

**RECIPIENT FUNDING AGREEMENT FOR TFCA FUNDS  
BETWEEN THE  
NAPA COUNTY TRANSPORTATION AND PLANNING AGENCY  
AND  
City of Calistoga  
NCTPA Agreement No. 10-14**

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 "Program Manager"), and the City of Calistoga, (hereinafter "Recipient").

RECITALS

**WHEREAS**, Program Manager and the Bay Area Air Quality Management District (hereinafter "Air District") entered into a Funding Agreement dated June 23, 2009, (hereinafter "Master Agreement") providing for Program Manager's receipt, allocation and expenditure of certain Transportation for Clean Air funds (hereinafter "TFCA funds") from the Air District; and

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

**WHEREAS**, The City of Calistoga, ("Recipient") is the project sponsor for the 09NAP05 Bicycle Incentive Project, (hereinafter the "Project") which is a qualifying project under the terms of Master Agreement; and

**WHEREAS**, Recipient will use TFCA funds to purchase three (3) bikes, three (3) bike lockers and three (3) bike racks for City staff use; and

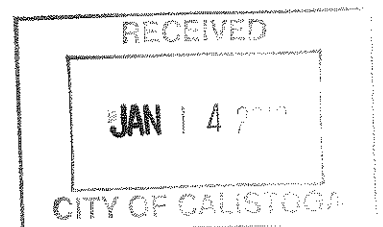
**WHEREAS**, Recipient is entitled to an allocation of TFCA funds upon completion of the Project or various phases thereof.

AGREEMENT

**NOW THEREFORE, PROGRAM MANAGER 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 TFCA funding amount allocated pursuant to this Sub-Agreement is \$8,500.00 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.

**B. Recipient Agrees:**

1. To be bound and abide by any and all applicable provisions of the Master Funding Agreement between Program Manager and the Air District dated June 23, 2009 ("Agreement"), which is attached hereto as Exhibit B and is incorporated herein by this reference. Where the Agreement requires Program Manager 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 Program Manager and do all such things, provide all such documentation and take all such actions as shall be reasonably requested by Program Manager, to facilitate Recipient's and Program Manager's compliance with the Master Agreement and the Sub-Agreement.
3. To submit invoices to Program Manager 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 Program Manager 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 June 30, 2011, unless a project schedule beyond this date has been approved by the Program Manager.

**C. Program Manager 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 the project 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 Program Manager for Napa County, unless Program Manager's rights and obligations arising from this Sub-Agreement are validly assigned or transferred as set forth below. Program Manager 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 Program Manager 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 Program Manager and the Air District is terminated. Program Manager shall provide written notice of termination, pursuant to this clause, 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 Program Manager, and hold harmless, Program Manager 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 Program Manager.

Recipient shall also indemnify, defend and hold harmless, Program Manager and Air District from and against all claims, suits or actions from and against which Program Manager 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 PROGRAM MANAGER: Paul W. Price, Executive Director  
Napa County Transportation & Planning  
Agency  
707 Randolph St., Suite 100  
Napa, CA 94559-2912

TO RECIPIENT: James C. McCann, City Manager  
City of Calistoga  
1232 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: Program Manager 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 Program Manager 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

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.

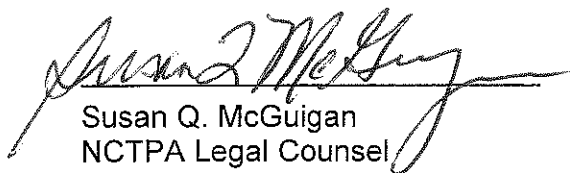
11. Prior Agreements and Amendments: This Sub-Agreement, including Exhibits A and B hereto represent the entire agreement of the parties with respect to the subject matter described in this Sub-Agreement, and no representation, warranties, inducements or oral agreements have been made by any of the parties 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.

