

**Memorandum of Understanding (MOU)**

**San Mateo County Transportation Authority  
and  
[SPONSOR]**

**for the Implementation of**

**[PROJECT NAME]**

This memorandum of understanding (MOU) is entered into as of the \_\_\_ day of \_\_\_\_\_, 20[XX], (Execution Date) by and between the San Mateo County Transportation Authority (TA) and the [SPONSOR NAME] (Sponsor), each of which is referred to herein individually as "Party" and jointly as "Parties."

**RECITALS**

**[WHEREAS]**, on June 7, 1988, the voters of San Mateo County approved a ballot measure to allow the collection and distribution by the TA of a half-cent transactions and use tax in San Mateo County for 20 years with the tax revenues to be used for highway and transit improvements pursuant to the Transportation Expenditure Plan presented to the voters (Original Measure A); and

***AND/OR***

**WHEREAS**, on November 2, 2004, the voters of San Mateo County approved the continuation of the collection and distribution by the TA of the Measure A half cent transaction and use tax for an additional 25 years to implement the 2004 Transportation Expenditure Plan, beginning January 1, 2009 (New Measure A); and

***AND/OR***

**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 [\$AMOUNT] in funds for the [Project NAME/TITLE] (Project); and

**WHEREAS**, the Project meets the intent of the [*if original Measure A: 1988 Transportation Expenditure Plan AND/OR if New Measure A: 2004 Transportation Expenditure Plan AND/OR if Measure W: 2018 Congestion Relief Plan*] and the TA's Strategic Plan 2020-2024; and

**WHEREAS**, on [DATE] and [DATE], respectively, the TA's Board of Directors programmed and allocated up to [\$AMOUNT] from the [Original Measure A AND/OR New Measure A AND/OR Measure W] Highway Program Category for the [PHASE(S)] phase (Scope of Work) of/for the Project through Resolution XXXX-XX and YYYY-YY; and

[*If applicable*] **WHEREAS**, as part of the allocated \$XXX,XXX, up to \$YYY,YYY may be provided in the form of TA staff or consultant support for the Scope of Work; and

**WHEREAS**, the Sponsor will contribute \$XXX,XXX in local, state, federal, or other grant matching funds for a total project scope of work cost of \$YYY,YYY; and

**WHEREAS**, the Sponsor desires the TA to implement the Scope of Work as described in Section A-2, below.

**Now, THEREFORE, the Parties to this MOU agree as follows:**

**A. Project Scope and Description**

1. Project Scope. This Project is the [PROJECT NAME].
2. Scope of Work. The Scope of Work is the [INSERT DESCRIPTION], in accordance with the Caltrans Project Development Procedures Manual.
3. Limited to Scope of Work. This MOU is intended to cover only the Scope of Work. Further roles and responsibilities for subsequent phases of work on, or other tasks related to, the Project will be determined by negotiations between the Parties.

**B. Funding and Payment**

1. Funding Commitment. The TA will provide up to \$[AMOUNT] of [Original Measure A AND/OR New Measure A AND/OR Measure W] Highway Program funds for the following tasks in the amounts specified below:
  - a. TA's services (provided by a combination of TA staff and consultants) associated with [INSERT DESCRIPTION]: \$[AMOUNT]
  - b. [ANY OTHER WORK & \$AMOUNT]

2. Cost Savings. Any cost savings of the [Original Measure A AND/OR New Measure A AND/OR Measure W] funds allocated for the Scope of Work will revert to the [Original Measure A AND/OR New Measure A AND/OR Measure W] Highway Program for the TA to reallocate to any eligible project through its usual fund programming and allocation activities.
3. Insufficient Funding. In the event that additional funding is needed to complete the Scope of Work, the TA will identify the additional amounts needed and review those estimates with the Sponsor. The Parties will work together to identify potential sources of funding, as well as obtain the necessary funds to complete the Scope of Work. If additional funding is needed due to a change in the Scope of Work, as requested by the Sponsor, the TA will identify the additional amounts needed and review those estimates with the Sponsor. In such case, it is the responsibility of the Sponsor to identify the potential sources of funding, as well as obtain the necessary funds to complete the changed Scope of Work. The TA may consider requests for additional funding, but is under no obligation to grant such requests.

