

**San Mateo County Transit District
2023 SamTrans Way2Go Pass Agreement**

Participant Name: _____

Address: _____

Legal Notice Address (if different from above): _____

Contact Person: _____ E-mail: _____

Phone: _____ Fax: _____

Total Payment: _____ Number of Participating Sites/Developments: _____

Number of Way2Go Users as defined below:

Way2Go Pass Eligibility

- Residential Complexes
All residents five years old and older are considered "Way2Go Users" for the purpose of this Agreement. Employees of residential developments are excluded from the Way2Go Program.
- Employer
All employees per defined group as indicated in the Intent to Participate Form approved by SamTrans are considered "Way2Go Users" for the purpose of this Agreement.
- Educational Institutions
All students per defined group as indicated in the Intent to Participate Form approved by SamTrans are considered "Way2Go Users" for the purpose of this Agreement.

Agreement Term: January 1, 2023 through December 31, 2023

Participant agrees to the attached terms and conditions.

XXX* **S A M P L E** **SAN MATEO COUNTY TRANSIT DISTRICT**
By: _____ By: _____

Print Name: _____ Print Name: April Chan
Title: _____ Title: General Manager/CEO

By: _____
Print Name: _____
Title: _____

** If Participant is a corporation or limited liability company, two corporate officers must sign on behalf of the corporation as follows: 1) the chairman of the board, president or vice-president; and 2) the secretary, assistant secretary, chief financial officer, or assistant treasurer. In the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the District is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws).*

Terms and Conditions

This Way2Go Pass Agreement (“Agreement”) is made between the San Mateo County Transit District (“District”) and the Participant (“Participant”) identified on page 1 of this Agreement.

- 1. PROGRAM SERVICE & FARE VALIDATION:** The District operates the SamTrans local and express bus service within San Mateo County and parts of San Francisco and Santa Clara counties and desires to provide SamTrans bus service for all of the eligible Way2Go Pass Users as defined on page 1 of this Agreement in the form of a product that is loaded to an Adult Clipper Card (“Way2Go Pass”). In order to facilitate the Way2Go Pass Program (“Program”), Participant will work with Clipper and District to coordinate Way2Go Pass product deactivations and activations through Clipper’s online portal. When the User’s Clipper Card serial number is entered into the portal, the User must tag the Clipper Card reader on the bus to load the Way2Go product to their card within 180 days. Way2Go Users must tag on a Clipper Card reader on the bus each time they board to validate the fare and District shall accept the Way2Go Pass as valid fare for travel on the SamTrans bus system.
- 2. PAYMENT:** Full payment for all Way2Go Passes shall be due prior to allowing Participant to load the Way2Go Pass product onto a User’s Clipper Card. The total cost of participating in the Way2Go Pass program will be based on the eligibility as selected on page 1 of this Agreement:
 - Residential Complexes – The greater of \$2,500 or \$40 per eligible Way2Go Pass User; or
 - Employers – The greater of \$2,500 or \$75 per eligible Way2Go Pass User; or
 - Educational Institutions – The greater of \$2,500 or \$35 per eligible Way2Go Pass User per defined semester; not to exceed two semesters and semesters combined must equal a calendar year or the greater of \$2,500 or \$70 per eligible Way2Go Pass User per calendar year.

The cost of additional Way2Go passes will be a pro-rated per amount based on Exhibit A beginning on page 6 of this Agreement. Way2Go Participant may share the cost of participation in the Way2Go program with its Users, but the cost to a particular User cannot be higher than the "per eligible Way2Go User" amount paid at the effective start date of the program. Participant must submit payment for any invoices within 30 days of the date shown on the invoice. Payments after 60 days will be charged a late fee of \$5 per day. Accepted payment methods include ACH, EFT and Participant checks. Personal Eligible User checks are not accepted. The return of a check (electronic or paper) issued to District will result in a \$25 returned check fee being placed on the account of the Participant.

