROVEMENTS PROJECT

This Funding Agreement (Agreement) is entered into on July 14, 2022, by and between the City/County Association of Governments of San Mateo County (C/CAG), and San Mateo County Economic Development Association (SAMCEDA), each of which is referred to individually as "Party" or jointly as "Parties."

RECITALS

- A. On December 2, 2021, the San Mateo County Transportation Authority (TA) Board of Directors programmed and allocated up to \$4,500,000 from the Measure W Highway Program Category (Measure W Funds) for the Pre-Project Initiation Documents (Pre-PID) and the Project Initiation Documents (PID) phases of the Dumbarton Roadway Improvements Project (Project) through Resolution 2021-33.
- B. On May 16, 2022 the TA and C/CAG entered into an agreement (the TA-C/CAG Agreement, included as Exhibit A to this Agreement) for up to \$675,000 of the awarded Measure W Funds for performing the Pre-PID phase (Scope of Work) of the Project as described in Exhibit A to the TA-C/CAG Agreement. A future agreement may be developed for the PID phase with remainder of allocated Measure W Funds.
- C. As part of C/CAG's application for TA Measure W Funds, SAMCEDA committed to provide \$500,000 in matching funds (10 percent of the total estimated cost to complete the Pre-PID and PID phases) if the Project was

selected for funding.

- D. C/CAG agreed, in the TA-C/CAG Agreement, to contribute \$75,000 in local, state, federal, or other grant matching funds for a total Pre-PID project scope of work cost of \$750,000, and C/CAG intends and SAMCEDA has agreed, to provide such matching funds.
- E. C/CAG and SAMCEDA desire to enter into this Agreement to establish the process, terms, and conditions for SAMCEDA's contribution of \$75,000, or 10 percent, of the initial Pre-PID project scope of work cost.

AGREEMENT

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

SECTION I

PERFORMANCE OF WORK

- A. C/CAG will serve as the lead for the Project for the purpose of this funding agreement. The Pre-PID phase of the Project will include assessing feasibility and scoping of future phases of the Project, as more specifically set forth in the Scope of Work (Exhibit A to the TA-C/CAG Agreement). C/CAG will use its best efforts to ensure the Scope of Work is completed as part of this Agreement.
- B. C/CAG agrees to (a) provide periodic updates to SAMCEDA on the status of the Project, (b) respond to SAMCEDA's reasonable requests for information regarding the Project, and (c) meet with SAMCEDA from time-to-time to discuss the Project.

SECTION II

TERM

The term of this Agreement will extend from the Effective Date to June 30, 2024, unless earlier terminated by the Parties pursuant to the terms of this Agreement. Any extension of this Agreement must be in a writing validly executed by both Parties. The Effective Date will be the date on which this Agreement has been signed by all signatories.

SECTION III
REIMBURSEMENT; INVOICING; AUDITS

A. SAMCEDA will reimburse C/CAG up to \$75,000 for C/CAG's reasonable and actual costs incurred with respect to the Scope of Work as described in Exhibit A to the TA-C/CAG Agreement. The Parties acknowledge that the costs included in Exhibit A reflect the Parties' best estimates as of execution of this Agreement. The cost estimates are not intended to limit C/CAG's expenditures on any phase of work; however, SAMCEDA's financial obligation will be capped at \$75,000. Aside from recovery of its costs in accordance with the terms of this Agreement, C/CAG will not charge SAMCEDA any fees under this Agreement.

B. C/CAG will submit invoices to SAMCEDA no more frequently than on a quarterly basis for reimbursement. Invoices will be sent to:

San Mateo County Economic Development Association
Attn: Rosanne Foust
1900 O'Farrell Street, Suite 380
San Mateo, CA 94403
T (650) 413-5600

C. C/CAG will include detailed supporting documentation with each invoice, including accounting summaries documenting hourly labor costs incurred in the implementation of the Scope of Work, copies of invoices from vendors or an explanation of the goods or services provided in furtherance of the Scope of Work and any other supporting documentation SAMCEDA may reasonably request.

D. SAMCEDA will pay invoices meeting the conditions set forth in paragraphs A through C within thirty business days of receipt.

E. C/CAG will retain all digital files, books, documents, papers, accounting records and other evidence pertaining to this Agreement for not less than three years after completion of the C/CAG's work under this Agreement.

F. SAMCEDA's auditor, or any duly authorized representative of SAMCEDA, will have

access to any digital files, books, records, and documents that are pertinent to this Agreement for audits and examinations, and C/CAG will furnish copies thereof, if requested, for a period of three years after completion of C/CAG's work under this Agreement.

G. SAMCEDA will provide timely notice to C/CAG prior to conducting an audit.

SECTION IV MISCELLANEOUS

A. **Amendment.** This Agreement may be amended or terminated only by mutual written consent of the Parties.

B. **Successors.** This Agreement shall be binding upon each Party and any successors or assigns thereof. Neither party may assign or transfer any part of this Agreement without the written consent of the other. Any attempt to violate the restriction in the prior sentence is void.

C. **Use of Contractors.** C/CAG currently has contractors on staff working on various matters. C/CAG's contractors may perform some of the work under this Agreement and, for the purposes of the work done under this Agreement only, will have the same rights and responsibilities (with respect to SAMCEDA) as regular C/CAG employees performing work hereunder.

D. **Third Parties.** This Agreement does not confer any benefits on any third party.

E. **Indemnification.** C/CAG will indemnify, keep and save harmless SAMCEDA and its directors, officers, agents and employees (collectively, "Indemnitees") against any and all suits, claims or actions arising out of any negligent act or omission, or any willful misconduct, by C/CAG, its agents, employees, contractors or subcontractors in connection with of the following:

- Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of the Project or implementation of

the Agreement; or

- Any allegation that materials or services developed, provided or used for the Project infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.
- In case of any and all suits, claims or actions arising out of any negligent act or omission, or any willful misconduct, by C/CAG, its agents, employees, contractors or subcontractors, C/CAG further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defenses of C/CAG and other Indemnitees as they are incurred. If any judgment is rendered, or settlement reached, against any Indemnitees in any such action, C/CAG will, at its expense, satisfy and discharge the same.