**"PROGRAM MANAGER"**

APPROVED AS TO FORM:  
and

**Napa County Transportation  
Planning Agency**

  
Susan Q. McGuigan  
NCTPA Legal Counsel

By:  Date: 12/10/2009  
Paul W. Price  
NCTPA Executive Director

**"RECIPIENT"**

By:  Date: 12/09/09  
James McCann, City Manager  
City of Calistoga

## EXHIBIT A

### PROJECT INFORMATION

- A. **Project Number:** 09NAP05
- B. **Project Title:** Calistoga Employee Bicycling Incentives Project (Bikes, Bike Lockers and Racks)
- C. **TFCA Funds Allocated:** \$8,500
- D. **Project Description:** The City of Calistoga will use TFCA funds to purchase three (3) bikes, three (3) bike lockers and three (3) bike racks for staff use. The City of Calistoga is taking an active leadership role in reducing vehicle miles traveled (VMT) and promoting bicycling as an alternative means of transportation during the course of work. Currently, City's Departments are established in several various buildings throughout the City, which results in a significant amount of 1-way trips during the course of business for meetings, courier services, work sessions, posting, etc. Providing bikes and storage/parking facilities for staff will significantly reduce the number of daily vehicle miles traveled by staff during the course of the day for routine functions. The bicycles and storage/parking facilities will be used by Recreation, Planning and Building, Public Works Departments and the City Manager's Office.
- E. **Final Report Content: Final Report Form:** Form 3.
- Cost-Effectiveness Worksheet:** Cost-effectiveness worksheet and any other information used to evaluate the proposed project is attached.
- G. **Comments (if any):**

It can be assumed that an average of fifteen (15) 1-way trips will be made by Staff during the course of a work day. The City is approximately 2 square miles so the average trip is estimated to be 0.65 miles, which is also the distance from the Logvy Community Pool to the Monhoff Recreation Center. The bikes will be available to Staff every work day within the year or approximately 250 days a year. The bikes will be secured in bike lockers, locked to bike racks and in placed within City buildings when not in use. In addition, the bikes will be licensed and registered with the Police Department and will be subject to regularly service and maintenance by City Staff and the local bike shop. This periodic service and maintenance will ensure that the bikes, lockers and racks have a live of at least 10 years.



## Notes & Assumptions

Used Notes and Assumptions Worksheet for Bicycle Projects in the Air District's TFCA 2009-10 County Program Expenditure Plan Guidance.

Cost effectiveness for racks, lockers and bicycles with extra safety precautions is 10 years

Ø Bike lockers - A quote was received from Amercian Bicycle Security Co. for the Solar-Shell in the amount of \$3,800 for each unit that accommodates two bikes and has the capability to accomodate battery charging. (\$11,400)

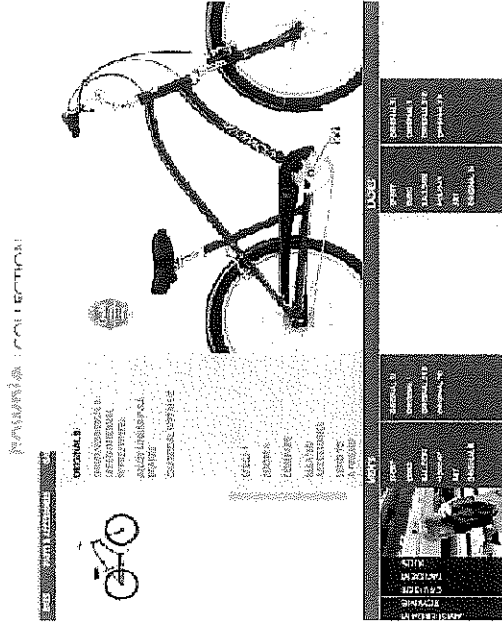
Ø Install on-street bicycle racks: total cost (rack, installation, and overhead) does not exceed \$250 per rack (two-bike capacity per rack). (\$750.00)

Ø Bicycles - We have received an initial quote from a local bike shop of \$283.30 per bicycle. (\$850.00)

