

**RECIPIENT FUNDING AGREEMENT FOR TFCA FUNDS
BETWEEN THE
NAPA COUNTY TRANSPORTATION AND PLANNING AGENCY
AND
CITY OF CALISTOGA
(NCTPA Agreement No. 12-14)**

This Recipient Funding Agreement (hereinafter "Sub-Agreement") is made by and between the Napa County Transportation and Planning Agency, a joint powers authority consisting of the cities of American Canyon, Calistoga, Napa, and St. Helena, Town of Yountville, and the County of Napa, (hereinafter "NCTPA"), and the City of Calistoga, (hereinafter "Recipient").

RECITALS

WHEREAS, NCTPA and the Bay Area Air Quality Management District (hereinafter "Air District") entered into a Funding Agreement dated June 21, 2012 hereinafter "Master Agreement") providing for NCTPA's receipt, allocation and expenditure of certain Transportation for Clean Air funds (hereinafter "TFCA funds") from the Air District; and

WHEREAS, NCTPA is obligated, pursuant to the Master Agreement, to require various commitments from any recipients of the TFCA funds allocated by NCTPA pursuant to the Master Agreement; and

WHEREAS, Recipient is the project sponsor for 12NAP04 – City of Calistoga Bicycle Racks ("Project") which is a qualifying project under the terms of Master Agreement; and

WHEREAS, Recipient is to purchase 4 bicycle racks for use in the commercial downtown; and

WHEREAS, Recipient is entitled to an allocation of TFCA funds upon completion of the Project or various phases thereof.

AGREEMENT

**NOW THEREFORE, NCTPA AND RECIPIENT HEREBY
ENTER INTO THIS RECIPIENT FUNDING AGREEMENT ON THE
FOLLOWING TERMS AND CONDITIONS:**

A. Project and Funding Identification:

1. The project description to which this Sub-Agreement applies is set forth in Exhibit A, entitled "Project Information," which is attached hereto and incorporated herein by this reference.

2. The maximum funding amount allocated pursuant to this Recipient Agreement is \$1,500 as set forth in Exhibit A. TFCA funding for the project shall be disbursed on a cost reimbursement basis and shall not exceed the amount allocated.
3. Disbursement of funding hereunder is at all times subject to receipt by NCTPA of funds under the Master Agreement.

B. Recipient Agrees:

1. To be bound and abide by any and all applicable provisions of the Master Agreement between NCTPA and the Air District dated June 21, 2012 which is attached hereto as Exhibit B and is incorporated herein by this reference. Where the Master Agreement requires NCTPA to require a particular item or obligation of a recipient, Recipient agrees to be bound by and comply with the item or obligation being required.
2. To cooperate with NCTPA and do all such things, provide all such documentation and take all such actions as shall be reasonably requested by NCTPA to facilitate Recipient's and NCTPA's compliance with the Master Agreement and this Agreement.
3. To submit invoices to NCTPA on a quarterly basis (ending September 30, December 31, March 31, and June 30), but in no case more than ninety (90) days after Project completion.
4. To comply with all project monitoring requirements set forth in Exhibit A.
5. Recipient acknowledges and guarantees that the projects for which this TFCA funding is allocated are qualifying projects under to the Master Agreement.
6. To return to the NCTPA any TFCA funds and/or associated interest which are allocated pursuant to this Sub-Agreement and which have not been expended on the Project, on or by July 1, 2014 unless a project schedule beyond this date has been approved by the NCTPA.
7. That assets purchased with TFCA funds, including facilities and equipment, shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life or years effectiveness, NCTPA shall be entitled to a present day value refund or credit at NCTPA'S option based on NCTPA'S share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to NCTPA in the same proportion that TFCA funds were originally used.

C. NCTPA Agrees:

1. To forward the TFCA funds allocated for the Project in a reasonable and timely manner following receipt and approval of a timely invoice submitted by Recipient.

