

TRANSPORTATION FUND FOR CLEAN AIR FUNDING AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
CITY OF SAN LEANDRO
PROJECT NUMBER: 14R23

This funding agreement “Agreement” is made and entered into between the City of San Leandro (“Project Sponsor”) and the Bay Area Air Quality Management District (the “Air District” hereinafter referred to jointly as the “Parties”).

SECTION I
RECITALS

- 1) California Health and Safety Code Sections 44223 and 44225 authorize the Air District to levy a fee on motor vehicles registered within its jurisdiction and to use those fees to implement mobile source and transportation pollution reduction projects.
- 2) The Air District has established a grant fund, entitled the Transportation Fund for Clean Air (“TFCA”) to implement such a program. Under the TFCA’s Regional Fund Program, the Air District may issue TFCA funds to public agencies and, for certain vehicle-based projects, to other entities for projects within the Air District’s jurisdiction (“Program”).
- 3) California Health and Safety Code Section 44241 lists the permissible types of projects, all of which must conform to the transportation control measures and mobile source measures that are included in the plan(s) adopted pursuant to California Health and Safety Code Sections 40233, 40717, and 40919 and are in effect as of the date of execution of this Agreement.
- 4) On November 6, 2013, the Air District’s Board of Directors approved the FYE 2014 TFCA Regional Fund Program Policies.
- 5) The Air District’s Board of Directors approved funding allocations for the Regional Fund Electronic Bicycle Locker Program on October 17, 2012 and May 21, 2014.
- 6) On December 16, 2009, the Air District’s Board of Directors authorized the Executive Officer/Air Pollution Control Officer (APCO) to execute Grant Agreements for eligible projects funded by the TFCA Regional Fund, with individual grant awards up to \$100,000.

On June 10, 2014, the Executive Officer/APCO of the Air District approved a TFCA award to the Project Sponsor to implement an eligible mobile source or transportation control project to improve air quality in the San Francisco Bay Area Air Basin based on the Program’s eligibility criteria and on information provided in Project sponsor’s application (“Project”).

- 7) The Air District and Project Sponsor desire to enter into this Agreement to implement the Project in accordance with the terms and conditions of this Agreement, including all attachments thereto.

NOW, THEREFORE, pursuant to California Health and Safety Code Section 44241, the Parties hereby agree as follows:

SECTION II

PROJECT SPONSOR OBLIGATIONS

- 1) The Project Sponsor hereby agrees to implement the Project, as described more fully in Attachment A, "Project Specific Information," and in Attachment B, "Project Description." Failure to implement the Project in accordance with the terms and conditions set forth in this Agreement and all attachments thereto shall be deemed a breach of this Agreement and may result in termination of the Agreement or a reduction of the award.
- 2) The Project Sponsor shall complete the Project within the Total Project Cost. Allowable Project costs are listed in the Matching Funds and TFCA Line Item Project Budgets set forth in the "Project Specific Information," Attachment A. Only those allowable Project costs incurred during the Term of this Agreement are eligible to receive TFCA Regional Funds. No costs incurred following the end of the Term of this Agreement or, if this Agreement is terminated, after the effective date of the termination of this Agreement, are eligible to receive TFCA Regional Funds. Any Project cost overruns are the sole responsibility of the Project Sponsor.
- 3) The Air District's funding obligation under this Agreement is limited to the TFCA Regional Funds Awarded. The Project Sponsor shall contribute or expend the total amount of Matching Funds prior to submission of the Final Invoice. If the actual total cost of the Project listed in the Final Report submitted and approved by the Air District is less than the Total Project Cost, the Air District reserves the right to reduce the amount of TFCA Regional Funds Awarded at its sole discretion. The Project Sponsor is responsible for assuring that use of the Matching Funds does not conflict with any federal, state or local requirements for their use.
- 4) The Project Sponsor shall submit a single invoice on the Air District's General Invoice Form for reimbursement of eligible Project costs and expenses consistent with the TFCA Regional Funds Awarded, Invoice and Payment Schedule, and Project Schedule. The Invoice shall include the Project number, an itemized list of all expenses incurred, and the total funds being requested. The Invoice package shall also include supporting documentation such as copies of invoices from vendors, consultants, or contractors with an explanation of the goods or services provided for the Project and copies of time sheets documenting hourly labor costs incurred.