**TOTAL COST \$12,433.30**

It can be assumed that an average of fifteen (15) 1-way trips will be made by Staff during the course of a work day. The City is approximately 2 square miles so the average trip is estimated to be 0.65 miles, which is also the distance from the Logvy Community Pool to the Monhoff Recreation Center. The bikes will be available to Staff every work day within the year or approximately 250 days a year. The bikes will be secured in bike lockers, locked to bike racks and placed within City buildings when not in use. In addition, the bikes will be licensed and registered with the Police Department and will be subject to regularity service and maintenance by City Staff and the local bike shop. This periodic service and maintenance will ensure that the bikes, lockers and racks have a life of at least 10 years.

The City of Calistoga currently has approximately 105 full time and part time staff. There are approximately 40 part time Park and Recreation Department staff that work at the community pool located at Logvy Park. The main Park and Recreation Administrative Offices are located at the Monhoff Center. Much of the Staff will need to travel 0.65 miles to the Office once or twice a day during the course of work.





## EXHIBIT B

FUNDING AGREEMENT  
BETWEEN  
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
AND  
NAPA COUNTY TRANSPORTATION AND PLANNING AGENCY  
09-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," both hereinafter referred to as "Parties." This Agreement includes Attachment A, which pertains to insurance requirements.

### SECTION I

#### RECITALS:

- 1) The Air District is authorized under Health and Safety Code Sections 44223 and 44225 to levy a fee on motor vehicles. Funds generated by the fee are referred to as the Transportation Fund for Clean Air (TFCA) and are used to implement projects to reduce air pollution from motor vehicles.
- 2) Health and Safety Code Section 44241 limits expenditure of collected revenues to specified transportation control measures included in the plan adopted pursuant to Health and Safety Code Sections 40233 and 40717 and prescribes the allocation of the funds to entities within the Air District's jurisdiction.
- 3) Health and Safety Code Section 44241(d) stipulates that forty (40) percent of funds generated within a county where the fee is in effect shall be allocated by the Air District to one or more public agencies designated to receive the funds to implement the Air District's 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 forty (40) percent of the funds collected in 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 resolution(s) specify the terms and conditions for the expenditure of funds by the Program Manager.
- 5) On November 5, 2008, the Air District Board of Directors ("Board of Directors") approved TFCA County Program Manager Fund Policies for Fiscal Year ("FY") 2009/2010, and on May 6, 2009, the Board of Directors approved an amendment to include five additional policies for the FY 2009/2010 Program (together comprising the "Policies"). The Policies set forth requirements, including eligibility and cost-effectiveness requirements, for projects funded by FY 2009/2010 Program funds. The Policies are incorporated as Appendix C and made a part of the "County Program Manager Fund Expenditure Plan Guidance for Fiscal Year 2009/2010, Revised May 6, 2009," and are incorporated herein and made a part hereof by this reference as if fully set forth herein.

## EXHIBIT B

- 6) On May 6, 2009, the Board of Directors approved an FY 2009/2010 funding allocation of \$218,867.33 for the Napa County Transportation and Planning Agency ("Program Funds").
- 7) 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 6 above.

### SECTION II

#### PROGRAM MANAGER AGREES:

- 1) To implement the FY 2009/2010 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 Program Funds may include the Program Manager, which undertakes its own County projects, and public entities ("Sub-awardees"). The Program Manager will designate the Program Projects as FY 2009/2010 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 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 Program Funds within two (2) years of receipt. The Program Manager may extend this time limit for up to an additional two (2) years if, pursuant to the provisions of the Health and Safety Code Section 44242:
  - a) The project completion schedule of a Program Project, as proposed and approved, will exceed two (2) years from the date the Program Manager receives the Program Funds, or
  - b) The Program Manager finds that, despite significant progress, the Sub-awardee requires additional time to implement a Program Project.
- 5) To return to the Air District any Program Funds and associated interest unexpended as per Section II, Paragraph 4 unless either:
  - a) The Program Manager has approved an extension of up to two (2) years for a Sub-awardee to complete its Program Project(s), 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 Program Funds and to withdraw funds from this separate account only for the