D. It Is Mutually Agreed:

1. Term: This Sub-Agreement shall remain in effect for three (3) years after the completion of all the projects listed in Exhibit A, unless it is terminated earlier as provided below.
2. Termination:
 - a. Prior to distribution of the TFCA funds to Recipient, either party may terminate this Sub-Agreement at any time by giving written notice of termination to the other party which shall specify the effective date thereof. Notice of termination under this paragraph shall be given at least sixty (60) days before the effective date of such termination.
 - b. This Sub-Agreement shall automatically terminate at the end of the fiscal year during which the Napa County Transportation and Planning Agency loses designation as NCTPA for Napa County, unless NCTPA's rights and obligations arising from this Sub-Agreement are validly assigned or transferred as set forth below. NCTPA shall provide written notice of termination, pursuant to this clause, to Recipient at least sixty (60) days prior to the effective date of termination, unless the loss of designation as NCTPA occurs within sixty (60) days of the end of the fiscal year, in which case notice of termination shall be provided within ten (10) days of the loss of designation.
 - c. This Sub-Agreement shall terminate in the event that the Master Agreement between NCTPA and the Air District is terminated. NCTPA shall provide written notice of termination, to Recipient at least sixty (60) days prior to the effective date of termination, or as soon as possible after receiving notice of termination from the Air District if such notice is received less than 60 days prior to any such termination.
3. Indemnity: Recipient shall indemnify, defend with counsel approved by NCTPA, and hold harmless, NCTPA and its member jurisdictions, and their respective officials, officers, directors, employees, agents, and volunteers, from and against any and all claims, allegations, suits, actions, causes of action, loss, damages, expense and costs (including, without limitation, costs and fees obligation) of every nature arising out of or in connection with performance of work hereunder, including, but not limited to, performance of

work on the Project, or Recipient's failure to comply with any of its obligations contained in this Sub-Agreement, except such losses or damages which are caused by the sole negligence or willful misconduct of NCTPA.

Recipient shall also indemnify, defend and hold harmless, NCTPA and Air District from and against all claims, suits or actions from and against which NCTPA must indemnify and save harmless Air District, which result from the performance by Recipient of its duties under this Sub-Agreement.

4. **Notice:** All notices and other communications required or permitted to be given under this Sub-Agreement shall be in writing and shall be personally served or mailed, postage prepaid and addressed to the respective parties as follows:

TO NCTPA: Kate Miller, Executive Director
Napa County Transportation & Planning Agency
707 Randolph St., Suite 100
Napa, CA 94559-2912

TO RECIPIENT: Dan Takasugi, Public Works Director
City of Calistoga
414 Washington Street
Calistoga, CA 94515

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days following the date of deposit with the United States Postal Service.

5. **Assignability:** Neither party to this Sub-Agreement shall assign or transfer any interest in this Sub-Agreement nor the performance of any duties or obligations hereunder, without the prior written consent of the other party, and any attempt by either party to so assign or transfer this Sub-Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.
6. **Governing Law:** NCTPA and Recipient agree that the law governing this Sub-Agreement shall be that of the State of California.
7. **Venue:** In the event that suit shall be brought by either party to this Sub-Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Napa, and venue for federal court shall be the Northern District of California.
8. **Interpretation:** Each party has reviewed this Sub-Agreement and any question of doubtful interpretation shall not be resolved by any rule or interpretation providing for interpretation against the drafting party. This Sub-Agreement

shall be construed as if both parties drafted it. The captions and headings contained herein are for convenience only and shall not affect the meaning or interpretation of this Sub-Agreement.

9. Force Majeure: Neither the NCTPA nor the Recipient shall be liable or deemed to be in default for any delay or failure in performance under this Sub-Agreement or for any interruption of services, directly or indirectly, from acts of god, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of the Air District, NCTPA or Recipient.
10. Controlling Provisions: In the event of a conflict between the provisions of this Sub-Agreement and those of the Master Agreement set forth in Exhibit B, the terms and conditions of this Sub-Agreement shall be controlling as to the parties to this Sub-Agreement.
11. Prior Agreements and Amendments: This Sub-Agreement, including Exhibits A and B hereto represent the entire agreement of the parties with respect to the subject matter described in this Sub-Agreement, and no representation, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein. This Sub-Agreement may only be modified by a written amendment duly executed by the parties hereto.

