

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
CONGESTION MANAGEMENT PROGRAM
TRANSPORTATION FUND FOR CLEAN AIR
AGREEMENT
FY 2018/19**

This agreement (“Agreement”) by and between the Santa Clara Valley Transportation Authority (“VTA”) and the City of San Jose (“Sponsor”) shall be effective on the date that this Agreement is fully executed by the parties hereto (“Effective Date”).

RECITALS

This Agreement is made with reference to the following facts:

- A. VTA has been designated by resolutions of the County of Santa Clara, as well as a majority of the cities within Santa Clara County, as the Program Manager for Santa Clara County Transportation Fund for Clean Air (“TFCA”) County Program Manager under the State of California Health and Safety Code Section 44241.
- B. Pursuant to that designation, VTA is responsible for allocating and administering the County of Santa Clara’s TFCA County Program Manager Fund (“County Fund”) to eligible project sponsors in accordance with its agreement with the Bay Area Air Quality Management District (“BAAQMD”).
- C. On September 6, 2018, the VTA Board approved the programming of FY 2018/19 Transportation Fund for Clean Air Program Manager (TFCA 40%) funds for the San Jose Signal Retiming and Bike Rack Purchase and Installation projects (PROJECT).
- D. This Agreement specifies the conditions under which VTA will allocate and administer a grant from the County Fund to Sponsor for fiscal year 2018/19.

Now, therefore the parties agree as follows:

AGREEMENT

Section 1. Grant of TFCA Funds; Description of Project

- A. Subject to appropriation and receipt of TFCA funds (as further set forth in Section 9, below), VTA hereby agrees to allocate to Sponsor a TFCA grant in an amount not to exceed \$754,423 (the “Grant Funds”) in consideration for Sponsor’s agreement to implement and complete the Project (as further set forth in the project summary, attached hereto as **Attachment A**), in accordance with the terms and conditions set forth in this Agreement.
- B. In consideration of VTA’s providing Sponsor with the Grant Funds, Sponsor hereby agrees to implement and complete the Project in conformance with the terms of this Agreement. In implementing the Project, Sponsor shall comply with the Project schedule and monitoring requirements, as described in **Attachment A**.

Section 2. Proper Expenditure; Return of Funds

- A. Sponsor shall assure that all funds received under this Agreement are expended only in accordance with all applicable provisions of federal, state and local law, and Sponsor shall require any other sub-recipients of Grant Funds for the Project to do the same.
- B. Sponsor shall comply with: (i) all TFCA program and project requirements, as set forth in the BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending (FYE) 2019," the Funding Agreement between VTA and BAAQMD for FY 2018/19 (FYE 2019); and (ii) the TFCA County Program Manager Fund Policies for FYE 2019 (hereinafter "Policies"). These documents, including appendices, are incorporated herein and made a part hereof by this reference as if fully set forth herein.
- C. Sponsor shall expend no more than five percent (5%) of Grant Funds received hereunder on administrative costs, per California Health and Safety Code Section 44233.
- D. Sponsor shall return to VTA all funds that are not expended in accordance with applicable provisions of law.
- E. In addition, Sponsor shall return the TFCA funds to VTA if a project is not maintained and/or operated throughout and until the conclusion of the "Number of Years of Effectiveness." This is the default value stated in Appendix H of BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending 2019" for the applicable project type, unless a different value was approved and shown to yield a Project that meets the cost-effectiveness requirement in the Policies by the Program Manager. The amount of funds returned to the Program Manager shall be calculated on a prorated basis.

Section 3. Term

The term of this Agreement shall commence July 1, 2018 and shall continue until either the Project is completed or terminated in accordance with Section 15C.

Any requests for additional time to complete Project beyond June 30, 2020 must be submitted in writing to VTA no later than sixty (60) days prior to that date. VTA may approve or deny two 12-month requests in its sole discretion. In order to approve any time extensions, sponsor must prove to VTA that significant progress has been made on implementing the project. Any subsequent schedule extensions for projects can only be approved by BAAQMD on a case-by-case basis, if BAAQMD finds that significant progress has been made on a project. Documentation by VTA or BAAQMD approving any extensions for the Project shall be sufficient approval to extend the term of this Agreement.

Section 4. Work Product

Sponsor shall place in the public domain any software, written document, or other product developed with funds received through this Agreement, to the extent not otherwise prohibited by

law, and to the extent required by the California Public Records Act (California Government Code Sections 6250 et seq.).