## EXHIBIT B

reimbursement of costs to implement Program Projects. Failure to comply with this paragraph shall constitute grounds for termination pursuant to Section IV.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 Program Funds.
  - a) The Program Manager shall not use interest from Program Funds for administration 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 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 Program Funds received.
- 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, 12, and 15. 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 period of three (3) 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 Program 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:

## EXHIBIT B

- a) **Semi-Annual Funding Status Report:** Beginning October 31, 2009, the Program Manager shall submit a report on April 30 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) **Annual Reports:** Beginning October 31, 2010, the Program Manager shall submit each October 31 until all Program Projects are completed an annual report, which itemizes (a) the expenditure of the Program Funds, (b) the status of each Program Project's implementation, and (c) the results of the monitoring of the performance of each Program Project on Air District-approved report forms.
- 16) 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 will be used on signs posted at the site of any Program Project construction.
  - b) The logo will be displayed on any vehicles or equipment operated or obtained as part of a Program Project.
  - c) The logo will 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 will retain documentation, such as photographs of vehicles and copies of press releases, demonstrating that Air District logos are used and displayed as required.
- 17) To assure that all Program 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 require that Sub-awardees return to the Program Manager all Program funds that are not expended in accordance with applicable provisions of law.
- 19) 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 place, and to require that Sub-awardees place, in the public domain any software, written document, or other product developed with Program Funds.
- 20) To require that Sub-awardees receiving Program Funds for the purchase of any vehicles return to the Program Manager any funds realized from the sale of any vehicles purchased with Program Funds if such reuse or sale occurs within five (5) years from the date of purchase of the vehicles. The amount of funds returned to the Program Manager shall be proportional to the percentage of Program Funds originally used to purchase the vehicles.

## EXHIBIT B

Any such funds returned to the Program Manager shall be reallocated to eligible Program Projects.

- 21) 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 A, 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 shall be deemed a breach of this Agreement.

### SECTION III

#### AIR DISTRICT AGREES:

- 1) To pay the funds for Program Projects that are consistent with the Policies and this Agreement in two payments. Payments will be made after this Agreement has been signed by both the Program Manager and the Air District.
  - a) The first payment will be forwarded within thirty (30) working days of the Air District receiving from the California Department of Motor Vehicles all the revenues that comprise the payment. The first payment will represent forty (40) percent of the revenues generated from motor vehicles registering in Napa County between January 1, 2009, and June 30, 2009, less Air District's administrative and audit costs.
  - b) The second payment will represent forty (40) percent of the revenues generated from motor vehicles registering in Napa County between July 1, 2009, and December 31, 2009, less Air District's administrative and audit costs. The second payment will be forwarded within thirty (30) working days of the Air District receiving from the DMV all the revenues that comprise the payment.
- 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 as specified in 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 semi-annual and annual reports required pursuant to Section II.15 above.
- 5) To provide a copy of the Air District logo to the Program Manager.

### 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 5, 2013) ("Term"), unless it is terminated or amended as provided for herein or in Paragraphs 2 and 8 below.

## EXHIBIT B

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, 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

## EXHIBIT B

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.
- 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.

EXHIBIT B

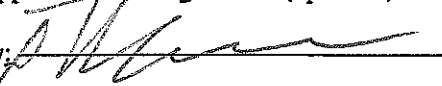
- 15) **Effective Date:** The effective date of this Agreement is the date the Air District Executive Officer/Air Pollution Control Officer executes the Agreement.
- 16) **Survival of Terms:** Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall 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.11.

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

Approved as to legal form (optional):

by:   
Napa county Transportation and Planning  
Agency

**FOR AIR DISTRICT:**

by:  Date: 6/23/09  
Jack P. Broadbent  
Executive Officer/APCO  
Bay Area Air Quality Management District

Approved as to legal form:

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



## EXHIBIT B

### 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.