WITNESS THE EXECUTION HEREOF on the day and year first herein below written.

**Napa County Transportation
and Planning Agency**

By: _____
Kate Miller
NCTPA Executive Director

Date: _____

"RECIPIENT"

CITY OF CALISTOGA

By: _____
Richard Spitler, City Manager

Date: _____

ATTEST:

BY _____

Approved as to form:

Janice Killion, NCTPA Counsel

Approved as to form:

City Attorney

EXHIBIT A

PROJECT INFORMATION

- A. **Project Number:** 12NAP04
- B. **Project Title:** Calistoga Bike Racks
- C. **TFCA Program Manager Funds Allocated:** \$ 1,500
- D. **TFCA Regional Funds Awarded (if applicable):** \$ 0
- E. **Total TFCA Funds Allocated (sum of C and D):** \$ 1,500
- F. **Total Project Cost:** \$ 1,500

G. Project Description:

Project sponsor will use TFCA funds to Purchase 4 "mini rolling" bike racks. Each rack is 38" in length and accommodates 4 bikes. The racks would be installed at varies locations in the commercial downtown. The demand is resulting from local resorts providing bicycles to their guest.

- H. **Final Report Content:** Form 3 – Bicycle
- I. **Cost-effectiveness Worksheet:** Cost-effectiveness worksheet and any other information used to evaluate the proposed project is attached.
- J. **Comments (if any):**

No additional comments necessary.

EXHIBIT A

**RIDESHARING, BICYCLE, SHUTTLE, AND SMART GROWTH PROJECTS
FYE 2013 TFCA Program Manager Fund Worksheet**

Version 1.0, updated 11/21/11

General Information Tab: Complete areas shaded in yellow.

Project Number (11XXYY)	12NAP04
Project Title	Calistoga Bike Racks
Project Type Code (e.g., 7a)	7e
County (2-3 character abbreviation)	NAP
Worksheet Calculated By	Danielle Schmitz
Date of Submission	July 2012
Project Sponsor	
Project Sponsor Organization	City of Calistoga
Public Agency? (Y or N)	Y
Contact Name	Erik Lundquist
Email Address	elundquist@ci.calistoga.us
Phone Number	707.942.2827
Mailing Address	1232 Washington Street
City	Calistoga
State	CA
Zip	94515
Project Schedule	
Project Start Date	11/1/2012
Project Completion Date	6/30/2014
Final Report to CMA	10/1/2014

Notes & Assumptions

Ø Install on-street bicycle racks: total cost (rack, installation, and overhead) does not exceed \$275 per rack plus freight (four-bike capacity per rack). (\$1,500:00)



TOTAL COST \$1,500

4 racks that can hold 4 bikes each
capacity of racks (.05)
4x4=16(0.05) = 8

Air District Assumption - 10 years effectiveness
Air District Assumption - 240 days
Air District Assumption - 3 mile trip length

EXHIBIT B

FUNDING AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
NAPA COUNTY TRANSPORTATION AND PLANNING AGENCY
12-NAP

This Funding Agreement (Agreement) is entered into between the Napa County Transportation and Planning Agency, hereinafter referred to as "Program Manager," and the Bay Area Air Quality Management District, hereinafter referred to as "Air District," hereinafter referred to jointly as "Parties." This Agreement includes Attachment A, which specifies the funding allocated under this Agreement, and Attachment B, which pertains to insurance requirements.

SECTION I

RECITALS:

- 1) The Air District is authorized under California Health and Safety (Health & Safety) Code Sections 44223 and 44225 to levy a fee on motor vehicles registered within its jurisdiction ("Motor Vehicle Fees"), a portion of which the Air District receives and dedicates to its Transportation Fund for Clean Air (TFCA) program.
- 2) TFCA program monies may be allocated for projects to reduce air pollution from motor vehicles and to implement transportation control measures included in the plan adopted pursuant to Health and Safety Code Sections 40233, 40717, and 40919.
- 3) In accordance with Health and Safety Code Section 44241(d), the Air District allocates not less than forty (40) percent of the TFCA monies received to implement the TFCA Program Manager program ("Program").
- 4) The Air District has been notified, in a communication dated August 26, 1992, that the Program Manager is the duly authorized recipient of the proportionate share of Program monies for Napa County, and has been so designated by resolution(s) adopted by the Napa County Board of Supervisors and by the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county. The terms and conditions for the expenditure of the County's Program monies by the Program Manager are set forth in the resolution(s).
- 5) On November 2, 2011, the Air District Board of Directors ("Board of Directors") approved the TFCA County Program Manager Fund Policies for Fiscal Year Ending 2013 ("Policies"). The Policies set forth requirements, including eligibility and cost-effectiveness requirements, for projects funded by TFCA funds in fiscal year ending (FYE) 2013. The Policies are incorporated as Appendix D and made a part of the "County Program Manager Fund Expenditure Plan Guidance for Fiscal Year Ending 2013, December 22, 2011" ("Guidance"), and are incorporated herein and made a part hereof by this reference as if fully set forth herein.
- 6) On or about April 2, 2012, the Program Manager submitted an Expenditure Plan Application to the Air District for its Napa County TFCA Program ("Napa County TFCA Program"), which specified interest income earned by the Program Manager and TFCA funds from

EXHIBIT B

previously funded TFCA projects available for reprogramming to other eligible TFCA projects.

- 7) On May 2, 2012, the Board of Directors approved an estimated allocation of FYE 2013 TFCA Program monies of \$185,717 for Napa County. On this same date, the Board of Directors approved an estimated total funding level for FYE 2013 for Napa County to be administered by the Program Manager (FYE 2013 TFCA funds), plus interest reported by the Program Manager and any reprogramming of previous TFCA monies remaining from projects from previous fiscal years, of \$192,531.89, which is covered under this Agreement ("TFCA Funds").
- 8) The Air District and the Program Manager, pursuant to Health and Safety Code Section 44241, hereby enter into this funding agreement to implement the Program within Napa County; to select and fund projects that improve air quality in the San Francisco Bay Area Air Basin and comply with the Policies; and to oversee such funded projects to assure that they meet, and are implemented in accordance with, the Policies and the terms of this funding agreement ("Agreement"). This Agreement covers the funding allocation set forth in Paragraph 7 above.

SECTION II

PROGRAM MANAGER AGREES:

- 1) To implement the FYE 2013 Program within Napa County in accordance with this Agreement and the Policies.
- 2) To select and fund projects that improve air quality in the San Francisco Bay Area Air Basin and that comply with the Policies and the terms of this Agreement ("Program Projects"). Recipients of TFCA Funds may include the Program Manager, which undertakes its own County projects, and other entities ("Sub-awardees"). The Program Manager shall designate the Program Projects as FYE 2013 Program Projects for administrative purposes.
- 3) Except in the case where the Program Manager is the Sub-awardee, to enter into a binding agreement with each Sub-awardee that sets forth the maximum amount of TFCA Funds awarded for each Program Project, and requires each Sub-awardee to comply with the terms of this Agreement and the Policies and to implement the Program Projects as approved by the Program Manager. The Program Manager shall maintain copies of the Program Manager's written agreements with Sub-awardees and any amendments thereto with Sub-awardees to carry out the Program Projects.
- 4) To encumber and expend all TFCA Funds within two (2) years of receipt of the first payment of the TFCA funds. The Program Manager may extend this time limit to the last day of the Term of this Agreement if, consistent with the Policies:
 - a) The Program Manager approves an application to extend the time to implement a particular Program Project, which extended deadline will be later than two (2) years from the date the Program Manager receives the first payment of TFCA funds, or
 - b) The Program Manager finds, based on the Sub-awardee's application that despite significant progress on the particular Program Project, the Sub-awardee requires additional time to implement the Program Project.