This indemnification does not and will not apply to any suits, claims or actions arising out of any negligent act or omission, or any willful misconduct, by SAMCEDA or any one or more of the Indemnitees.

This indemnification will survive termination or expiration of the Agreement.

F. **Governing Law.** This Agreement will be construed, and its performance enforced under California law.

G. **Venue.** In the event that a suit is brought by either Party to this Agreement, the Parties agree that venue will be exclusively vested in the State courts of the County of San Mateo or, if federal jurisdiction is appropriate, exclusively in the United States District Court for the Northern District of California, in San Jose; California.

H. **Entire Agreement.** The Agreement constitutes the entire Agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understanding of the Parties relative hereto. The Recitals above and Exhibit A, attached hereto, are true, correct and made a part hereof.

I. **Notices.** Any notice required to be given by either Party, or which either

Party may wish to give, must be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To C/CAG: City/County Association of Governments
of San Mateo County
555 County Center, 5th Floor
Redwood City, California, 94063
Attn: Sean Charpentier, Executive
Director

To SAMCEDA: San Mateo County Economic Development Association
Attn: Rosanne Foust
1900 O'Farrell Street, Suite 380
San Mateo, CA 94403
T (650) 413-5600

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

J. **Severability.** If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, is to any extent 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, will remain in full force and effect and will in no way be affected, impaired or invalidated thereby.

K. **No Waiver.** The failure of either Party to insist upon the strict performance of any of the terms, covenant and conditions of this Agreement will not be deemed a waiver of any right or remedy that either Party may have, and will not be deemed a waiver of their right to require strict performance of all of the terms, covenant, and conditions thereafter.

L. **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.

M. **Publicity.** Except to the extent required by applicable law, C/CAG agrees not to issue any public announcements or press releases regarding this Agreement without first obtaining SAMCEDA's prior consent.

IN WITNESS WHEREOF, the Parties hereto have subscribed their names on the day and year indicated below.

CITY/COUNTY ASSOCIATION OF GOVERNMENTS
OF SAN MATEO COUNTY

By: _____

Name: Davina Hurt

Its: C/CAG Chair

Date: _____

Approved as to Form:

Legal Counsel for C/CAG

SAN MATEO COUNTY ECONOMIC DEVELOPMENT
ASSOCIATION

By: _____

Name: Rosanne Foust

Its: President and CEO

Date: _____

Exhibit A - C/CAG SMCTA Funding Agreement

FUNDING AGREEMENT SAN MATEO COUNTY TRANSPORTATION AUTHORITY MEASURE W FUNDS DUMBARTON ROADWAY IMPROVEMENTS PROJECT

This Funding Agreement (Agreement) is made this 16th day of May, 2022 (Execution Date) by and between the San Mateo County Transportation Authority (TA) and the City/County Association of Governments of San Mateo County (C/CAG) (Sponsor), each of which is referred to herein individually as "Party" and jointly as "Parties."

RECITALS

WHEREAS, on November 6, 2018, the voters of San Mateo County authorized a new one-half percent sales tax in San Mateo County for transportation purposes, and tasked the TA with administering four of the five transportation program categories described in the Congestion Relief Plan presented to the voters (Measure W); and

WHEREAS, the Measure W Congestion Relief Plan designates twenty two and one-half percent of Measure W funds to fund highway projects throughout the County; and

WHEREAS, on August 6, 2021, the TA issued a call for projects for the Highway Program; and

WHEREAS, in response to the call for projects, Sponsor requested that the TA provide a total of \$4,500,000 in funds, \$675,000 of which is covered by this Agreement for the Dumbarton Roadway Improvements Project (Project), as described in Exhibit A; and

WHEREAS, the Project meets the intent of the Measure W Congestion Relief Plan and the TA's Strategic Plan 2020-2024; and

WHEREAS, on December 2, 2021, the TA's Board of Directors programmed and allocated up to \$4,500,000 from the Measure W Highway Program Category (Measure W Funds) for the Pre-Project Initiation Documents (Pre-PID) and the Project Initiation Documents (PID) phases of the Project through Resolution 2021-33. This Agreement is only for up to \$675,000 of the awarded Measure W Funds for performing the Pre-PID phase (Scope of Work) of the Project as described in Exhibit A. A more detailed Scope of Work must be submitted by the Sponsor for approval by the TA prior to commencement of work. A future agreement may be developed for the PID phase with remainder of allocated Measure W Funds and Sponsor match; and

WHEREAS, the Sponsor will contribute \$75,000 in local, state, federal, or other grant matching funds for a total Pre-PID project scope of work cost of \$750,000; and

WHEREAS, the TA and Sponsor desire to enter into this Agreement to establish the process, terms and conditions governing the allocation and expenditure of Measure W Funds on the Project.

Now therefore, the Parties agree as follows:

SECTION 1: Scope of Work Oversight and Reporting

1.1 Sponsor Oversight: Work Plan. Sponsor is responsible for the completion of the Scope of Work as described in Exhibit A, "Scope of Work Information," which is attached to this Agreement and incorporated herein by this reference. Sponsor is responsible for procuring and administering any professional service and/or other contracts entered into in connection with the Scope of Work. Sponsor will oversee completion of the Scope of Work. Sponsor may appoint a designee or engage contractor(s) to perform work necessary for Scope of Work completion, but Sponsor remains responsible to the TA for the completion of the Scope of Work.

