

TRANSPORTATION FUND FOR CLEAN AIR FUNDING AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
COUNTY OF MARIN

07BFP25

This funding agreement (Agreement) is made and entered into between the County of Marin, hereinafter referred to as "Project Sponsor," and the Bay Area Air Quality Management District, hereinafter referred to as the "Air District."

SECTION I

RECITALS

- 1) California Health and Safety Code Section 44220 et seq., including 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 a program to reduce air pollution from motor vehicles and to implement certain other projects pursuant to the California Clean Air Act of 1988.
- 2) 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 plans adopted pursuant to California Health and Safety Code Sections 40233, 40717, and 40919 and that are in effect as of the date of execution of this Agreement. This includes projects that facilitate the "implementation of bicycle facility improvement projects that are included in an adopted countywide bicycle plan or congestion management program."
- 3) The Air District has established a grant program, entitled the Bicycle Facility Program (BFP) to "reduce emissions from mobile sources by contributing Air District funding for the implementation of bicycle facilities in the Bay Area, via streamlined processes that are cost-effective in both air-quality and administrative terms." Under the BFP, the Air District may issue funds to public agencies within the Air District's jurisdiction.
- 4) On April 4, 2007, the Board of Directors of the Air District approved the BFP guidelines, the allocation of Transportation Fund for Clean Air funds for implementation of the BFP, and authorized Air District staff to award grants of these funds.
- 5) Air District staff has determined that the Project Sponsor is eligible for an award of a BFP grant to implement an eligible transportation control measure or mobile source measure to improve air quality in the San Francisco Bay Area Air Basin (Project), based on the BFP eligibility criteria and on information provided in Project Sponsor's grant application.
- 6) The Air District and Project Sponsor desire to enter into this Agreement for implementation of the Project in accordance with the terms and conditions of this Agreement, including all attachments thereto.

NOW, THEREFORE, the parties agree as follows:

SECTION II

PROJECT SPONSOR OBLIGATIONS

- 1) Project Sponsor hereby agrees to implement the Project, as described more fully in Attachment A, "Project Specific Information," and in Attachment B, "Project Description," both of which attachments are annexed to this Agreement and made a part hereof by this reference. Failure to implement the Project in accordance with the terms and conditions set forth in this Agreement and all attachments thereto will be deemed a breach of this Agreement and may result in termination of the Agreement.
- 2) Project Sponsor will complete the Project in accordance with the following conditions:
 - A. The Air District's funding obligation under this Agreement is limited to the "Total BFP Funds Awarded," specified in Attachment A. Any Project cost overruns are the sole responsibility of the Project Sponsor.
 - B. Only those allowable Project costs incurred following the date of execution of this Agreement are eligible to receive BFP funds. Allowable Project costs are listed in the "Bicycle Facility Program Grant Application Package for Fiscal Year 2007/2008."
 - C. Project Sponsor will contribute or expend all "Matching Funds," set forth in Attachment A, required for the successful completion of the Project prior to submission of the Final Invoice. In the event the specified "Matching Funds" are to be contributed by a third party and Project Sponsor does not receive all such funds, the Air District reserves the right to terminate this Agreement in whole or in part, to reduce the amount of the grant of "Total BFP Funds Awarded," or to renegotiate the terms and conditions of this Agreement, at its sole discretion.
 - D. If before the end of the "Project Useful Life," set forth in Attachment B, Project Sponsor removes any equipment or other property purchased, installed, or constructed with BFP funds under this Agreement from service, Project Sponsor is in breach of this Agreement.
 - E. If during the "Project Useful Life," Project Sponsor sells any equipment or other property purchased, installed, or constructed with BFP funds under this Agreement, Project Sponsor will reimburse the Air District the total amount of BFP funds awarded within thirty (30) days of the sale.
- 3) Project Sponsor will submit one (1) invoice to the Air District, upon completion of the Project, for reimbursement of eligible Project costs and expenses consistent with the Total BFP Funds Awarded, Invoice and Payment Schedule and the Project Schedule contained in Attachments A and B, respectively, in a form acceptable to the Air District. Invoices will include a summary sheet specifying the Project number; time period for the invoice; itemized staff charges to the Project, if any; itemized payments to vendors, consultants, or contractors; and total funds being requested. The invoice will also include detailed supporting documentation which will include copies of time sheets documenting hourly labor costs incurred in the implementation of the Project, copies of invoices from vendors, consultants, or contractors or an explanation of the goods or services provided for the Project. Project Sponsor may establish an alternative method, approved in advance by the Air District, to document staff costs charged to the Project.

Project Sponsor must submit the invoice for payment no later than ninety (90) days after the submission of the Final Report, the requirements and deadline for which are set forth in Attachment C, which attachment is annexed to this Agreement and made a part hereof by this reference. The District will not process any invoice submitted by the Project Sponsor until the Air District accepts the Final Report as required by Attachment C.