- 3. CLIPPER CARD FEE:** A Clipper Card fee of \$3 applies to each Adult Clipper card ordered. This fee is for the cost of a Clipper card, as determined and assessed by the Clipper Program. If an eligible user already has an Adult Clipper Card, it may be used for the Way2Go Pass and the Clipper Card fee will not be assessed.
- 4. ELIGIBLE PARTICIPANTS:** Only individual Participants are eligible to participate in the Program. Participants with multiple locations or developments are eligible to participate in the Program and must provide a Way2Go User count for each individual Participant site enrolled in the Way2Go Program (“Participating Site(s)”). However, such Participants must enroll in the Program under a single Way2Go Agreement and designate a single corporate contact and administrator. Such Participants’ employees/residents/students at non-participating locations are not eligible to participate in the Program. Employees of the Development and its parent Company, as well as guests of the Development, are not eligible to participate in the Program. Way2Go Passes may not be provided or resold to individuals outside the Participating Sites selected. Violation of this may result in termination of this Agreement and loss of Participant’s eligibility for future participation in the program.
- 5. ELIGIBLE WAY2GO USER VERIFICATION:** Way2Go Passes must be purchased for each and every Way2Go Pass User at each Participating Site.

Employer and Residential Participants will be required, prior to the District issuing the Way2Go Passes, to complete and provide District with a completed District Intent to Participate Form (“Intent Form”) signed by a Human Resources Director, an officer of the Participant or Development Manager verifying the then-

current number of Way2Go Pass Users of the Participant at each Participating Site.

Educational Participants will be required, prior to the District issuing the Way2Go passes, to complete and provide District with a completed District Intent Form signed by a Human Resources Director or an officer of the Participant defining its semesters totaling a calendar year and verifying the current number of Way2Go Pass Users of the Participant's defined starting semester(s) at each Participating Site. If there are multiple Participating Sites, the Intent Form must indicate the individual Participating Site's name, address and the number of Users at each Participating Site.

Neither Participant nor any of its affiliates shall be required to participate in the Program with respect to other sites other than the Participating Site(s) identified in the Intent Form. The Intent Form should also include the Participant name as it should be written on cover page of Way2Go Pass Agreement, main contact person first and last name, phone and email address, main contact Participant site address and Legal Notice address if different than Participant site address. For Educational Participants, the Intent Form should also include the defined group of students participating in the program, if applicable, and define its semesters totaling a calendar year.

- 6. PROGRAM RECORDKEEPING:** Participant will create and maintain a Way2Go Log of its Way2Go Users who currently hold Way2Go Passes. The Way2Go Pass Log columns shall include the Participant name, Way2Go Pass User's first and last name, unique serial number for the individual Clipper Card each Way2Go Pass User holds, Way2Go Pass status (i.e. active, lost, damaged or stolen), date the Way2Go Pass becomes added and blocked, if applicable, Clipper Portal file ID, validity period and any other pertinent information. Participant will be responsible for adding and blocking the Way2Go Pass product through the Clipper program and its online portal. A sample Way2Go Pass Log and online portal instructions will be provided. Participant may decide when to submit the Clipper Card serial numbers to load the Way2Go Pass through the online portal, but when blocking a product, it must be done within three business days of learning of the information requiring a block to be placed. The Way2Go Pass will be available for pick-up within five (5) business days after being entered into the portal once tagged. If the Way2Go Pass is not tagged within 180 days, the action to load the Way2Go Pass will expire and it will have to be re-entered by Participant into the portal.
- 7. REPORTING:** Participant must submit a report to SamTrans by March 1, June 1, September 1 and December 1 of the agreement term year. The report must list all lost, stolen and damaged Way2Go Passes issued and separated Users. It must include the reason for replacement, if applicable, Way2Go Pass User first and last name and corresponding Clipper Card Serial Number and the current number of Users working at the work site(s)/residing in the development(s) enrolled in the program. Participant may submit its Way2Go Pass Log (See Section 6 above) in lieu of the report.
- 8. PROGRAM ANALYSIS AND AUDIT:** District reserves the right to audit Participant's Way2Go Pass Program at any point during the term of this Agreement with five (5) working days' notice. The purpose of the audit is to ensure that appropriate tracking procedures are in place. Within 10 working days of receipt of any audit report from the District, Participant must, in conjunction with District staff, develop a mutually agreeable action plan to satisfy any audit findings. If no mutually agreeable plan can be developed, District may terminate the Program upon 10-days' notice pursuant to the terms of Section 12, Termination.
- 9. LOST AND STOLEN WAY2GO PASSES:** If the Clipper Card is registered and/or has cash value or another product, in addition to the Way2Go Pass on the Clipper Card, the Way2Go Pass User must call the Clipper Customer Service Bureau or use the Clipper website to report the card as lost or stolen and also report the card lost or stolen to Way2Go Participant. Participant shall update its Way2Go Pass Log to indicate the Way2Go Pass as lost or stolen and request a block to be applied to the Way2Go Pass product through the online Clipper portal. Once the Way2Go Pass User receives a new Clipper Card, the new card serial number must be provided to Participant and Participant must load the Way2Go Pass through the online Clipper portal. A Way2Go Pass may be issued as a replacement for lost or stolen Way2Go Passes up to two (2) times per Way2Go User. A Way2Go Pass may not be issued as a replacement for lost or stolen Way2Go Passes a third time. District is not responsible for replacing other products or cash value on the Clipper card.