1.2 Required Approvals. Prior to commencement of the Scope of Work, Sponsor or its designee (e.g., a consultant) will obtain all applicable local, state and federal approvals and permits for the Scope of Work. In addition, Sponsor must comply with all applicable federal, state and local laws and regulations applicable to the Project. All real property appraisals must comply with Uniform Standards of Professional Appraisal Practice (USPAP). Any right-of-way activities involving property on the Caltrans right-of-way must be conducted in accordance with the current version of the Caltrans Right-of-Way manual.

1.3 Contract Award and Change Orders. Sponsor must comply with state and local agency requirements for the award of any contract(s) for the performance of the Scope of Work and any change orders. As the Scope of Work proceeds, Sponsor must advise the TA of any contracts awarded and change orders as part of the regular progress reporting requirements (Section 1.4). Notice of any contracts and change orders provided to the TA will not constitute approval by the TA of the contracts and change orders nor obligate the TA to provide funds in excess of its maximum contribution stated in Section 2.1 of this Agreement.

1.4 Progress Reports. Sponsor will prepare and submit to the TA monthly progress reports during the entire term of the Scope of Work and covering all Scope of Work activities for work completed during the previous month using the template in Exhibit B. The reports must describe:

- a) The current status of, and any changes in, scope, schedule, budget, and funding plans of the Scope of Work and the Project;
- b) Any risk factors;
- c) The work performed during the previous quarter and projected for the next three months;
- d) Scope of Work Costs (as defined in Section 2.1, below) projected to be expended during the next three months; and
- e) Any other information requested by the TA.

1.5 Final Report. Within ninety (90) days of Sponsor's final acceptance of the Scope of Work and all incidental work, Sponsor must prepare and submit to the TA a final report detailing the following and all other relevant information:

- a) A description of the Project, including a statement detailing the overall progress and success of the Scope of Work and the Project, a compilation of any data collected during the active phase(s) of the Project, and changes/additions to the scope of the Project.
- b) Total costs for the Scope of Work, including an accounting of all Measure W Funds expended in connection with the Scope of Work, and reflecting any unexpended Measure W Funds.
- c) An explanation and the status of any outstanding obligations or potential obligations related to the Scope of Work.
- d) A discussion of any pertinent issues or problems that arose during the implementation of the Scope of Work.
- e) Any copies of press articles, press releases, newsletter articles and any other publicity materials regarding the Project.
- f) Written confirmation that no further reimbursements associated with the Scope of Work are anticipated and that all draw-down requests have been made.
- g) Photographs for all construction projects that satisfactorily demonstrate: 1) site conditions before the project was implemented; 2) work in progress; and 3) completed improvements.

1.6 Access to Records and Record Retention. At all reasonable times, Sponsor will permit the TA access to all reports, designs, drawings, plans, specifications, schedules and other materials prepared, or in the process of being prepared, for the Scope of Work by Sponsor or any contractor or consultant of Sponsor. Sponsor will also make available to the TA upon request any professional service agreements, change orders and any other agreements that are related to the Scope of Work. Sponsor will provide copies of any documents described in this Section to the TA upon request. Sponsor will retain all records pertaining to the Scope of Work for at least three years after completion of the Project.

1.7 Audits.

- a) The TA, or its authorized agents, may, at any reasonable time during business hours, conduct an audit of Sponsor's performance under this Agreement. Sponsor will permit the TA, or its authorized agents, to examine, inspect, make excerpts from, transcribe or photocopy books, documents, papers and other records of Sponsor which the TA reasonably determines to be relevant to this Agreement.
- b) Sponsor will transmit to the TA the Independent Auditor's Report prepared for Sponsor's Comprehensive Annual Financial Report within thirty (30) days of receipt by Sponsor and highlight the section that pertains to the Measure W Funds.

SECTION 2: Funding and Payment

2.1 Funding Commitment. The TA allocates to Sponsor up to \$675,000 for reimbursement of expenditures related to the Scope of Work (Scope of Work Costs) as provided in this Section 2. Sponsor will contribute, or provide for the contribution of, \$75,000 in matching funds on a 10% pro rata basis for each expenditure as well as the entire amount in excess of the total \$750,000 needed to complete the Scope of Work. The TA's funding commitment under this Agreement in no way establishes a right for Sponsor to receive additional funding from the TA. All funding obligations of the TA under this Agreement are subject to downward adjustment based on actual sales tax receipts for the fiscal years indicated.

Sponsor will assess and confirm its ability to complete the Scope of Work within budget as part of the monthly reporting requirements established in Section 1.4, above. Sponsor must further notify the TA between reporting cycles if Sponsor determines that the budget will not be sufficient to complete the Scope of Work. The TA reserves the right to suspend its funding obligation as set forth in Section 3.4 of this Agreement upon such notice, and until Sponsor develops a credible funding plan acceptable to the TA to fund and complete the Scope of Work.

2.2 Use of Funds.

- a) Measure W Funds shall be used only for direct eligible costs to complete the Scope of Work. The Sponsor is responsible for demonstrating to the TA that the expenses incurred were necessary to deliver the Scope of Work. Reimbursement for the following costs will require detailed documentation in accordance with generally-accepted accounting principles:
 - i. Scope of Work phases or components such as stakeholder/public outreach; development of planning studies, project initiation documents (PID), project study reports (PSR), environmental clearance, project approval and environmental document (PA&ED), project design, and plans specifications and estimates (PS&E); regulatory agency review; acquisition of right-of-way; construction, and construction management;
 - ii. Costs directly tied to the implementation of the Scope of Work as more specifically defined in Exhibit C, "Definitions of Eligible Costs for Reimbursement," which is attached to this Agreement and incorporated herein by this reference;
 - i. Sponsor staff time for Scope of Work implementation;
 - ii. Project administration costs for the Scope of Work under this Agreement.
- b) The following costs are not eligible for Measure W Highway Funds reimbursement:
 - i. Sponsor's costs which are unrelated to the Scope of Work;
 - ii. Costs for entering into this Agreement;