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- 5) To return to the Air District any TFCA Funds and associated interest unexpended as per Section II, Paragraph 4 unless either:
 - a) The Program Manager has approved an extension for a Sub-awardee to implement its Program Project(s) as per Section II, Paragraph 4, or
 - b) The Air District and the Program Manager have amended this Agreement to provide for further extensions of time to expend such funds.
- 6) To maintain, at all times during the term of this Agreement, a separate account or sub-ledger for all TFCA Funds and to withdraw funds from this separate account only for the reimbursement of costs to implement Program Projects. Failure to comply with this paragraph shall constitute grounds for termination pursuant to Section IV, Paragraph 2 below.
- 7) To maintain, or cause to be maintained, adequate records to document and demonstrate to Air District staff and auditors the receipt, interest accrual, and expenditures of Air District funds to implement the Program.
- 8) To track and report to the Air District all interest accrued from TFCA Funds.
 - a) The Program Manager shall not use interest from TFCA Funds for administrative purposes.
 - b) The Program Manager's distribution of any interest funds shall be at the discretion of the Program Manager, after consultation with the Air District and shall be in accordance with the Policies and applicable State law.
- 9) To track and report to the Air District any TFCA Funds and associated interest unencumbered at the time of completion or termination of a Program Project. The distribution of any such funds and associated interest shall be at the discretion of the Program Manager, after consultation with the Air District.
- 10) To limit administrative costs to conduct the Program to no more than five percent (5%) of the FYE 2013 TFCA monies received by the Program Manager.
- 11) To allow, and to require the Sub-awardees to allow, the Air District's staff, its authorized representatives, and its independent auditors, during the term of this Agreement and for three (3) years following completion of each Program Project, to conduct performance and financial audits of the County's Program and Program Projects and to inspect the Program Projects. During audits, the Program Manager will make available to the Air District in a timely manner all records relating to the Program Manager's implementation of the Program and of Sub-awardees' expenses and performance of their Program Projects. During inspections, the Program Manager will provide, at the request of the Air District, access to inspect a Sub-awardee's Program Projects and related records.
- 12) To keep, and to require Sub-awardees to keep, all financial and Program Project implementation records necessary to demonstrate compliance with this Agreement and the Program. Such records include the reports and those records required to comply with Section II, Paragraphs 8, 9, 10, 11, 12, 15, and 21. Such records shall include documentation that demonstrates significant progress made for those Program Projects seeking extensions to the completion date. The Program Manager shall keep such documents in a central location for a

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period of five (5) years following completion of the projects and shall require each Sub-awardee to keep its necessary records at a central Sub-awardee location.

- 13) To maintain, and to require that each Sub-awardee maintain, employee time sheets documenting those hourly labor costs incurred in the implementation of this Agreement, including both administrative and Program Project implementation costs, or to establish an alternative method to document staff costs charged to the funded project.
- 14) To distribute TFCA Funds allocated to a Sub-awardee only as reimbursement for documented Program Project costs that are eligible and approvable under the Policies.
- 15) To prepare and submit reports to the Air District as follows:
 - a) **Semi-annual Funding Status Report:** Beginning May 31, 2013, the Program Manager shall submit a report on May 31 and October 31 of each year until all Program Projects are completed that specifies a) the Program Projects that have been cancelled, completed, and completed at a cost less than the allocation during the previous six-month period and if completed at a lesser cost, the amount of associated unexpended funds; and b) the Program Projects for which the Program Manager has extended any deadlines and, for those projects, the revised completion date and documentation of the Program Manager's certification that, pursuant to Health and Safety Code Section 44242(d), the Sub-awardee had made significant progress.
 - b) **Final Reports:** Beginning May 31, 2013, the Program Manager shall submit each May 31 and October 31, until all Program Projects are completed, a Final Report for each completed Program Project, which itemizes (a) the expenditure of the TFCA Funds, and (b) the results of the monitoring of the performance of each Program Project on Air District-approved report forms.
 - c) **Interim Project Reports:** Beginning October 31, 2013, the Program Manager shall submit each October 31 an Interim Project Report for each Program Project that has not been completed and which itemizes (a) the expenditure of the TFCA Funds, and (b) the status of each Program Project's implementation on Air District-approved report forms.
 - d) If the due date for a report specified above falls on a weekend or on a State holiday, then that report is due on the following business day.
- 16) To acknowledge, and to require all Sub-awardees to acknowledge, the Air District as a Program Project's funding source during the implementation of a Program Project and to use the Air District's approved logo as specified below:
 - a) The logo shall be used on signs posted at the site of any Program Project construction.
 - b) The logo shall be displayed on any vehicles or equipment operated or obtained as part of a Program Project.
 - c) The logo shall be used on any public information material relating to a Program Project, such as websites and printed materials, including transit schedules, brochures, handbooks, maps and other promotional materials.
 - d) The Program Manager shall retain documentation, such as photographs of vehicles and copies of press releases, demonstrating that Air District logos are used and displayed as required.