### C. Term

1. Term of Agreement. This MOU is effective upon the Execution Date, and will terminate upon the earliest of: (a) 6 months after written acceptance/endorsement of the Sponsor of the completion of the Scope of Work, (b) termination by Sponsor or the TA pursuant to section C-3 or C-4 or C-5, or (c) [DATE- *Time of Performance plus 6 months*].
2. Time of Performance. This Project Scope of Work must be completed no later than [DATE].
3. Termination by Sponsor. The Sponsor may at any time terminate the MOU by giving ten (10) days' written notice to the TA. Sponsor will reimburse the TA for all funds expended by the TA in connection with the Scope of Work, and for all costs incurred by the TA in connection with the termination, within ninety (90) days of the TA's submission to Sponsor of a detailed statement of such payments and costs.
4. Termination by the TA. The TA may at any time terminate the MOU, with or without cause, by giving ten (10) days' written notice of such termination. If the TA terminates the MOU for Sponsor's default, Sponsor will reimburse the TA for all funds expended by the TA in connection with performance of this MOU. If the TA terminates the MOU for convenience, the TA will reimburse Sponsor all costs and expenses incurred by Sponsor as a result of such termination.
5. Termination by the Parties. If it is mutually agreed by the Parties that it would be in their mutual best interests to terminate or suspend work on the Project, neither Party may seek nor be entitled to receive further reimbursement for any costs or expenses incurred in connection with the Scope of Work nor termination of this MOU.

6. Expiration of TA Financial Obligations. Any and all financial obligations of the TA pursuant to this MOU will expire upon the expenditure of the TA's maximum contribution to the Project as established in Section B-1 above or upon termination of this MOU under Section C-1 above, whichever occurs first.

#### D. TA Responsibilities

1. The TA will perform and complete the Scope of Work, either through its own forces or the use of one or more third-party consultants or contractors.
2. The TA will make available to the Project up to [\$AMOUNT] of [Original Measure A AND/OR New Measure A AND/OR Measure W] funds for the Scope of Work.
3. For purposes of delivering the Scope of Work, the TA agrees to:
  - a. Manage the Scope of Work, including developing and carrying out the Scope of Work on schedule and within budget;
  - b. Provide technical oversight for performance of the Scope of Work;
  - c. Lead coordination with Caltrans and other permitting agencies as necessary for the Scope of Work;
  - d. Obtain the necessary permits and approvals required for the Scope of Work;
  - e. Procure and administer the consultant/contractor services to complete the Scope of Work;
  - f. Organize and facilitate regular meetings of a Project Development Team (PDT) comprised of various Caltrans functional units, the Sponsor and representatives from involved local and regional entities to provide input and guidance on the Scope of Work;
  - g. Keep Sponsor apprised of developments, such as award of contracts or potential changes that may affect the scope, schedule, or budget of the Project or Scope of Work; and
  - h. Consult with Sponsor where necessary/appropriate.
4. The TA will execute an agreement with Caltrans for oversight services associated with the Scope of Work.
5. The TA will prepare and provide to Sponsor status reports including anticipated and expended costs and Scope of Work delivery milestones and schedule forecasts.

6. The TA will review, process, and audit (at its discretion) invoices and other documentation of expenditures for work performed under this MOU. The TA will also track the accumulation and expenditure of Measure A funds allocated for Scope of Work, and process other documentation of expenditures in compliance with TA accounting and budgeting requirements.

#### E. Sponsor Responsibilities

1. The Sponsor will be responsible for championing the effort of obtaining political and public support for the Project.
2. The Sponsor will be the public face of the Project for purposes of leading outreach efforts to local stakeholders and community members, including coordination of public meetings and solicitation of public comment.
3. The Sponsor will provide input and oversight based on local policies and desires regarding the outcome of and deliverables of the Project.
4. The Sponsor will actively participate in the PDT meetings related to the Scope of Work.
5. The Sponsor may, at its discretion, review any professional services agreements, change orders and any other agreements that the TA has entered into for the performance of Scope of Work; however the TA retains ultimate authority over contracting and related decisions.
6. The Sponsor may, at its discretion, review the work products and deliverables produced by the TA and/or its contractors/consultants for the Scope of Work, including reports, designs, drawings, plans, specifications, schedules and other materials; however, the TA retains authority to accept or reject contractor/consultant work.
7. The Sponsor will approve or endorse, in writing, the final deliverables or work products produced by the TA and/or its contractors/consultants for the Scope of Work.
8. The Sponsor will review progress reports prepared and provided by the TA.
9. The Sponsor may, at its discretion, review and audit invoices and other documentation of the expenditure of [Original Measure A/New Measure A/Measure W] funds allocated for the Scope of Work, however the TA retains ultimate authority for expenditure of [Original Measure A/New Measure A/Measure W] funds on the Project.