- iii. Maintenance, rehabilitation, routine operations of the Project or other facilities or programs; and
 - iv. Development of proposals, applications or agreements for Measure W, or other funding programs.
- c) Eligible costs are defined in greater detail in Exhibit C, "Definitions of Eligible Costs for Reimbursement." If Sponsor wishes to undertake items of work not covered under the Scope of Work concurrent with performing the Scope of Work, the cost for including and undertaking the additional work shall be segregated, and the costs borne exclusively by the Sponsor from a non-Measure W Highway Program funding source(s). In the event that an activity is not listed in Exhibit C, but Sponsor believes that it is an eligible cost, Sponsor may request that the TA consider reimbursing the Sponsor for the activity. The TA will have sole discretion to grant or deny Sponsor's requests.
- d) Sponsor agrees that it shall use funds provided pursuant to this Agreement to supplement existing revenue. Sponsor will not use Measure W Funds to replace other local taxes or revenues already programmed and available for use for the same purpose. Sponsor will use funds provided pursuant to this Agreement only for the Scope of Work.

If the TA determines that Sponsor has used Measure W Funds other than for the approved Scope of Work, the TA will notify Sponsor of its determination. Within thirty (30) days of notification Sponsor will either (a) repay such funds to the TA, or (b) explain in writing how the funds in question were spent for the approved Scope of Work. The TA will respond to Sponsor's written explanation within thirty (30) days of receipt. Unless otherwise stated in the response, the TA's response will be final, and Sponsor will repay any funds used other than for the approved Scope of Work within thirty (30) days.

2.3 Reimbursement Basis. Sponsor may seek pro rata reimbursement for Scope of Work Costs incurred on or after the Execution Date. Scope of Work Costs must be incurred and paid by Sponsor prior to requesting pro rata (90% TA-10% Sponsor split) reimbursement from the TA. Sufficient documentation must accompany all requests for pro rata reimbursement, including the submittal of all due monthly progress reports.

2.4 Accounting and Request for Reimbursement Procedures. Sponsor, in coordination with and to the satisfaction of the TA, will establish procedures for Scope of Work accounting and requests for reimbursement. These procedures will track and reflect the accumulation of the TA's pro rata share of Scope of Work Costs. Sponsor will detail the TA's pro rata share of Scope of Work costs for all work funded under this Agreement with each "Reimbursement Claim Form," which is attached to this Agreement as Exhibit D and incorporated herein. Sponsor will maintain all necessary books and records in accordance with generally accepted accounting principles.

2.5 Invoices; Payments.

- a) Sponsor must prepare and submit billing statements consistent with the Reimbursement Claim Form with all required supporting documentation. Supporting documentation may include, but is not limited to, copies of vendor invoices, timesheets, backup documentation, checks, and payment advice, and must include an accounting of the TA's share of costs for the Scope of Work as contemplated by this Agreement.
- b) For any property acquisitions for which Sponsor seeks reimbursement from the TA, Sponsor must provide the following supporting documentation for each property:
 - i. Copies of the final real estate appraisal and any appraisal review conducted on behalf of Sponsor;
 - ii. For any right-of-way activities involving property on the Caltrans right-of-way, written confirmation that the acquisition process was conducted in accordance with the then-current version of the Caltrans Right-of-Way manual;
 - iii. A Phase One Environmental Assessment and any recommended additional testing (unless waived by the TA);
 - iv. Copy of the offer package provided to the property owner(s);
 - v. Copy of the Notice of Exemption or other required document for environmental clearance under CEQA/NEPA for the purchase of the property, and evidence of the date of filing such Notice; and
 - vi. Written justification acceptable to the TA of any settlement at an amount higher than the offer.
- c) For each voluntary real property transaction, Sponsor must also provide:
 - i. Copy of the fully executed purchase and sale agreement;
 - ii. Copy of an executed and recorded deed, in a form consistent with the requirements set forth in the then-current Caltrans Right-of-Way manual;
 - iii. Copy of the Policy of Title insurance; and
 - iv. Copy of the final closing statement from the escrow.
- d) For each real property acquisition undertaken through condemnation, Sponsor must also provide:
 - i. Copy of the recorded Final Order of Condemnation; and
 - ii. Copy of the litigation guarantee issued by a title insurer.

- e) Sponsor must detail the tasks performed, associated costs, and pro rata share of Scope of Work Costs to be borne by the TA with each reimbursement request.
- f) The TA will endeavor to disburse reimbursements for approved Scope of Work Costs within thirty (30) days after the TA's approval of each claim, subject to the limits on the TA's maximum contribution as established in Section 2.1. The TA's obligation to reimburse Scope of Work Costs to Sponsor as provided in this section is conditioned upon the TA's prompt receipt of monthly progress reports from Sponsor pursuant to Section 1.4 above.
- g) Invoices may be submitted, no more frequently than once a quarter, by mail to:

Accounts Payable
San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070

Or by e-mail to: accountspayable@samtrans.com and the designated TA Project Manager at el-guindyh@samtrans.com

SECTION 3: Term

3.1 Term. The term of this Agreement will commence on Execution Date and conclude upon the earliest of: (a) the TA's final reimbursement to Sponsor for work performed hereunder, (b) termination by Sponsor or the TA pursuant to this Section 3, or (c) June 30, 2024.

3.2 Sponsor's Right to Terminate; Repayment upon Termination. Sponsor may at any time terminate the Scope of Work by giving ten (10) days' written notice to the TA of its election to do so. Upon such termination, Sponsor will not be reimbursed for any further Scope of Work Costs and will reimburse the TA for all monies paid by the TA and costs incurred by the TA in connection with the Scope of Work as well as all reasonable costs and expenses incurred to effect such termination within ninety (90) days of the TA's submission to Sponsor of a detailed statement of such payments and costs.