- 10. SEPARATED USERS:** For separated users, Participant shall update its Way2Go Pass Log to indicate the Way2Go Pass User status as separated, include the date of separation, and request a block to be applied to the Way2Go Pass Product through the online Clipper portal.
- 11. ELIGIBLE SERVICE:** The Way2Go Pass shall be valid for full fare on all SamTrans regular fixed-route service. Special service is excluded from the Program.
- 12. TERMINATION:** Either party may terminate this Agreement by giving the other party written notice at least 90 days prior to the desired termination date, which shall be the last day of a calendar month. If either party terminates the Agreement pursuant to this provision, District shall refund to Participant a pro-rata portion of Participant's total payment in accordance with the Proration Schedule attached to and incorporated in this Agreement as Exhibit A, within 30 days after the termination date provided that Participant verifies in writing that it has blocked all Way2Go Passes that have been distributed to its Users within three (3) working days after the termination date. In the event Participant fails to comply with the terms of this Agreement, District may terminate this Agreement with 15 days' notice. Non-compliance by Participant may make Participant ineligible to participate in the Way2Go Pass program in subsequent years. This Agreement shall automatically terminate if Participant discontinues its business at the Participating Site(s) and it will be up to Participant to notify its Way2Go Pass Users that the Way2Go Pass will no longer be valid. District has the right, in its sole discretion, to block Way2Go products on Way2Go Users' cards.
- 13. MISUSE OF WAY2GO PASS:** The Way2Go Pass constitutes a fare media product that is valid only so long as it is used in full conformance with the terms set forth herein.

Way2Go Participant – District agrees not to pursue any claims or demands against Participant for a Way2Go Pass User's unauthorized use of the Way2Go Pass, unless the unauthorized use is the result of Participant's failure to follow the issuance procedures in Section 4, gross negligence or willful misconduct. The transfer of the Way2Go product constitutes fare evasion, which is a violation of California Penal Code section 640. At the time of Way2Go Pass issuance, Participant shall (1) notify its Users that Way2Go Passes are non-transferrable, and (2) that transferring a Way2Go Pass constitutes fare evasion under the law.

Way2Go Pass User – All Way2Go Pass Users shall be subject to District's fare inspection regulations. District may pursue claims or demands against, or seek prosecution of, anyone who duplicates, alters, transfers, sells or commits unauthorized use of the Way2Go Pass. Unauthorized use of the Way2Go Pass includes, but is not limited to, allowing a non-eligible person to use a Way2Go Pass.

District may cancel any individual Way2Go Pass if it has reason to believe that the Way2Go Pass was issued and/or used in a manner that fails to comply with the requirements herein. District will notify Participant if it has any such concerns and, after appropriate investigation, revoke those passes in question (and block Way2Go products on Way2Go Users' cards). Participant agrees to cooperate with District in such an investigation, including assisting the District in determining the identity of the Way2Go Pass User(s) who are alleged to have misused the Way2Go Pass. Participant waives all remedies and rights to refunds for any Way2Go Passes revoked for misuse. District will incur no liability resulting from blocked Way2Go Passes due to misuse or Way2Go Passes from a Way2Go Pass User whose Participant's Agreement has been terminated.

