

FUNDING AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
CITY/COUNTY ASSOCIATION OF GOVERNMENTS

17-SM

This Funding Agreement (Agreement) is entered into between the City/County Association of Governments, hereinafter referred to as "County 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 County Program Manager program ("Program").
- 4) The Air District has been notified, in a communication dated July 29, 1992, that the County Program Manager is the duly authorized recipient of the proportionate share of Program monies for San Mateo County, and has been so designated by resolution(s) adopted by the San Mateo 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 County Program Manager are set forth in the resolution(s).
- 5) On November 18, 2015, the Air District Board of Directors ("Board of Directors") approved the TFCA County Program Manager Fund Policies for Fiscal Year Ending 2017 ("Policies"). The Policies set forth requirements, including eligibility and cost-effectiveness requirements, for projects funded by TFCA funds in fiscal year ending (FYE) 2017. The Policies are incorporated as Appendix D and made a part of the "County Program Manager Fund Expenditure Plan Guidance for Fiscal Year Ending 2017, Revised May 18, 2016" ("Guidance"), and are incorporated herein and made a part hereof by this reference as if fully set forth herein.
- 6) On or about March 3, 2016, the County Program Manager submitted an Expenditure Plan Application to the Air District for its San Mateo County TFCA Program ("San Mateo County TFCA Program"), which specified interest income earned by the County Program Manager

and TFCA funds from previously funded TFCA projects available for reprogramming to other eligible TFCA projects.

- 7) On May 6, 2016, the Board of Directors approved an estimated new allocation of FYE 2017 TFCA Program monies of \$1,110,717 for San Mateo County, which includes estimated new DMV revenue and interest reported by the County Program Manager. On this same date, the Board of Directors approved an estimated total funding level for FYE 2017 for San Mateo County to be administered by the County Program Manager (FYE 2017 TFCA funds), plus any reprogramming of previous TFCA monies remaining from projects from previous fiscal years, of \$1,277,039.76, which is covered under this Agreement (“TFCA Funds”).
- 8) The Air District and the County Program Manager, pursuant to Health and Safety Code Section 44241, hereby enter into this funding agreement to implement the Program within San Mateo 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

COUNTY PROGRAM MANAGER AGREES:

- 1) To implement the FYE 2017 Program within San Mateo 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 County Program Manager, which undertakes its own County projects, and other entities (“Sub-awardees”). The County Program Manager shall designate the Program Projects as FYE 2017 Program Projects for administrative purposes.
- 3) Except in the case where the County 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 County Program Manager. The County Program Manager shall maintain copies of the County 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 County Program Manager may extend this time limit to the last day of the Term of this Agreement if, consistent with the Policies:
 - a) The County 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 County Program Manager receives the first payment of TFCA funds, or

- b) The County 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.
- 5) To return to the Air District any TFCA Funds and associated interest unexpended as per Section II, Paragraph 4 unless either:
 - a) The County 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 County 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 County Program Manager shall not use interest from TFCA Funds for administrative purposes.
 - b) The County Program Manager's distribution of any interest funds shall be at the discretion of the County 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 County 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 2017 TFCA monies received by the County 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 from the end of each project's Project Useful Life, to conduct performance and financial audits of the County's Program and Program Projects and to inspect the Program Projects. During audits, the County Program Manager will make available to the Air District in a timely manner all records relating to the County Program Manager's implementation of the Program and of Sub-awardees' expenses and performance of their Program Projects. During inspections, the County 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 County Program Manager shall keep such documents in a central location for a period of five (5) years from the end of each project's Project Useful Life, 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, 2017, the County 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 County Program Manager has extended any deadlines and, for those projects, the revised completion date and documentation of the County 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, 2017, the County 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, 2017, the County 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 County 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.
- 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 County 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 County 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 County 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 H 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 County Program Manager. The amount of funds returned to the County Program Manager shall be calculated on a prorated basis. Any such funds returned to the County 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 2017 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 County Program Manager and the Air District. Notwithstanding the above, the Air District is only obligated to pay that portion of the FYE 2017 TFCA monies that constitutes that portion of the fees subvented by the California Department of Motor Vehicles (“DMV”) for calendar year 2016 to the Air District for its allocation to the County Program Manager from the Program funds. To the extent the estimated FYE 2017 TFCA monies exceed the Motor Vehicle Fees that are received by the Air District and are available to the County Program Manager, the County Program Manager understands and agrees that the Air District will not pay the

difference between the Motor Vehicle Fees available and the estimated FYE 2017 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 generated from registration fees paid for motor vehicles that registered in San Mateo County between January 1, 2016, and June 30, 2016, 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 San Mateo County between July 1, 2016, and December 31, 2016, less Air District's administrative and audit costs.
- 2) To provide timely notice prior to conducting an audit.
- 3) To provide the County 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 County Program Manager with all Air District-approved County Program Manager reporting forms required for the County 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 County 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 July 1, 2016 until December 31, 2020 ("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 County 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 County Program Manager, the County 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 City/County Association of Governments loses its designation as County Program Manager for San Mateo County.

- 3) Indemnity: The County 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 County 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
City/County Association of Governments
555 County Center, 5th Fl.
Redwood City, CA 94063

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 County Program Manager shall notify the Air District of the County 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 County 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 County 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 pertaining to the terms and conditions herein. 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 County 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 County 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 County 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 Section II, Paragraph 11.

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

FOR COUNTY PROGRAM MANAGER:

by: _____
Mary Ann Nihart
City/County Association of Governments

Approved as to legal form (optional):

by: _____
City/County Association of Governments

FOR AIR DISTRICT:

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

Approved as to legal form:

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

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SUMMARY INFORMATION

County Program Manager Agency Name: City/County Association of Governments

Address: 555 County Center, 5th Fl., Redwood City, CA 94063

PART A: NEW TFCA FUNDS

- | | | |
|---|----------------|------------------------------|
| 1. Estimated FYE 2017 DMV revenues (based on projected CY2015 revenues): | Line 1: | <u>\$1,091,850.00</u> |
| 2. Difference between prior-year estimate and actual revenue: | Line 2: | <u>\$18,867.00</u> |
| a. Actual FYE 2015 DMV revenues (based on CY2014): | | <u>\$1,067,865.00</u> |
| b. Estimated FYE 2015 DMV revenues: | | <u>\$1,048,998.00</u> |
| <i>('a' minus 'b' equals Line 2.)</i> | | |
| 3. Estimated New Allocation (Sum of Lines 1 and 2): | Line 3: | <u>\$1,110,717.00</u> |
| 4. Interest income. List interest earned on TFCA funds in calendar year 2015. | Line 4: | <u> </u> |
| 5. Estimated TFCA monies budgeted for administration: ¹ | Line 5: | <u>\$53,039.76</u> |
| <i>(Note: This amount may not exceed 5% of Line 3.)</i> | | |
| 6. Total new TFCA funds available in FYE 2017 for projects and administration | Line 6: | <u>\$1,110,717.00</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>\$166,322.76</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>\$1,277,039.76</u> |
| 9. Estimated Total TFCA funds available for projects (Line 8 minus Line 5) | Line 9: | <u>\$1,224,000.00</u> |

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

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INSURANCE REQUIREMENTS

Verification of Coverage

The County 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 County 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 County 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 County 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.

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