The Air District may withhold funds pending receipt of any report.

- 5) The Project Sponsor must submit the Invoice for payment on the Air District's General Invoice Form by the deadline indicated in the Final Report, which is set forth in Attachment C. The District will not process the Invoice until the Air District accepts the Final Report.
- 6) The Project Sponsor must expend the TFCA Funds within two (2) years of the Effective Date of this Agreement, unless the Air District approves in advance a longer period in writing.
- 7) The Project Sponsor shall allow the Air District or its authorized representatives to conduct audits of the Project records at all times during the Term of this Agreement. The Project Sponsor shall cooperate with such audits and shall make available to the Air District all records relating to Project performance and expenses incurred in the implementation of the Project.

The Project Sponsor shall allow the Air District or its authorized representatives to inspect the Project at all times during the Project Useful Life. The Project Sponsor shall cooperate with such inspections; the Air District makes reasonable efforts to conduct such inspections during normal business hours of the Project Sponsor.

- 8) The Project Sponsor shall prepare and maintain all necessary Project Records to document Project activities and performance, including invoicing documentation set forth in Section II.4,

documentation to support the Project reporting requirements set forth in Attachment C, and insurance documentation set forth in Attachment D (all of which comprise “Project Records”). Project Records shall also include documentation that verifies compliance with the requirements set forth in Section II.11 below. The Project Sponsor shall keep Project Records in one central location during for a period of three (3) years after the later of a) the date of the Air District’s final payment, or b) the end of the Project Useful Life. The Project Sponsor shall submit the following reports to the Air District by the due dates specified in Attachment C:

- a. Semi-annual Report(s), and
- b. Final Report.

- 9) The Project Sponsor shall monitor the operational status of the Project for the Project Useful Life. The Project Sponsor shall notify the Air District in writing of any change in operational status of any portion of the Project within thirty (30) calendar days of its occurrence. For purposes of this Agreement, a “change in operational status” occurs whenever any portion of the Project is removed from active service, relocated outside the boundaries of the Air District, rendered inoperable, sold, or transferred to another entity, before full completion of the Project Useful Life. For service-based projects, a “change in operational status” occurs whenever there is a change in service level, routing, vehicle type, or vehicle uses. Failure to provide the required written notice of a change in operational status is a breach of this Agreement.

If the Project Sponsor intends to make a change to the project the Project Sponsor may seek a modification of this Agreement in advance to allow for a change pursuant to Section IV.3. The Project Sponsor may not make any changes without the prior approval of the Air District. Failure to obtain prior approval is a breach of this Agreement.

- 10) The Project Sponsor will maintain the portions of the Project funded under this Agreement for the Project Useful Life and in accordance with the manufacturer’s specifications, and any Special Conditions included in the Project Specific Information (Attachment A).
- 11) The Project Sponsor shall acknowledge the Air District as a Project funding source at all times throughout the Project Useful Life. The Project Sponsor shall use, and require any third party that implements the Project to use the Air District’s approved logo for the Project. The required documentation and materials are specified in Attachment C.
- 12) The Project Sponsor shall obtain and maintain throughout the Term of this Agreement the insurance coverage specified in Attachment D, “Insurance Requirements,” and shall 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.
- 13) To the extent not otherwise prohibited by law, and to the extent required by the California Public Records Act (Government Code section 6250 et seq.), the Project Sponsor shall place in the public domain any software, written document, or other product developed with TFCA funds as part of the Project and shall require recipients of Project funds, if any, to do the same.
- 14) The Project Sponsor shall use TFCA Regional Funds Awarded only for the implementation of a project that results in surplus motor vehicle emission reductions within the Air District’s jurisdiction. Surplus emission reductions are those that exceed the requirements of applicable regulations or other legal obligations (including contracts) as of the Effective Date of this Agreement.
- 15) The Project Sponsor shall comply with all Program requirements set forth in the Air District’s “Board Adopted TFCA Regional Fund Policies and Evaluation Criteria for FYE 2014,” which

are incorporated therein as Appendix A, and made a part of the “Transportation Fund for Clean Air (TFCA) Regional Fund Guidance, Policies and Evaluation Criteria For Fiscal Year Ending (FYE) 2014,” dated November 2013, and which are incorporated herein and made a part hereof by this reference as if fully set forth herein.