#### F. Third Party Roles

1. Third Party Roles. Caltrans as owner operator of the facility proposed for modification is responsible for reviewing and approving the [RELEVANT DOCUMENTS] for the Project.
2. Other Agreements. A Cooperative Agreement must be executed between Caltrans and the TA that lists the terms and conditions, roles and responsibilities and fee payment associated with Caltrans' review and approval of the [RELEVANT DOCUMENTS].

#### G. Indemnification

1. Each of the Parties will indemnify, hold harmless and defend the other Party and its directors/councilmembers, officers, employees and agents (collectively, "Indemnitees") against all liability, claims, suits, actions, costs or expenses related to performance of the Scope of Work or the Project, including but not limited to those arising from loss of or damage to property, and injuries to or death of any person (including but not limited to the property or employees of each Party) when arising out of or resulting from any act or omission by the indemnifying Party, its agents, employees, contractors or subcontractors in connection with any aspect of the Project, including Project design, construction and/or maintenance.
2. Each of the Parties will also fully release, indemnify, hold harmless and defend the other Party and Indemnitees from and against any and all claims or suits that may be brought by any of the indemnifying Party's contractors or subcontractors performing work in connection with or related to the Project.
3. The indemnifying Party's obligation to defend includes the payment of all reasonable attorneys' fees and all other costs and expenses of suit, and if any judgment is rendered, or settlement entered, against any Indemnitee, the indemnifying Party must, at its expense, satisfy and discharge the same. Indemnitees may require the indemnifying Party to obtain counsel satisfactory to the Indemnitees.
4. This indemnification will survive termination or expiration of this MOU.

#### H. Miscellaneous

1. 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 the TA or the Sponsor under this MOU, are the joint property of the TA and the Sponsor. Each Party is entitled to copies and access to these materials during the progress of the Project and upon completion of the Scope of Work or termination of this MOU. Both Parties may retain a copy of all material produced under this MOU for use in their general activities.
2. Attribution to the TA. Sponsor must include attribution that indicates work was funded by [Original Measure A/New Measure A/Measure W] funds from the TA. This

provision applies to any project, or publication, that was funded in part or in whole by [Original Measure A/New Measure A/Measure W] funds. Acceptable forms of attribution include TA branding on Project-related documents, construction signs, public information materials, and any other applicable documents.

3. No Waiver. No waiver of any default or breach of any covenant of this MOU 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.
4. Assignment. No Party can assign, transfer or otherwise substitute its interest or obligations under this MOU without the written consent of the other Party.
5. Governing Law. This MOU is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.
6. Modifications. This MOU may only be modified in a writing executed by both Parties.
7. Disputes. If a question arises regarding interpretation of this MOU or its performance, or the alleged failure of a Party to perform, the Party raising the question or making the allegation must give written notice thereof to the other Party. The Parties will promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation or binding arbitration, may be pursued by mutual agreement. It is the intent of the Parties to the extent possible that litigation be avoided as a method of dispute resolution.
8. Attorneys' Fees. In the event legal proceedings are instituted to enforce any provision of this MOU, the prevailing Party in said proceedings will be entitled to its costs, including reasonable attorneys' fees, in addition to such other remedies to which it may be entitled.
9. Relationship of the Parties. It is understood that this is an MOU by and between independent contractors and is not intended to and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractor.
10. Warranty of Authority to Execute MOU. Each Party to this MOU represents and warrants that each person whose signature appears hereon is duly authorized and has the full authority to execute this MOU on behalf of the entity that is a Party to this MOU.
11. 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.
12. Counterparts. This MOU may be executed in counterparts.

13. Entire MOU. This MOU 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.
14. Notices. All notices affecting any of the clauses of this MOU 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 will be 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: [Sponsor]  
 [ADDRESS LINE ONE  
 ADDRESS LINE TWO  
 Attn: PROJECT SPONSOR CONTACT  
 TITLE]

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

**[SPONSOR]**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Its: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
 Attorney for [SPONSOR]

**SAN MATEO COUNTY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Its: \_\_\_\_\_

Approved as to Form:

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Legal Counsel for the TA