3.3 Termination by the TA. The TA may terminate this Agreement, with or without cause, by giving ten (10) days' written notice of such termination. If the TA terminates the Agreement for Sponsor's default, Sponsor will reimburse the TA for all funds paid to Sponsor in connection with the Scope of Work, and for all costs incurred by the TA in connection with the Scope of Work as well as all reasonable costs and expenses incurred to effect such termination, within ninety (90) days of the TA's submission to Sponsor of a detailed statement of such payments and costs. If the TA terminates the Agreement for convenience, the TA is obligated to pay to Sponsor all costs and expenses incurred by Sponsor up to the date of notice of termination, as well as all reasonable costs and expenses incurred to effect such termination.

3.4 Expiration/Suspension of TA's Financial Obligations. Any and all financial obligations of the TA pursuant to this Agreement expire upon the expenditure of TA's maximum contribution to the Scope of Work as established in Section 2.1 above or the conclusion of the Term as defined in Section 3.1, whichever occurs first. The TA reserves the right to suspend its financial obligation, with ten (10) days' advance notice, if Sponsor identifies a risk of not being able to complete the Scope of Work within budget. If Sponsor cannot provide a credible funding plan acceptable to the TA to fund and complete Scope of Work, the Sponsor will be in default and the TA may terminate this Agreement. If Sponsor identifies a risk of not being able to complete the Scope of Work within budget, failure to report such risk to the TA constitutes default and is cause for termination under Section 3.3.

3.5 Time of Performance. The Scope of Work must be completed no later than February 28, 2024.

3.6 Time Extension. If the Scope of Work cannot be completed within the Time of Performance as defined in Section 3.5, Sponsor must submit a request in writing to the TA no later than six (6) months before the Time of Performance for an extension for the Time of Performance. The TA will review the request, and grant the extension if it is justified in TA's sole and complete discretion. Costs incurred for the Scope of Work after the Time of Performance are at risk of denial for reimbursement by the TA. The unreimbursed portion of the Measure W allocation will be retained by the TA for the Measure W Highway Program.

SECTION 4: Indemnification and Insurance

4.1 Indemnity by Sponsor.

Sponsor shall indemnify, keep and save harmless the TA and its directors, officers, agents and employees against any and all suits, claims or actions related to the performance of the Scope of Work or the Project including, but not limited to, those arising out of any of the following:

- a) Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of the Project or implementation of this Agreement; or
- b) Any allegation that materials or services developed, provided or used for the Project infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

Sponsor further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against the TA or any of the individuals enumerated above in any such action, Sponsor shall, at its expense, satisfy and discharge the same.

This indemnification shall survive termination or expiration of the Agreement.

4.2 Insurance. For the purposes of this Insurance section, "Entity" is defined as any entity designing, approving designs and/or performing the Scope of Work funded by this Agreement. Entities may include Sponsor, a contractor of Sponsor, another body on behalf of which Sponsor submitted its funding application, and/or a contractor of such other body.

All Entities will provide the appropriate insurance covering the work being performed. The insurance requirements specified in this section will cover each Entity's own liability and any liability arising out of work or services of Entity subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") working on the Project. If Sponsor itself is an Entity, Sponsor must also provide its own insurance meeting the requirements of this Section.

- a) Minimum Types and Scope of Insurance. Each Entity is required to procure and maintain at its sole cost and expense insurance subject to the requirements set forth below. Such insurance will remain in full force and effect throughout performance of the Scope of Work. All policies will be issued by insurers acceptable to the TA (generally with a Best's Rating of A-10 or better). Each Entity is also required to assess the risks associated with work to be performed by Agents and to require that Agents maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks. To the extent that its Agent does not procure and maintain such insurance coverage, an Entity is responsible for and assumes any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Entity's indemnity obligations as to itself or any of its Agents in the absence of coverage. Entities may self-insure against the risks associated with the Scope of Work, but in such case, waive subrogation in favor of the TA respecting any and all claims that may arise.
 - i. Workers' Compensation and Employer's Liability Insurance. Worker's Compensation coverage must meet statutory limits and Employer's Liability Insurance must have minimum limits of \$1 (one) million. Insurance must include a Waiver of Subrogation in favor of the TA.
 - ii. Commercial General Liability Insurance. The limit for Commercial General Liability Insurance in each contract and subcontract cannot be less than \$1 (one) million. Commercial General Liability Insurance must be primary to any other insurance, name the TA as an Additional Insured, include a Separation of Interests endorsement and include a Waiver of Subrogation in favor of the TA.
 - iii. Business Automobile Liability Insurance. The limit for Business Automobile Liability Insurance in each contract and subcontract cannot be less than \$1 (one) million. Insurance must cover all owned, non-owned and hired autos, and include a Waiver of Subrogation in favor of the TA.
 - iv. Property Insurance. Property Insurance must cover an Entity's and/or Agent's own equipment as well as any materials to be installed. Property

Insurance must include a Waiver of Subrogation in favor of the TA.