SECTION III

AIR DISTRICT OBLIGATIONS

- 1) The Air District will provide eligible TFCA funds for this Project in an amount not to exceed the TFCA Regional Funds Awarded.
- 2) The Air District will endeavor to pay the undisputed amount of an approved invoice within thirty (30) calendar days of the date of Air District’s receipt of such invoice.
- 3) The Air District will provide timely notice to the Project Sponsor prior to conducting an audit.
- 4) The Air District will provide the Project Sponsor a copy of the fiscal and performance audits of the Project as specified in California Health and Safety Code Section 44242.
- 5) The Air District will provide the Project Sponsor all Air District-approved Regional Fund reporting and invoice forms.
- 6) The Air District will make its logo available to Project Sponsor solely for use to fulfill the Project Sponsor’s obligation under Section II.11 of this Agreement.

SECTION IV

GENERAL PROVISIONS

- 1) Effective Date: The effective date of this Agreement is the date the Air District Executive Officer/Air Pollution Control Officer executes this Agreement (the “Effective Date”).
- 2) Term: The term of this Agreement shall be from Effective Date of this Agreement until the end of three (3) years from the latter of either 1) the date of the Air District’s payment after acceptance of the Final Report, or 2) the last day of the Project Useful Life, unless this Agreement is terminated or amended as provided below, or the Term is extended pursuant to Special Conditions, Attachment A.
- 3) 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. Any change in Project scope shall constitute an Amendment under this Agreement.
- 4) Project Liaison: Within thirty (30) days from the Effective Date of this Agreement, the Project Sponsor shall notify the Air District of the Project Sponsor’s Project Liaison and of the Liaison’s address, telephone number, and email address. The Project Liaison shall be the liaison to the Air District pertaining to implementation of this Agreement and shall be the day-to-day contact about the Project. All correspondence shall be addressed to the Project Liaison. The Project Liaison shall notify the Air District of a change of Project Liaison or of the Liaison’s contact information in writing no later than thirty (30) days from the date of the change.
- 5) Notices: Any notice that 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 first class mail, or by certified mail (return receipt requested). Within thirty (30) days from the Effective Date of this Agreement, the Parties shall inform the other Party of the addressee for notice. Each

Party shall promptly inform the other of any changes for notice. All correspondence shall reference the Project Number.

6) 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 the requirements set forth in Sections II.7, II.8, II.9, II.10, II.11 and II.12.

7) Termination:

A. Voluntary. Either Party may terminate this Agreement by giving written notice to the other Party. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of receipt of such notice. Notice shall be delivered as provided for in Section IV.5 above. If the Project Sponsor terminates this Agreement, the Project Sponsor shall not be entitled to the full amount of the TFCA Regional Funds Awarded. The Project Sponsor may retain or receive payment for that portion of the TFCA Funds to which they are entitled as well as all unpaid amounts due Project Sponsor that Air District has not paid, including but not limited to, those eligible costs on the Project incurred by Project Sponsor.

The Air District will calculate the amount of funds to which the Project Sponsor is eligible by a) dividing the amount of the TFCA Regional Funds Awarded by the number of months of the Project Useful Life, and then, b) multiplying that amount by the number of full months of operation completed at the time the Agreement is terminated. If the Air District has paid the Project Sponsor more than the amount of funds to which the Project Sponsor is eligible, the Project Sponsor shall pay the funds owed to the Air District within thirty (30) days of the effective date of termination.

If the Air District terminates this Agreement pursuant to this provision, any costs incurred on the Project following the effective date of termination shall be ineligible for reimbursement of TFCA funds, except costs for any work that the Air District has specified in the notice of termination the Project Sponsor may continue to perform for the specified period of time. The Air District will reimburse Project Sponsor for all eligible costs on the Project expended prior to the effective date of the termination.