Project Sponsor must expend BFP funds within two (2) years of the effective date of this Agreement, unless the Air District approves, in advance and in writing, an amendment to extend the expenditure period for a longer period.

- 4) Project Sponsor will keep all necessary Project records to document Project activities and performance, including documentation of expenses and charges to support invoices submitted to the Air District and other Project reporting requirements as described in Attachment C. Project Sponsor will keep Project records in one central location for a period of three (3) years after the Air District's final payment of an approved final invoice as required by Section II.3 above.
- 5) Project Sponsor will allow Air District or its authorized representatives to inspect, audit, and make copies of any Project records related to the performance of this Agreement.
- 6) Project Sponsor will submit all reports set forth in Attachment C to the Air District by the specified due dates.
- 7) Project Sponsor will acknowledge the Air District as a Project funding source and will use or display the Air District-approved logo for this Project so that it is visible to the public as follows:
 - A. On any equipment or other property purchased, installed, or constructed with BFP funds.
 - B. On any printed or electronic material associated with the Project that is distributed to the public. Printed material includes Project related schedules, brochures, handbooks, or promotional material. Electronic material includes Project related web sites, electric signs, or e-mail broadcasts.
 - C. In any Project related media events, articles, news releases or other publicity materials.
 - D. Project Sponsor will demonstrate to the Air District through photographs, or other documentation, of equipment and property and provide copies of printed, electronic, and publicity material that Air District logos are used and displayed as required.
- 8) Project Sponsor will place in the public domain any software, written document, intellectual property, process, technique, or product developed with BFP funds as part of the Project.
- 9) Project Sponsor will monitor the operational status of the equipment or other property purchased, installed, or constructed under this Agreement for the "Project Useful Life," as listed in Attachment B. Project Sponsor will notify the Air District in writing of any change in operational status of any equipment or other property funded under the terms of this Agreement, within thirty (30) calendar days of its occurrence. For purposes of this Agreement, a "change in operational status" occurs whenever any service is discontinued or any equipment or other property funded under the terms of this Agreement is removed from active service, relocated outside the boundaries of the Air District, sold, or transferred to another entity, before full completion of the Project Useful Life specified in Attachment B. If Project Sponsor fails to

provide the required written notice of a change in operational status on a timely basis, the Air District may require repayment of grant funds pursuant to and in accordance with the terms set forth in Paragraphs 2.D and 2.E, above.

- 10) Project Sponsor will maintain any equipment or other property funded under the terms of this Agreement in good repair and according to the applicable manufacturer's specifications for the Project Useful Life, as defined in Attachment B.
- 11) Project Sponsor will use BFP funds only for the implementation of projects that result in the reduction of motor vehicle emissions within the Air District's jurisdiction that achieve surplus emission reductions. Surplus emission reductions are those that exceed the requirements of applicable regulations or other legal obligations (including contracts) at the time the Air District Board of Directors approves a grant award.
- 12) Project Sponsor agrees to obtain and maintain throughout the Term of this Agreement, the insurance coverage specified in "Insurance Requirements," Attachment D, and to comply with all insurance requirements set forth therein, including the provision for 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 OBLIGATIONS

- 1) The Air District will provide BFP funds for this Project in an amount not to exceed the "Total BFP Funds Awarded," set forth in Attachment A.
- 2) The Air District will endeavor to pay undisputed amounts of each approved invoice within thirty (30) calendar days of the Air District's receipt of such invoice.
- 3) The Air District will provide timely notice to Project Sponsor prior to conducting an audit.
- 4) The Air District will provide a copy of any fiscal audits of the Project as specified in California Health and Safety Code Section 44242.
- 5) The Air District will provide a copy of its logo for this Project.

SECTION IV GENERAL PROVISIONS

- 1) Term: This Agreement will commence as of the effective date of this Agreement and shall remain in effect for three (3) years following the later of 1) the Air District's final payment after acceptance of the Final Report, or 2) the "Project Useful Life" as specified in Attachment B, unless this Agreement is terminated as provided below.
- 2) Termination: The Air District may terminate this Agreement for default upon giving a minimum of ten (10) business days' written notice of such default to Project Sponsor and Project Sponsor does not cure such default within that period of time. The notice of default will specify the amount of Total BFP Funds Awarded that Project Sponsor must reimburse the Air District, if any. The Air District will calculate the amount of funds owed based on each year or part of each year of the Project Useful Life that Project Sponsor operated the equipment covered by this Agreement prior to the breach. For example, if the Air District determines that Project Sponsor defaulted during the seventh year of operation of equipment that has a ten-year Project Useful

Life, the Air District will allow Project Sponsor the amount of Total BFP Funds that represents six years of operation. Project Sponsor may retain or receive payment for that portion of the Total BFP Funds that is determined by first dividing the amount of the encumbered Total BFP Funds Awarded by the number of years of the Project Useful Life and then multiplying that amount by the number of full years of operation completed prior to the breach. Project Sponsor shall reimburse such funds owed the Air District within thirty (30) days of the effective date of termination. The parties may agree to an alternative formula for reimbursement or payment, which shall be in the Special Conditions of the Project Specific Information, Attachment A.