- v. Professional Liability Insurance. If deemed appropriate by Sponsor or an Entity in consideration of the work required for the Project, insurance should cover each Entity's and any Agent's professional work on the Project. The limit for Professional Liability Insurance in each appropriate contract and subcontract should not be less than \$1 (one) million.
 - vi. Contractors' Pollution Liability Insurance and/or Environmental Liability Insurance. If deemed appropriate by Sponsor or an Entity in consideration of the work required for the Project, insurance should cover potential pollution or environmental contamination or accidents. The limit for Pollution and/or Environmental Liability Insurance in each appropriate contract and subcontract should not be less than \$1 (one) million. Such insurance must name the TA as an Additional Insured and include a Waiver of Subrogation in favor of the TA.
 - vii. Railroad Protective Liability Insurance. Insurance is required if the Project will include any construction or demolition work within 50 feet of railroad tracks. The limit for Railroad Protective Liability Insurance in each appropriate contract and subcontract cannot be less than \$2 (two) million per occurrence and \$6 (six) million annual aggregate.
- b) Excess or Umbrella Coverage. Sponsor and/or any other Entity may opt to procure excess or umbrella coverage to meet the above requirements, but in such case, these policies must also satisfy all specified endorsements and stipulations for the underlying coverages and include provisions that the policy holder's insurance is to be primary without any right of contribution from the TA.
 - c) Deductibles and Retentions. Sponsor must ensure that deductibles or retentions on any of the above insurance policies are paid without right of contribution from the TA. Deductible and retention provisions cannot contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the named insured is unacceptable.

In the event that any policy contains a deductible or self-insured retention, and in the event that the TA seeks coverage under such policy as an additional insured, Sponsor will ensure that the policy holder satisfies such deductible to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of the Entity or Agents, even if neither the Entity nor Agents are named defendants in the lawsuit.

- d) Claims Made Coverage. If any insurance specified above is provided on a claim-made basis, then in addition to coverage requirements above, such policy must provide that:
 - i. Policy retroactive date coincides with or precedes the Entity's start of work (including subsequent policies purchased as renewals or replacements).

- ii. Entity will make every effort to maintain similar insurance for at least three (3) years following Project completion, including the requirement of adding all additional insureds.
 - iii. If insurance is terminated for any reason, each Entity agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
 - iv. Policy allows for reporting of circumstances or incidents that might give rise to future claims.
- e) Failure to Procure Adequate Insurance. Failure by any Entity to procure sufficient insurance to financially support Section 4.1, Indemnity by Sponsor, of this Agreement does not excuse Sponsor from meeting all obligations of Section 4.1 and the remainder of this Agreement, generally.

Prior to beginning work under this Agreement, Sponsor must obtain, and produce upon request of the TA, satisfactory evidence of compliance with the insurance requirements of this section.

SECTION 5: Miscellaneous

5.1 Notices. All notices required or permitted to be given under this Agreement, excluding progress reports, the final report, and invoices, must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier, to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the other. Notices are deemed received upon delivery if personally served, one (1) day after mailing if delivered via overnight courier, or two (2) days after mailing if mailed as provided above.

To TA: San Mateo County Transportation Authority
 1250 San Carlos Avenue
 P.O. Box 3006
 San Carlos, CA 94070-1306
 Attn: Dora Seamans
 District/TA Secretary

To Sponsor: City/County Association of Governments of San Mateo County
 555 County Center, 5th Floor
 Redwood City, California, 94063
 Attn: Sean Charpentier
 Executive Director

5.2 No Waiver. No waiver of any default or breach of any covenant of this Agreement by either Party will be implied from any omission by either Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to one action does not imply consent to any future action.

5.3 Assignment. Parties are prohibited from assigning, transferring or otherwise substituting their interests or obligations under this Agreement without the written consent of all other Parties.

5.4 Governing Law. This Agreement is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

5.5 Compliance with Laws. In performance of this Agreement, the Parties must comply with all applicable Federal, State and local laws, regulations and ordinances.

5.6 Modifications. This Agreement may only be modified in a writing executed by both Parties.

5.7 Attorneys' Fees. In the event legal proceedings are instituted to enforce any provision of this Agreement, the prevailing Party in said proceedings is entitled to its costs, including reasonable attorneys' fees.

5.8 Relationship of the Parties. It is understood that this is an Agreement by and between Independent Contractors and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of Independent Contractor.

5.9 Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for, in the process of being assembled or prepared by or for, or furnished to Sponsor under this Agreement, are the joint property of the TA and Sponsor, and will not be destroyed without the prior written consent of the TA. The TA is entitled to copies and access to these materials during the progress of the Project and upon completion or termination of the Project or this Agreement. Sponsor may retain a copy of all material produced under this Agreement for its use in its general activities. This Section does not preclude additional shared ownership of work with other entities under contract with Sponsor for funding of the Project.

5.10 Non-discrimination. Sponsor and any contractors performing services on behalf of Sponsor will 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.

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

5.12 Severability. If any portion of this Agreement, or the application thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining portions of this Agreement, or the application thereof, will remain in full force and effect.

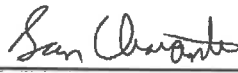
5.13 Counterparts. This Agreement may be executed in counterparts.

5.14 Attribution to the TA. Sponsor must include attribution that indicates work was funded with Measure W Funds from the TA. This provision applies to any project, or publication, that was funded in part or in whole by Measure W Funds. Acceptable forms of attribution include TA branding on Project-related documents, construction signs, public information materials, and any other applicable documents.

5.15 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the Parties on the same subject.

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

**CITY/COUNTY ASSOCIATION OF
GOVERNMENTS OF SAN MATEO COUNTY**

By: 
Name: Sean Charpentier
Its: Executive Director

Approved as to Form:


Legal Counsel for the Sponsor

**SAN MATEO COUNTY TRANSPORTATION
AUTHORITY**

By: 
Name: Carter Mau
Its: Acting Executive Director

Approved as to Form:


Legal Counsel for the TA

Exhibit A: Scope of Work Information

Exhibit B: Progress Reporting Template

Exhibit C: Permissible Costs for Reimbursement

Exhibit D: Reimbursement Claim Form

EXHIBIT A: SCOPE OF WORK INFORMATION

Dumbarton Roadway Improvements Project/Pre-PID Phase

Sponsoring Agency: City/County Association of Governments of San Mateo County

Contact: Sean Charpentier, Executive Director
Tel: (415) 370-2174 E-mail: scharpentier@smcgov.org,
Address: 555 County Center, 5th Floor,
Redwood City, California, 94063

Implementing Agency: City/County Association of Governments of San Mateo County

Contact: Sean Charpentier, Executive Director
Tel: (415) 370-2174 E-mail: scharpentier@smcgov.org,
Address: 555 County Center, 5th Floor,
Redwood City, California, 94063

Overall Project Description:

The Scope of Work is for the Pre-Project Initiation Documents (Pre-PID) phase of the Project, which will help in assessing the feasibility and scoping of future phases of the Project.