Section 5. Acknowledgement of Funding Sources

- A. Sponsor shall acknowledge both VTA and BAAQMD as Project's funding sources during the implementation of a project and shall use the VTA and the BAAQMD approved logos as specified below:
- (1) The logos shall be used on signs posted at the site of any Project construction;
 - (2) The logos shall be displayed on any vehicles operated with or obtained as part of the Project;
 - (3) The logos shall be used on any material intended for public consumption associated with the Project, such as websites and printed materials, including project-related transit schedules, brochures, handbooks, maps created for public distribution, and promotional material; and
 - (4) Sponsor will demonstrate to VTA, through evidence such as photographs of vehicles, construction signs, and copies of press releases, that the logos are used and displayed as required by this Section.
- B. VTA shall provide a copy of BAAQMD and VTA logos to Sponsor solely for use in fulfilling Sponsor's obligations under this Section.
- C. Sponsor shall acknowledge VTA and BAAQMD as a funding source in any related articles, news releases, or other publicity materials for the Project that are produced or caused to be produced by Sponsor.

Section 6. Insurance Coverage

Sponsor shall obtain and maintain, throughout the term of this Agreement, the insurance coverage specified in Attachment B "Insurance Requirements," and shall comply with all insurance requirements set forth therein, including the provision regarding documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements shall be deemed a breach of this Agreement. The Sponsor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to william.hough@vta.org.

Section 7. Invoicing

Sponsor shall submit invoices at quarterly intervals to VTA for reimbursement of costs incurred to implement the Project. Sponsor shall send requests for reimbursement to VTA Accounts Payable at 3331 North 1st Street, Building A, San José, CA 95134-1927. Sponsor shall include relevant, auditable back-up documentation (time sheets, bills, etc.) with each invoice.

Section 8. Reimbursement

- A. All funds allocated by VTA to Sponsor shall be on a cost-reimbursement basis only. VTA shall pay no funds in advance.

- B. Upon review and approval of invoices and documentation, VTA shall, within twenty (20) days of receipt of an invoice that conforms to the requirements set forth in this Agreement, reimburse Sponsor for all eligible expenditures up to the maximum amount described in Section 1 of this Agreement. Only those Project costs incurred by Sponsor on or after July 1, 2018 shall be considered reimbursable expenditures.
- C. Funds for the Project described in this Agreement, which are not submitted for reimbursement prior to June 30, 2020, shall not be available to reimburse Project costs unless a Project schedule, which extends the Project completion date beyond June 30, 2020, has been approved by VTA and BAAQMD, as set forth in Section 3, above.

Section 9. Funds Subject to Appropriation/Allocation of Funds Contingent on Appropriation

VTA's obligations under the terms of this Agreement are contingent upon and subject to the allocation of TFCA funds to VTA by BAAQMD under VTA's "19-SC" agreement with BAAQMD for approved projects during Fiscal Year 2018/19.

Section 10. Audit

This Agreement shall be subject to the examination and audit of the California State Auditor pursuant to California Government Code Section 8546.7 for a period of five (5) years after final payment. Audits may also be conducted by an auditor chosen by BAAQMD or VTA.

Section 11. Sponsor's Record Keeping

Sponsor shall:

- A. Allow VTA staff, BAAQMD staff, both Parties' authorized representatives, and both Parties' independent auditors, during the term of this Agreement and for five (5) years following completion of each Project, to conduct performance and financial audits of the Project and to inspect the Project. During audits, the Sponsor shall make available to the auditor, in a timely manner, all records relating to Sponsor's implementation of the Project. During inspections, Sponsor will provide, at the request of VTA or BAAQMD, access to inspect the Project and related records.
- B. Maintain employee time sheets documenting those hourly labor costs incurred in the implementation of the Project, including both administrative and Project implementation costs, or to establish an alternative method to document staff costs charged to the funded Project.
- C. Keep all financial and Project implementation records necessary to demonstrate compliance with this Agreement and the Program. Such records shall include documentation that demonstrates significant progress made for those Program Projects seeking extensions to the completion date. Sponsor shall keep such documents in a central location for a period of five (5) years following completion of the Project.
- D. Submit a mid-year progress report to VTA one (1) month after the end of the second quarter of each fiscal year ("fiscal year" means the period starting July 1 and ending June 30.) The

report shall itemize: (a) the expenditure of the funds; and (b) progress to-date in the implementation of each funded project.

- E. Submit a year-end report within one (1) month of the end of each fiscal year until each project is completed and all monitoring requirements have been fulfilled. The report shall itemize: (a) the expenditure of the funds; (b) progress to-date in the implementation of each funded project; and (c) the results of the monitoring of the performance of the Project as specified in Attachment A.