- 3) Indemnification: Project Sponsor shall indemnify and hold harmless the Air District, its officers, employees, agents, representatives, and successors-in-interest against any and all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses (including reasonable attorney fees) that the Air District, its officers, employees, agents, representatives, and successors-in-interest may incur or be required to pay arising from the death or injury of any person or persons, including employees of Project Sponsor; from destruction of or damage to any property or properties, caused by or connected with the performance of this Agreement and the operation of equipment or other property that is the subject of this Agreement by Project Sponsor, its employees, subcontractors, or agents; or arising out of an act or omission of Project Sponsor or its employees, subcontractors or agents in the performance of this Agreement, except to the extent such claim, suit or action arises out of the sole negligence or willful misconduct of the Air District. Project Sponsor's indemnification and obligation to have applicable third parties indemnify the Air District will survive expiration or termination of 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 delivery service or first class mail, to the addressees set forth in Attachment A, or to such addressees which may be specified in writing by the parties. Each party shall promptly inform the other of any change of address or addressee for notice.
- 5) Contacts: The persons listed as Contacts in Attachment A shall be the liaisons between the Air District and Project Sponsor for the day-to-day activities of the Project and for receipt of all notices. All reports and correspondence are to be addressed to the specified Contacts. Each party shall promptly inform the other of any change of address or addressee for Contact..
- 6) Project Number: All correspondence shall reference the "Project Number" specified in Attachment A.
- 7) Integration: This Agreement represents the final, complete, and exclusive statement of the agreement between the parties related to Project Sponsor implementing the Project and supersedes all prior and 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. Any attempt at oral modification of this Agreement shall be void and of no effect. Amendments to this Agreement shall be executed in writing by the signators to this Agreement. Any change in project scope is an amendment.

- 9) Independent Contractor: None of the Project Sponsor's agents, subcontractors or employees shall be construed as agents or employees of the Air District.
- 10) Assignment: Neither party shall assign, sell, license, nor otherwise transfer any rights or obligations under this Agreement to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception. In the event of such assignment, sale, license or transfer by Project Sponsor to a successor entity, all obligations and duties set forth in this Agreement pertaining equipment and other property funded by BFP funds under this Agreement shall become the obligations and duties of the successor entity.
- 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) Effective Date: The effective date of this Agreement is the date the Air District Executive Officer/APCO executes this Agreement.
- 14) General Compliance with Laws: The performance of this Agreement and the expenditure of BFP funds received under this Agreement will be in accordance with all applicable provisions of federal, state, and local law.
- 15) Liquidated Damages: It is agreed by the parties that a violation of Section II.7 will result in damage to the Air District that is or will be impracticable to determine. It is therefore agreed that Project Sponsor will be liable for up to five percent (5%) of the "Total BFP Funds Awarded" for the Project as liquidated damages if Project Sponsor does not cure a noticed violation of Section II.7 within thirty (30) days of such written notice from the Air District. The Air District may deduct such liquidated damage amounts from any amounts owed to Project Sponsor or may require payment of such liquidated damage amounts by Project Sponsor.
- 16) Force Majeure: Neither Air District nor Project Sponsor shall be liable for or deemed to be in default for any delay or failure in performance under this Contract 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 services, or other causes, except financial, that are beyond the reasonable control of Air District or 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 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 party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.

- 17) **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 to 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.
- 18) **Binding on Successors:** 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.
- 19) **Attorneys' fees:** If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding will recover, in addition to all court costs, reasonable attorneys' fees.
- 20) **Conflict of Interest:** Project Sponsor warrants and represents that it presently has no interest and agrees that it 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.

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

SIGNATURES:

by: _____
Steve Kinsey
President - Board of Supervisors
County of Marin

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

Approved as to legal form:

by: _____
County Counsel

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

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**ATTACHMENT A
PROJECT SPECIFIC INFORMATION**

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

1. **Project Sponsor:** County of Marin
2. **Project Number (Section IV.6):** 07BFP25
3. **Total Project Cost:** \$892,500
4. **Matching Funds (Section II.2):** \$850,000
5. **Total BFP Funds Awarded (Section II.2, III.1, IV.15):** The Air District will provide funds up to a maximum of \$42,500
6. **Invoice and Payment Schedule (Section II.3, II.4, II.5, III.2):** The Project Sponsor shall submit a single invoice for reimbursement at the time of submittal of the final report for the Project.