B. Breach. The Air District may terminate this Agreement for breach of any term of this Agreement. The Air District will deliver a written notice of breach that specifies the date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of such notice. The notice will direct the Project Sponsor to cease all work immediately upon receipt of the notice, except as specifically provided for in the notice. In the alternative, or as provision of the notice of termination, the Air District may allow the Project Sponsor to cure the breach; in that instance, the notice shall specify the nature of the breach and the date by which such breach must be cured (the "Cure Period"). The notice of termination will specify the amount of the TFCA Regional Funds Awarded that the Air District has paid and the amount owed, if any, by the Project Sponsor to the Air District. The Project Sponsor shall reimburse any funds owed to the Air District prior to the effective date of termination.

The Air District will calculate the amount of funds owed based on each month of the Project Useful Life that the Project Sponsor operated the Project prior to the breach. For example, if the Air District determines that the Project Sponsor breached this Agreement during the seventh month of operation of the Project that has a two-year Project Useful Life, the Air District will reimburse the Project Sponsor up to the amount of the TFCA Regional Funds Awarded that represents six months of operations. If the Parties have agreed to an alternative

reimbursement formula, which would be set forth in the Special Conditions, Attachment A, the Air District will calculate the amount of the reimbursement based on that formula.

C. Reserved.

- 8) 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.
- 9) Indemnification: The Project Sponsor 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 Project Sponsor of its duties under this Agreement, and shall require any third party who owns, operates, controls or implements any portion of the Project 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 any portion of the Project. The Project Sponsor's indemnification and its obligation to have applicable third parties indemnify the Air District shall survive expiration or termination of this Agreement.
- 10) Independent Contractor: Neither the Project Sponsor nor its officers, employees, agents, or representatives shall be considered employees or agents of the Air District. This Section does not apply to elected officials serving concurrently on the governing boards of both the Project Sponsor and the Air District.
- 11) Assignment: Neither Party shall assign, sell, license, or otherwise transfer any rights or obligations under this Agreement to a third party without the prior written consent of the other Party. All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors, assigns and legal representatives.
- 12) 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.
- 13) 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.
- 14) Force Majeure: Neither the Air District nor the Project Sponsor 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 the Project, or other

causes, except financial, that are beyond the reasonable control of the Air District or the Project Sponsor, for a period of time equal to the period of such force majeure event, provided that the Party failing to perform notifies the other Party within fifteen (15) calendar days of discovery of the force majeure event, and provided further that that Party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to a Party's own action or inaction, then such cause shall not excuse that Party from performance under this Agreement.

- 15) **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.
- 16) **Public Entities - Conflict of Interest:** The Project Sponsor warrants and represents that its public officials, including its officers and employees in their official capacity, presently have no interest and agrees that its public officials, including its officers and employees in their official capacity, will not acquire any interest which would represent a conflict of interest under California Government Code sections 1090 et seq. and 87100 et seq. during the performance of this Agreement.
- 17) **Integration:** This Agreement, including all attachments hereto, represents the final, complete, and exclusive statement of the agreement between the Air District and the Project Sponsor 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized officers.

SIGNATURES:

by: _____
Chris Zapata
City Manager
City of San Leandro

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

Approved as to legal form:

by: _____
Richard D. Pio Roda
City Attorney
City of San Leandro

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

**ATTACHMENT A
PROJECT SPECIFIC INFORMATION**

(Note: The section numbers shown in parentheses below refer to sections in the Funding Agreement.)

1. **Project Sponsor:** City of San Leandro
2. **Project Number (Section IV.5):** 14R23
3. **Total Project Cost (Section II.2):** \$92,817.73
4. **Matching Funds (Section II.3):** \$22,817.73
5. **TFCA Regional Funds Awarded (Sections II.3, II.4, II.5, II.14, III.1, IV.7):** The Air District will fund up to \$2,500 per bicycle accommodated by the locker(s). The maximum award will be \$70,000. If the actual cost of the Project is less than the Total Project Cost, the Air District will fund 75.417% of the actual total project cost.
6. **Invoice and Payment Schedule (Section II.4, II.5, III.2):** The Project Sponsor shall submit a single invoice on the Air District's General Invoice Form for reimbursement at the submittal of the Final Report for the Project.