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- 17) To assure that all TFCA Funds received under this Agreement are expended only in accordance with all applicable provisions of law for projects that are implemented directly by the Program Manager, and to require Sub-awardees to expend the funds only in accordance with all applicable provisions of law.
- 18) To return, and to require that Sub-awardees return, to the Program Manager all TFCA Funds that are not expended in accordance with applicable provisions of law.
- 19) To return funds to the Air District, and require that Sub-awardees return their funds to the Program Manager if a project is not maintained and/or operated throughout and until the conclusion of the Project Years of Effectiveness. The Project Years of Effectiveness is the default value stated in Appendix G of the Guidance for the applicable project type, unless a different value was approved and shown to yield a Project meeting 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. Any such funds returned to the Program Manager shall be reallocated to eligible TFCA Program Projects.
- 20) To obtain and maintain, and to require that each Sub-awardee obtain and maintain, throughout the Term of this Agreement, the insurance coverage specified in "Insurance Requirements," Attachment B, and to comply with all insurance requirements set forth therein, including the provision of documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements is a breach of this Agreement.
- 21) To the extent not otherwise prohibited by law, and to the extent required by the California Public Records Act (California Government Code section 6250 *et seq.*), to make available to the public and to require that Sub-awardees make available to the public any software, written documents, or other products developed with TFCA Funds.

SECTION III

AIR DISTRICT AGREES:

- 1) To pay the FYE 2013 TFCA monies, the amount of which is estimated on Attachment A, Summary Information, Line 1 and calculated as set forth in Section III, Paragraphs 1a and 1b below, for Program Projects that are consistent with the Policies and this Agreement, in two payments. Payments shall be made after this Agreement has been signed by both the Program Manager and the Air District. Notwithstanding the above, the Air District is only obligated to pay that portion of the FYE 2013 TFCA monies that that constitutes that portion of the fees subvended by the California Department of Motor Vehicles ("DMV") for calendar year 2012 to the Air District for its allocation to the Program Manager from the Program funds. To the extent the estimated FYE 2013 TFCA monies exceed the Motor Vehicle Fees that are received by the Air District and are available to the Program Manager, the Program Manager understands and agrees that the Air District will not pay the difference between the Motor Vehicle Fees available and the estimated FYE 2013 TFCA monies.
 - a) To endeavor to forward the first payment within thirty (30) business days of the Air District receiving from the DMV all the revenues that comprise the payment. The first payment shall represent the County's proportionate share of the Program revenues

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generated from registration fees paid for motor vehicles that registered in Napa County between January 1, 2012, and June 30, 2012, less Air District's administrative and audit costs.

- b) To endeavor to forward the second payment within thirty (30) business days of the Air District receiving from the DMV all the revenues that comprise the payment. The second payment shall represent the County's proportionate share of the Program revenues generated from registration fees paid for motor vehicles that registered in Napa County between July 1, 2012, and December 31, 2012, less Air District's administrative and audit costs.
- 2) To provide timely notice prior to conducting an audit.
- 3) To provide the Program Manager, and any other requesting party, a copy of the fiscal and performance audits conducted pursuant to Section 44242 of the Health and Safety Code.
- 4) To provide the Program Manager with all Air District-approved Program Manager reporting forms required for the Program Manager to submit pursuant to this Agreement, including the reports required pursuant to Section II, Paragraph 15 above.
- 5) To provide a copy of the Air District logo to the Program Manager solely for use to fulfill the obligation under Section II.16 of this Agreement.