- 14. PROTECTION OF PRIVACY:** The District contracts with a third-party online survey platform to facilitate Participant registration and agreement to the user terms and conditions of the Program, facilitate administration of the Program by the Participant, and collect SamTrans usage information. Participants are directed to review online survey platform provider website and privacy policy for additional information regarding its data privacy and security provisions. District acknowledges that it may review data stored on the third-party online survey platform that contains personally identifiable information ("PII") or confidential information about the Participant or the Way2Go Pass User ("Information") to administer the Way2Go Pass Program. If requested by a Participant's Way2Go Pass administrator, the District may share a list of

Way2Go Pass User names with the administrator directly from the online survey platform. The District does not store any PII collected through the Way2Go Program on its servers. Except as required to administer the Way2Go Program in accordance with this Agreement or as otherwise required by law, District agrees not to use or to disclose to third parties the Information. Notwithstanding the foregoing, District may use and disclose to third parties information in an aggregate format that does not personally identify a Way2Go Pass User.

- 15. ENTIRE AGREEMENT:** This contract contains the entire Agreement between the parties hereto for the term stated on Page 1 of this Agreement and cannot be changed or altered except by written agreement signed by both parties hereto. Neither party shall be bound by any oral agreement or other understandings contrary to or in addition to the terms and conditions as stated herein.
- 16. SUCCESSORS AND ASSIGNS:** The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Participant and District and, except as otherwise provided herein, their personal representatives and successors and assigns.
- 17. NO THIRD-PARTY BENEFICIARIES:** There are no third-party beneficiaries to this Agreement.
- 18. NO JOINT VENTURE:** It is expressly agreed that Participant is not, in any way or for any purpose, a partner of District in the conduct of District's business or a member of a joint enterprise with District, and does not assume any responsibility for District's conduct or performance of this Agreement. It is expressly agreed that District is not, in any way or for any purpose, a partner of the Participant in the conduct of Participant's business or a member of a joint enterprise with Participant, and does not assume any responsibility for Participant's conduct or performance of this Agreement.
- 19. ATTORNEYS' FEES:** In the event that either District or Participant fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified.
- 20. GOVERNING LAW:** This Agreement shall be governed and construed in accordance with the laws of the State of California. Any action relating to, and all disputes arising under, this Agreement shall be instituted and prosecuted in a court of competent jurisdiction in the State of California.
- 21. NOTICES:** All notices, requests, communications and legal notices to be made or given to Participant under this Agreement shall be addressed or sent electronically via email to addresses as shown on page 1 of this Agreement. All notices, including legal notices, communications and requests to be made or given to the District shall be addressed as follows:

San Mateo County Transit District
B2B – Finance Division
1250 San Carlos Avenue
San Carlos, CA 94070-1306
b2b@samtrans.com

Exhibit A

Proration Schedule – New Users and Terminated Users

Residential Complexes

Effective Date (falling in month)	Total Fee per User (More than the Minimum)	Total Fee (Less than the Minimum)
January	None	None
February	\$36.63	\$2,291.67
March	\$33.30	\$2,083.33
April	\$29.97	\$1,875.00
May	\$26.64	\$1,666.67
June	\$23.31	\$1,458.33
July	\$19.98	\$1,250.00
August	\$16.65	\$1,041.67
September	\$13.32	\$833.33
October	\$9.99	\$625.00
November	\$6.66	\$416.67
December	\$3.33	\$208.33

Employers

Effective Date (falling in month)	Total Fee per User (More than the Minimum)	Total Fee (Less than the Minimum)
January	None	None
February	\$68.75	\$2,291.67
March	\$62.50	\$2,083.33
April	\$56.25	\$1,875.00
May	\$50.00	\$1,666.67
June	\$43.75	\$1,458.33
July	\$37.50	\$1,250.00
August	\$31.25	\$1,041.67
September	\$25.00	\$833.33
October	\$18.75	\$625.00
November	\$12.50	\$416.67
December	\$6.25	\$208.33

Educational Institutions

Effective Date (falling in month)	Total Fee per User (More than the Minimum)	Total Fee (Less than the Minimum)
January	None	None
February	\$ 64.13	\$ 2,291.67
March	\$ 58.30	\$ 2,083.33
April	\$ 52.47	\$ 1,875.00
May	\$ 46.64	\$ 1,666.67
June	\$ 40.81	\$ 1,458.33
July	\$ 34.98	\$ 1,250.00
August	\$ 29.15	\$ 1,041.67
September	\$ 23.32	\$ 833.33
October	\$ 17.49	\$ 625.00
November	\$ 11.66	\$ 416.67
December	\$ 5.83	\$ 208.33

S A M P L E