TFCA funds cannot be used to reimburse:

- Costs related to maintenance, repairs, rehabilitation, or upgrade of existing bicycle facilities;
- Operating costs (e.g., salaries after a locker is open for public use, ongoing training/support, advertising, and rent/leases);
- Planning activities not directly related to project implementation; or
- Indirect and administrative costs.

Pursuant to Section II.5 of this Agreement, the Air District may withhold funds pending receipt of reports.

7. **Special Conditions (Sections IV.2, IV.7):** None.

**ATTACHMENT B
PROJECT DESCRIPTION**

1. **Project Title:** Adding E-Lockers at San Leandro BART Station
2. **Project Useful Life:** 10 years
3. **Project Description:** Installation of electronic bicycle lockers accommodating a minimum of 28 bicycles at any given time. Lockers may be installed at any of the location(s) below.

- San Leandro BART Station – 1401 San Leandro Blvd., San Leandro

4. **Project Schedule:**

Milestone

Completion Date

Project start

Effective Date of Agreement

Installation activities complete; Project in-service

July 31, 2016

Final Report and Invoice due, per Attachment C

October 31, 2016

End of Project Useful Life

10 years after the date the Project is installed and placed into service

5. **Project Goal:** The goal of this Project is to reduce motor vehicle emissions by providing trip-reducing transportation alternatives (e.g. bicycle parking), thereby reducing motor vehicle emissions, trips, and vehicle-miles traveled.

**ATTACHMENT C
MONITORING OF PROJECT PERFORMANCE**

1. **Semi-annual Reports (Section II.8):** The Project Sponsor shall submit Semi-annual Reports to the Air District summarizing Project progress. Semi-annual Reports shall be prepared on the Air District's Semi-annual Report form.

Due Dates: Beginning 60 days after the commencement of the Term of this Agreement, every April 15, and October 15, following the Effective Date until the Final Report has been submitted.

2. **Final Report Due Date(Section II.8): October 31, 2016**

The Final Report shall include the following information:

- A. A description of the completed Project including
 - Exact location of each of the lockers
 - Physical features and dimensions
 - Security features and mechanism for gaining access
 - Number of bicycles that can be accommodated by each locker at any given time.
- B. Photographs that demonstrate that all portions of the Project are installed. Digital photos may be sent by e-mail.
- C. Documentation that the Project Sponsor has acknowledged the Air District as a Project funding source throughout the Project's Useful Life, including documentation of use of the Air District logo, copies of any promotional materials, press releases, and newsletter articles related to the Project (Section II.11).

**ATTACHMENT D
INSURANCE REQUIREMENTS**

Verification of Coverage

Project Sponsor shall provide the Air District certificates and/or other evidence of the insurance coverage required below. The Air District reserves the right to require Project Sponsor 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.

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.

Minimum Scope of Insurance

Throughout the Term of the Agreement, Project Sponsor shall obtain and maintain in full force and effect the insurance as set forth below. Project Sponsor must initial next to each checked insurance requirement to confirm understanding and Agreement with the applicable Project insurance requirements:

**Required
if marked**

1. Liability Insurance

Initial Corporations/Private and Public Entities - 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 Project Sponsor, and to the operation of the vehicles, engines or equipment operated by the Project Sponsor.

Initial Single Vehicle Owners - a limit of not less than \$750,000 per occurrence. Such insurance shall be of the type usual and customary to the business of the Project Sponsor, and to the operation of the vehicles, engines or equipment operated by the Project Sponsor.

2. Property Insurance

Initial Repower and New Vehicle/Equipment Purchase - in an amount of not less than the insurable value of Project Sponsor's vehicles, engines or equipment funded under the Agreement of which this Attachment is a part, and covering all risks of loss, damage or destruction of such vehicles, engines or equipment.

Initial Property Insurance for Retrofit Projects – for all 2003 model year or newer vehicles in an amount of not less than the insurable value of Project Sponsor's vehicles, covering all risks of loss, damage or destruction of such vehicles, engines or equipment.

3. Workers Compensation Insurance.

Initial Workers Compensation Insurance - as required by California law and employers liability insurance with a limit not less than \$1 million.