SECTION IV

IT IS MUTUALLY AGREED:

- 1) **Term:** The term of this Agreement shall be from the Effective Date of this Agreement until the end of the fourth year from the date of Air District Board of Directors approval of the funding allocation (May 2, 2016) ("Term"), unless it is terminated or amended as provided for in Paragraphs 2 and 8 of this Section or elsewhere in this Agreement.

If the Program Manager seeks to extend the Term in order to provide a Sub-awardee additional time to complete its Program Project(s) beyond the two-year extension already provided by the Program Manager, the Program Manager shall submit that request to the Air District no later than 60 days prior to the end of the Term.

- 2) **Termination:** Either Party may terminate this Agreement at any time by giving written notice of termination to the other Party which shall specify the effective date thereof. Notice of termination under this paragraph shall be given at least ninety (90) days before the effective date of such termination, unless the parties mutually agree to an earlier termination date. This Agreement shall also terminate at the end of the fiscal year during which the Napa County Transportation and Planning Agency loses its designation as Program Manager for Napa County.
- 3) **Indemnity:** The Program Manager shall indemnify and hold harmless the Air District, its employees, agents, representatives, and successors-in-interest against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance by the Program Manager of its duties under this Agreement and shall require Sub-awardees to indemnify and hold harmless the Air District, its employees, agents,

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representatives, and successors-in-interest against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of their performance of the project or operation or use of the equipment that is subject to this Agreement.

- 4) **Notices:** Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, by U.S. Postal Service mail, or by certified mail (return receipt requested), to the addresses set forth below, or to such addresses which may be specified in writing to the Parties hereto.

Executive Director
Napa County Transportation and Planning Agency
707 Randolph Street, Ste 100
Napa, CA 94559

Air Pollution Control Officer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

- 5) **Program Liaison:** Within thirty (30) days from the Effective Date of this Agreement, the Program Manager shall notify the Air District of the Program Manager's Program Liaison and of the Liaison's address, telephone number, and email address. The Program Liaison shall be the liaison to the Air District pertaining to implementation of this Agreement and shall be the contact for information about the Program and Program Projects. The Program Manager shall notify the Air District of the change of Program Liaison or of the Liaison's contact information in writing no later than thirty (30) days from the date of any change.
- 6) **Additional Provisions and Additional Acts and Documents:** Each Party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents that are reasonably required to carry out the provisions, intent and purpose of this Agreement. All attachments to this Agreement are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
- 7) **Integration:** This Agreement, including all attachments hereto, represents the final, complete, and exclusive statement of the agreement between the Air District and the Program Manager related to the Parties' rights and obligations and subject matter described in this Agreement, and supersedes all prior and other contemporaneous understandings and agreements of the parties. No Party has been induced to enter into this Agreement by, nor is any Party relying upon, any representation or warranty outside those expressly set forth herein.
- 8) **Amendment:** This Agreement may not be modified except in writing, signed by both Parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
- 9) **Independent Contractor:** Neither the Program Manager nor its officers, employees, agents, or representative shall be considered employees or agents of the Air District.
- 10) **Assignment:** Neither Party shall assign, sell, license, or otherwise transfer any rights or obligations under this Agreement without the prior written consent of the other Party.

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- 11) **Waiver:** No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a Party to enforce performance by the other Party of any term, covenant, or condition of this Agreement, and the failure of a Party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that Party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
- 12) **Severability:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
- 13) **Force Majeure:** Neither the Air District nor the Program Manager shall be liable for or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of this Agreement, or other causes, except financial that are beyond the reasonable control of the Air District or the Program Manager.
- 14) **Governing Law:** Any dispute that arises under or relates to this Agreement shall be governed by California law, excluding any laws that direct the application of another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Agreement, including mediation, shall be San Francisco, California.
- 15) **Effective Date:** The effective date of this Agreement is the date the Air District Executive Officer/Air Pollution Control Officer executes the Agreement (the "Effective Date").
- 16) **Survival of Terms:** Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled, and shall apply to both parties' respective successors and assigns. Such terms include, but may not be limited to, the auditing requirements set forth in Paragraph II, Paragraph 11.

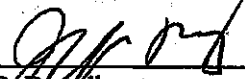
EXHIBIT B

IN WITNESS WHEREOF, the Program Manager and the Air District have entered into this Agreement as of the date listed below.