The Dumbarton Roadway Improvements Project aims to connect the existing US 101 Express Lanes to the Dumbarton Bridge. Key project goals include relieving congestion and reducing delays, increasing person throughput, giving priority to HOV vehicles and transit, encouraging Clean Air Vehicles (CAV), and reducing per capita Vehicle Miles Traveled (VMT) and associated Greenhouse Gas (GHG) emissions. Other key goals include improving pedestrian and bicycle safety and connections to and along the Bayfront for commuting and recreation trips. This in turn would further reduce GHG emissions. Strategies to reduce transportation impacts on the local community will be an integral part of the project, with planned inclusion of Green Infrastructure and Complete Streets designs for both receiving water quality and community enhancement. There is potential for improvement to transit amenities, especially given the proximity to large employers.

Measure W Funded Scope of Work:

As noted above, the Scope of Work is for the Pre-Project Initiation Documents (Pre-PID) phase of the Project. As part of the Pre-PID phase, there will be significant stakeholder engagement efforts. The Project team will be tasked with identifying options to provide managed lane roadway facilities to connect the existing US 101 Express Lanes to the Dumbarton Bridge. The Project stakeholders will assist in identifying alternatives to be analyzed in a future PID phase, and key equity and community aspects to be considered.

Concept studies will be based on results of the 2020 Peninsula Gateway Corridor Study (Kimley-Horn & Associates) and the Dumbarton Transportation Corridor Study (SamTrans 2017). The

2020 Peninsula Gateway Corridor Study consciously focused on traffic improvements and did not address transit and multimodal challenges and opportunities in the corridor. The Dumbarton Transportation Corridor Study provided local stakeholders with additional options to consider developing further. The Pre-PID phase will build on the work of both of these studies, and other considerations, and provide the necessary bridge between transportation infrastructure planning and project delivery.

It should be noted that the Project corridor connects four counties in the Bay Area. Project stakeholders are expected to include representatives from multiple transit agencies, affected cities/communities, utility providers, business groups, and others.

The Scope will Include:

A detailed Pre-PID scope of work must be prepared by the Project Sponsor or its consultant, and must be approved by the TA prior to proceeding with the work. The Pre-PID is expected to include:

- Convening a group of Project stakeholders;
- Using existing studies and focused data for the Project staff and stakeholders to identify the potential alternatives and challenges to be analyzed in a future PID phase; and,
- Conducting public outreach as needed/appropriate.

Scope of Work Schedule:

	<u>Begin</u>	<u>End</u>
Planning	09/22	02/24

Scope of Work Budget/ Source of Funding:

Include funding plan for Scope of Work defined above, including use of TA staff and/or consultant support if applicable.

Phase	Original Measure A Funding	New Measure A Funding	Measure W Funding	Other Sources*		Total
				List Fund Source	Amount	
Pre-PID			\$675,000	Private sector	\$75,000	\$750,000
TA Support (if applicable)						
Total:			\$675,000	Private sector	\$75,000	\$750,000

* The other fund sources are provided for information purposes.

Cash Flow Projection for Measure W Funds only

The cash flow projection is provided for informational purposes only.

Phase/Activity	FY22				Subtotal FY22	FY23				Subtotal FY23
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)		1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)	
Pre-PID				\$675,000	\$675,000					\$0
					\$0					\$0
					\$0					\$0
					\$0					\$0
					\$0					\$0
					\$0					\$0
					\$0					\$0
Total	\$0	\$0	\$0	\$675,000	\$675,000	\$0	\$0	\$0	\$0	\$0
Cumulative to Date	\$0	\$0	\$0	\$675,000		\$675,000	\$675,000	\$675,000	\$675,000	
Phase/Activity (e.g. Planning, PSE, Construction)	FY24				Subtotal FY24	FY25	FY26	FY27	Subtotal for FY25-FY27	Project Total
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)						
					\$0				\$0	\$675,000
					\$0				\$0	\$0
					\$0				\$0	\$0
					\$0				\$0	\$0
					\$0				\$0	\$0
					\$0				\$0	\$0
					\$0				\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$675,000
Cumulative to Date	\$675,000	\$675,000	\$675,000	\$675,000		\$675,000	\$675,000	\$675,000		

Operating Responsibility: City/County Association of Governments of San Mateo County

Maintenance Responsibility: City/County Association of Governments of San Mateo County

Scope of Work Implementation Responsibility: City/County Association of Governments of San Mateo County

Scope of Work Oversight Responsibility: City/County Association of Governments of San Mateo County

EXHIBIT B: PROGRESS REPORTING TEMPLATE

REPORTING PERIOD: FROM mm/dd/yyyy TO mm/dd/yyyy

SMCTA Project # 00XXX – [Project Title/Phases]
[Carryover to additional pages as necessary]

Contact: [Name, Title, Phone, email, address]

1) Scope:

[Describe Scope of Work here, specify Project limits, phases of Project. Identify the Measure W funded components]

Status Summary: [Provide Status]

Issues: [List any issues, i.e. potential scope changes]

2) Schedule:

Major Milestones:

	Original Baseline		Current Baseline		Current Forecast	
	Start	Finish	Start	Finish	Start	Finish
[Activity]	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY
[Activity]	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY
[Activity]	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY
[Activity]	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY

Progress This Reporting Period:

[Describe progress and activities]

Measure W Funds Expended This Reporting Period: \$

Future Activities, Next Reporting Period:

[Describe planned future activities]

Projected Measure W Funds Expenditure Next Reporting Period: \$

Issues: [List any issues, such as impacts to schedule]

3) Scope of Work Total Budget:

HIGHWAY PROGRAM 2021 CALL FOR PROJECTS

San Mateo County Transportation Authority/City/County Association of Governments of San Mateo County

18397083.3

	A	B	C	D	E	F
Phase/Activity	Original Budget (per Funding Agreement)	Updated Cost Estimate	Total Change from Approved (B-A)	Total Expended to Date	% of Revised Budget Expended (D/B)	% of Work Completed
			-		0.00%	0.00%
			-		0.00%	0.00%
			-		0.00%	0.00%
Total Project	-	-	-	-	# DIV/0!	

4) Scope of Work Measure W Budget:

	A	B	C	D	E	F
Phase/Activity	Original allocation (per Funding Agreement)	Current allocation (Per Amendments)	Change in allocation from Approved/Funding Agmt (B-A)	Total Measure [A/W] Expended to date	% of current allocation expended (D/B)	% of Work Completed
					#DIV/0!	
					#DIV/0!	
					#DIV/0!	
Total Scope of Work	\$0	\$0	\$0	\$0	#DIV/0!	

Issues: [List any issues, i.e. potential cost increases]

5) Funding: [List additional sources as needed, Fill out the following matrix for each phase for the Scope of Work. i.e. environmental, design, etc.]

	Original	Original %	Current	Current %	Estimated at Completion	EAC %
	Contribution		Contribution		Contribution	
SMCTA		#DIV/0!		#DIV/0!		#DIV/0!
Others:						
Federal (specify)		#DIV/0!		#DIV/0!		#DIV/0!
State (specify)						#DIV/0!
Other (specify)						
Total	-	# DIV/0!	-	# DIV/0!	-	# DIV/0!

Issues: [List any issues such as changes in non-Measure W funding]

Submit Progress Reports To: xxxxx@samtrans.com or
 SMCTA
 Planning & Development
 1250 San Carlos Avenue
 San Carlos, CA 94070

Exhibit C

Definitions of Eligible Costs for Reimbursement

Project Initiation Documents (PID) - activities necessary to complete the Pre-PID covered under the Scope of Work.

Environmental Studies – environmental studies costs, including determination of the appropriate environmental document, preparation of all preliminary engineering for each alternative, including geomantic layouts, determination of right-of-way needs, environmental technical studies (such as air, noise, energy, cultural resources and hazardous waste), and all other studies or activities necessary to prepare and finalize the appropriate documents for Project and environmental approval.

Design – design activities such as preparation of design studies; materials and foundation reports; drainage, hydrology and hydraulic reports; surveying and mapping; preparation of the plans, specifications and estimate; preparation of bid documents and Project files; preparation of permit applications and maintenance agreements; coordination of agency reviews and any other activities necessary to prepare final plans specifications and estimate (PS&E) for bid advertisement and award; and management oversight of these tasks except as limited in Section 2.2 (b) of the Agreement.

Right-of-Way Acquisition – all activities related to right-of-way including determination of right-of-way needs; title searches; preparation of appraisal maps, legal descriptions and plat maps; parcel appraisals and appraisal reviews; hazardous materials-testing and analysis; preparation of right-of-way acquisition documents; activities involved with acquiring rights-of-way including negotiation with property owners and cost associated with condemnation proceedings (including legal costs, expert witness costs, etc., but not including costs related to claims for inverse condemnation), right-of-way capital costs and cost-to-cure impacts related to the acquisition. To the extent allowed by law, Sponsor shall undertake all best efforts so that cleanup of existing hazardous materials shall remain the liability of the property owner.

Services provided for right-of-way activities involved with property not necessary for the Measure A or Measure W Highway Program-funded Project as defined in the Scope of Work, and the associated costs for all such property, shall be at the sole expense of the Sponsor.

Any property not used for construction of the Project, or used for any purpose other than construction of the Project as defined in the Scope of Work, should be identified and the funding agencies should be informed. Any excess right-of-way shall be identified as early as possible in the Project design process and sold. The proceeds from the sale of such property shall be returned to the funding agencies, prorated based on the percentage of funds each agency contributed to the purchase of the property.

Construction – construction expenditures for the Project (construction capital, management and inspection, surveys, public outreach, and related activities) that are part of the Scope of Work agreed to by the TA. Sponsor must submit all change orders over \$50,000 to the TA for review and written approval before the TA will reimburse the Sponsor with Measure A Funds or Measure W Funds.

In addition, Measures A and W Funds are eligible for reimbursement of Sponsor's Project management oversight expenses associated with the construction of the Project. This would include activities such as construction management inspection, expenses associated with reviewing proposed change orders, and activities involved with submitting final costs to the appropriate agencies to secure other leveraged funds. Expenditure of Measure A and Measure W Funds remains subject to the limits set forth in Section 2.2 (b) of the Agreement.

The Sponsor may include additional work beyond the Scope of Work for the Project at its own expense. The TA will require these costs to be segregated from the other item work expenses and paid for with non-Measure A or Measure W Highway Program funds.

Miscellaneous – fees from other agencies, including permit fees or reimbursement for review or oversight costs needed for the Project are eligible costs. However, the cost of permits or fees from the Project Sponsor will not be eligible. Utility relocation costs are eligible for reimbursement according to previous agreements establishing rights for those utilities. The costs for specialized equipment for testing, analysis or production of documents for Project-related work are also eligible.