Section 12. Indemnity and Insurance.

Sponsor shall comply with the indemnity and insurance requirements as set forth in Attachment

B. Section 13. Review

- A. VTA shall review Sponsor's progress in implementing the Project at the end of the sixth (6th) quarter following execution of this Agreement. If progress at the sixth (6th) quarter review is insufficient to implement the Project or to expend the funds within the period described in Section 3, VTA shall develop an action plan with the Sponsor to ensure that these funds are not required to be repaid to the County Funds, and the action plan may include reprogramming funds to other projects within Santa Clara County to ensure their expenditure prior to the fund expiration date described in Section 3.
- B. VTA shall provide Sponsor with all BAAQMD-approved Program Manager reporting forms required pursuant to this Agreement.

Section 14. Non-Performance

- A. If Sponsor causes all or part of these Grant Funds to be subject to repayment to the County Program Manager Fund as a result of failure to complete a project according to the work scope described in Attachment A, Sponsor's next grant allocation of any kind shall be reduced by the amount lost.
- B. Sponsor shall be ineligible for future funding under this program if Sponsor has five (5) or more projects greater than two (2) years old on BAAQMD's annual "Less than 100% complete" list.

Section 15. General Terms and Conditions

- A. **Notices.** 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 Deputy Director, Programming & Congestion Management 3331 North 1st Street San José, CA 95134-1906
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To SPONSOR:	City of San Jose City Manager 200 East Santa Clara Street
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B. **Program Liaison.** Within thirty (30) days from the Effective Date of this Agreement, Sponsor shall notify VTA of Sponsor's "Program Liaison" and of the Program Liaison's address, telephone number, and email address. The Program Liaison shall be the liaison to VTA pertaining to implementation of this Agreement and shall be the contact for information about the Project(s). Sponsor shall notify VTA of the change of Program Liaison or of the Program Liaison's contact information in writing no later than thirty (30) days from the date of any change.

C. **Termination.**

- i. **Voluntary.** Either Party may terminate this Agreement by giving written notice to the other Party. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of receipt of such notice.

Unless the Parties have agreed to an alternative formula, the VTA will calculate the amount of funds to which the Sponsor is eligible or which the Sponsor is required to return to VTA. If the VTA has paid the Sponsor more than the amount of such eligible funds, the Sponsor shall pay the funds owed to the VTA within thirty (30) days of the effective date of termination.

If the VTA terminates this Agreement pursuant to this provision, the Sponsor shall cease all work under this Agreement and cease further expenditures of TFCA funds received under this Agreement immediately upon receipt of the notice of termination, excepting any work permitted to continue that is specified in the notice of termination. The VTA will reimburse Sponsor for eligible costs on the Project expended up to the effective date of the termination.

- ii. **After Breach.** The VTA may terminate this Agreement for breach. The VTA will deliver a written notice of breach that specifies the date of termination, which will be no less than ten (10) business days from delivery of such notice, and will provide the Sponsor the opportunity to contest such breach within that period of time. The notice of termination will specify the amount of the Total TFCA Funds awarded that the VTA has paid. The Sponsor shall reimburse any funds owed to the VTA within thirty (30) days of the effective date of termination.

Survival. Any provision that, by its nature, extends beyond the term or termination of this Agreement shall survive the expiration or termination of this Agreement.

D. **Non-Waiver.** The failure of either party to insist upon the strict performance of any of the terms, covenants, 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.

E. **Assignment:** Sponsor shall not assign, sell, license, or otherwise transfer any rights or obligations under this Agreement without the prior written consent of VTA.

F. **Integration.** This Agreement, including all attachments and references, constitutes the entire

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

- G. **Amendments.** Future amendments and modifications to this Agreement shall be made in writing and signed by both parties.
- H. **Attachments.** Each attachment hereto is incorporated into this Agreement as if fully set forth herein.
- I. **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.
- J. **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.

Signatures of Parties on following page.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date shown below.

City of San Jose
(Sponsor)

Santa Clara Valley Transportation Authority
(VTA)

Dated: _____

Dated: _____

Leland Wilcox, Chief of Staff
Office of the City Manager

Nuria I. Fernandez, General Manager/CEO
VTA

Approved As To Form:

Approved As To Form:

Jon Calegari, Deputy City Attorney

Caroline Kim
Assistant Counsel

ATTACHMENT A

PROJECT INFORMATION

- A. Project Number: 19SC03
- B. Project Title: San Jose Signal Timing
- C. TFCA Program Manager Funds Allocated: \$664,000
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$664,000
- F. Total Project Cost: \$664,000.00
- G. Project Description: Grantee will use TFCA funds to perform signal timing on 18 arterials at various locations throughout the City of San Jose.
- H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.