FOR PROGRAM MANAGER:

by: 
Paul W. Price
Napa County Transportation and Planning Agency


FOR AIR DISTRICT:

by:  Date: 6/21/12
Jack P. Broadbent
Executive Officer/APCO
Bay Area Air Quality Management District

Approved as to legal form (optional):

by: 
Napa County Transportation and Planning Agency

Approved as to legal form:

by: 
Brian C. Bunger, District Counsel
Bay Area Air Quality Management District

SUMMARY INFORMATION

Program Manager Agency Name: Napa County Transportation and Planning Agency

Address: 707 Randolph Street, Ste 100, Napa, CA 94559

PART A: NEW TFCA FUNDS

1. Estimated FYE 2013 DMV revenues (based on projected CY2011 revenues):	Line 1:	<u>\$185,717.00</u>
2. Difference between prior-year estimate and actual revenue:	Line 2:	<u>\$ 301.12</u>
a. Actual FYE 2011 TFCA monies (based on CY2010):		<u>\$187,531.12</u>
b. Estimated FYE 2011 TFCA monies (based on CY2010):		<u>\$187,230.00</u>
<i>('a' minus 'b' equals Line 2.)</i>		
3. Estimated New Allocation (Sum of Lines 1 and 2):	Line 3:	<u>\$186,018.12</u>
4. Interest income. List interest earned on TFCA funds in calendar year 2011.	Line 4:	<u>\$5,770.36</u>
5. Estimated TFCA monies budgeted for administration: ¹	Line 5:	<u>\$9,300.90</u>
<i>(Note: This amount may not exceed 5% of Line 3.)</i>		
6. Total new TFCA funds available in FYE 2013 for projects and administration	Line 6:	<u>\$191,788.48</u>
<i>(Add Lines 3 and 4. These funds are subject to the six-month allocation deadline.)</i>		

PART B: TFCA FUNDS AVAILABLE FOR REPROGRAMMING

7. Total amount from previously funded projects available for reprogramming to other projects. (Enter zero (0) if none.)	Line 7:	<u>\$ 743.41</u>
<i>(Note: Reprogrammed funds originating from pre-2006 projects are not subject to the six-month allocation deadline.)</i>		

PART C: TOTAL AVAILABLE TFCA FUNDS

8. Total Available TFCA Funds (Sum of Lines 6 and 7)	Line 8:	<u>\$192,531.89</u>
9. Estimated Total TFCA funds available for projects (Line 8 minus Line 5)	Line 9:	<u>\$183,230.99</u>

¹ The "Estimated TFCA funds budgeted for administration" amount is listed for informational purposes only. Per California Health and Safety Code Section 44233, Program Managers must limit their administrative costs to no more than 5% of the actual total revenue received from the Ari District.

INSURANCE REQUIREMENTS

Verification of Coverage

The Program Manager shall obtain and maintain certificates and/or other evidence of the insurance coverage required below. The Air District reserves the right to require the Program Manager to provide complete, certified copies of any insurance offered in compliance with these specifications. Certificates, policies and other evidence provided shall specify that the Air District shall receive 30 days advanced notice of cancellation from the insurers.

Minimum Scope of Insurance

Throughout the Term as defined in Section IV of the Agreement, the Program Manager shall obtain and maintain in full force and effect the Liability Insurance as set forth below, and shall require each Sub-awardee to obtain and maintain in full force and effect the Liability Insurance and Property Insurance as set forth below:

1. **Liability Insurance** with a limit of not less than \$1,000,000 per occurrence. Such insurance shall be of the type usual and customary to the business of the Program Manager and Sub-awardee, and to the operation of the vehicles, vessels, engines or equipment operated by the Sub-awardee.
2. **Property Insurance** in an amount of not less than the insurable value of Sub-awardee's vehicles, vessels, engines or equipment funded under the Agreement, and covering all risks of loss, damage or destruction of such vehicles, vessels, engines or equipment.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Air District may, at its sole discretion, waive or alter this requirement or accept self-insurance in lieu of any required policy of insurance.