BFP funds cannot be used to reimburse:

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

Per Section II.3 of this Agreement, the Air District may withhold funds pending receipt of reports.

7. **Notices (Section IV.4):** Any written notice required is to be addressed to:

Project Sponsor:

Farhad Mansourian
Director
Marin County Public Works Department
3501 Civic Center Dr.
San Rafael, CA 94903

Air District:

Jack P. Broadbent
Executive Officer/APCO
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

8. Contacts (Section IV.5): Contact persons for day-to-day activities of the Project are:

Project Contact:

Patrick Echols
Senior Civil Engineer
Marin County Public Works Department
PO Box 4186
San Rafael, CA 94913
PEchols@co.marin.ca.us
(415) 499-7026

Air District:

Avra Goldman
Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
agoldman@baaqmd.gov
(515) 749-5093

9. Special Conditions (Section II.2, II.7, II.9):

- A. The Project Sponsor shall include the Air District as a Project funding source and the Air District decal on any signs erected to describe the Project and the Project funding sources.
- B. The Project Sponsor shall acknowledge the Air District as a funding source in all promotional materials (e.g., press releases, brochures, schedules, etc.) related to the Project.
- C. Project design shall conform to all applicable standards in Chapter 1000 of the *California Highway Design Manual* (Caltrans).

**ATTACHMENT B
PROJECT DESCRIPTION**

The BFP grant application submitted on September 22, 2007 is incorporated herein by this reference.

1. **Project Title:** Alameda Del Prado Class II Project
2. **Project Useful Life:** 15 years
3. **Project Description:** Add class II bicycle lanes along Alameda del Prado from approximately Alameda de la Loma to Posada del Sol to close a gap in the north south bikeway connecting Novato to the other communities along the SR 101 corridor. This project will involve reconfiguring the center median to accommodate the bicycle lanes, traffic lanes, and parking. The project will result in new bicycle lanes along 0.5 miles of roadway.

4. **Project Schedule:**

<u>Milestone</u>	<u>Date</u>
Project Start	December 2008
Construction Begins	Fall 2008
Project Completion Date	November 31, 2009

5. **Amendment (Section IV.8):** The Project Sponsor must submit in writing to the Air District Project Contact any requests to revise the Project Schedule or Project Description. The Air District will approve or disapprove these requests in writing.

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**ATTACHMENT C
MONITORING OF PROJECT PERFORMANCE**

1. Quarterly Reports (Section II.6):

Due Dates: After the contract has been signed by both parties, quarterly reports will be due every January 15, April 15, July 15, and October 15 until the Final Report has been submitted.

The Project Sponsor shall submit brief quarterly reports to the Air District during implementation of the Project. Quarterly reports are required regardless of project activity. Quarterly reports shall summarize progress in Project implementation, describe any problems encountered, and note any potential need for changes in the Project implementation schedule. Quarterly reports shall be submitted based upon the format provided by the Air District.

2. Final Report (Section II.6):

Due Date: December 31, 2009

The final report shall include the following information in a format approved by the Air District:

- A. A description of the bicycle facility implemented, location, and the project specifications, including:
 - For bikeways – Length, width, materials used, amenities provided, activity centers serviced and documentation to demonstrate that the Project conforms to applicable design standards in Chapter 1000 of the *California Highway Design Manual*,
 - For bicycle racks, lockers, & storage facilities – Physical features and dimensions, security features, mechanism for gaining access, bicycle capacity, and
 - For bicycle racks on public transportation vehicles – Technical specifications, bicycle capacity, type of vehicles the racks are installed on, and routes the vehicles service.
- B. Photographs of the completed bicycle facility. For bikeway type projects, the Project Sponsor must include photographs from at least three different locations along each non-contiguous segment. For non-bikeway type facilities (racks, lockers, etc.), the Project Sponsor must include photographs that indicate all BFP-funded components have been installed. The Air District encourages the submittal of photos via e-mail (jpg files) if Project Sponsor has this capability.
- C. Documentation that the Project Sponsor has displayed the Air District-approved logo, acknowledging the Air District as a Project funding source, on any equipment or other property purchased, installed, or constructed as part of the BFP funded Project.
- D. Copies of any promotional materials, press releases, newsletter articles, or other media coverage related to the Project.

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ATTACHMENT D
INSURANCE REQUIREMENTS

1. **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.

2. **Minimum Scope of Insurance:** Throughout the Term as defined in Section IV of the Agreement of which this Attachment is a part, Project Sponsor shall obtain and maintain in full force and effect the insurance as set forth below:
 - A. 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 Project Sponsor, and to the operation of the vehicles, vessels, engines or equipment operated by the Project Sponsor.

 - B. Property Insurance in an amount of not less than the insurable value of Project Sponsor's equipment or other property funded under the Agreement of which this Attachment is a part, and covering all risks of loss, damage or destruction of such equipment or property.

3. **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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