PROJECT INFORMATION

- A. Project Number: 19SC10
- B. Project Title: San Jose Bike Racks
- C. TFCA Program Manager Funds Allocated: \$90,423.00
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$90,423.00
- F. Total Project Cost: \$90,423.00
- G. Project Description: Grantee will use TFCA funds to install 300 public Bike Racks and two Quad eLockers at popular destinations throughout the City of San Jose.
- H. Final Report Content: Final Report Form for Trip Reduction projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.

ATTACHMENT B

INDEMNITY AND INSURANCE REQUIREMENTS

I. INDEMNITY

The Sponsor must indemnify, defend, and hold harmless Santa Clara Valley Transportation Authority (hereinafter, "VTA"), the Bay Area Air Quality Management District, their respective officers, agents, employees, representatives, and successors-in-interest from any claim, liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damage arising out of, or in connection with, performance of this Agreement by Sponsor and/or its agents or employees or subcontractors, excepting only loss, injury or damage caused by the gross negligence or willful misconduct of personnel employed by VTA.

II. INSURANCE

Without limiting the Sponsor's obligation to indemnify VTA, the Sponsor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Sponsor, its agents, representatives, or employees, or subcontractors. The cost of such insurance must be included in the Sponsor's Bid/Proposal. The Sponsor must furnish complete copies of all insurance policies, within three (3) business days of any such request by VTA.

A. Liability and Workers' Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.
- b. Insurance Services Office Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
- c. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance
- d. Property insurance covering all risks of loss, damage, or destruction of vehicles, vessels, engines or equipment funded under this Agreement.

2. Minimum Limits of Insurance

Sponsor must maintain limits no less than:

- a. General Liability: \$1,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.

- b. Automobile Liability: \$1,000,000 limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.
- d. Property insurance in an amount not less than the replacement cost value (RCV) of vehicles, vessels, engines, or equipment funded under this Agreement.

3. Self-Insured Retention

Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if Sponsor is a publicly-traded company) must be declared to and approved by VTA. If Sponsor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$50,000, Sponsor must provide a current financial report including balance sheet and income statement for the past three years, so that VTA can assess Sponsor's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if VTA, in its sole discretion, deems it necessary, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its officers, officials, employees and volunteers; or to require Sponsor to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom must be borne solely by the Sponsor.

B. Claims Made Provisions (not applicable to General Liability or Auto Liability)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

- 1. The policy retroactive date must be no later than the date of this Agreement.
- 2. If any policy is not renewed or the retroactive date of such policy is to be changed, the Sponsor must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must be of at least two (2) years.
- 3. No prior acts exclusion to which coverage is subject that predates the date of this Agreement.
- 4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. Other Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. VTA, its officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the

Sponsor, including VTA's general supervision of the Sponsor; products and completed operations of the Sponsor or subcontractors; premises owned, occupied or used by the Sponsor; or automobiles owned, leased, hired or borrowed by the Sponsor. The coverage must contain no special limitations on the scope of protection afforded to VTA, its officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.

- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its officers, officials, employees, or volunteers.
- c. The Sponsor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.

2. All Coverages

- a. The insurer must agree to waive all rights of subrogation against VTA, its officers, officials, employees, and volunteers for losses arising from work performed by the Sponsor and its subcontractors for VTA.
- b. The Sponsor's insurance coverage must be primary insurance as respects VTA, its officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its officers, officials, employees, or volunteers may apply only as excess to the Sponsor's insurance. Sponsor's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the right to require the Sponsor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

D. Acceptability of Insurers

Insurance and bonds must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

E. Certificates of Insurance

Sponsor must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. The Sponsor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to william.hough@vta.org.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required above, and (3) in the “Certificate Holder” box include:

Santa Clara Valley Transportation Authority (“VTA”)
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Contract number must appear, the list of policies scheduled as underlying on the Umbrella policy must be listed, Certificate Holder should be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract Documents.

All certificates and endorsements are to be received and approved by VTA before work commences. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If the Sponsor receives any notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, Sponsor or insurer must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

F. Maintenance of Insurance

If Sponsor fails to maintain such insurance as is called for herein, VTA, at its option, may suspend payment for work performed and/or may order the Sponsor to suspend work at Sponsor’s expense until a new policy of insurance is in effect.