



City of San Leandro

Meeting Date: May 7, 2018

Staff Report

File Number: 18-176 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.L.

TO: City Council

FROM: Jeff Kay
Interim City Manager

BY: Keith Cooke
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution to Authorize the City Manager to Enter into an Agreement with the Bay Area Air Quality Management District to Receive \$139,128 in Grant Funding from the Transportation Fund for Clean Air Program and Provide a Minimum Local Match Amount of \$48,372 to Install 9.5 Miles of Bikeways for the Bicycle Network West, Project No. 2014.0430

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council adopt a resolution authorizing the City Manager to enter into an agreement with the Bay Area Air Quality Management District (Air District) to receive \$139,128 in grant funding from the Transportation Fund for Clean Air (TFCA) Program and provide a minimum local match amount of \$48,372 to install 9.5 miles of bikeways for the Bicycle Network West Project.

BACKGROUND

The California Legislature created the Air District in 1955 as the first regional air pollution control agency in the country, recognizing that air pollution transcends political boundaries. The Air District is the public agency entrusted with regulating stationary sources of air pollution in the nine-county San Francisco Bay region.

In 1991, the California State Legislature authorized the Air District to impose a \$4 surcharge on motor vehicles registered within its jurisdiction to fund projects that reduce on-road motor vehicle emissions. The Air District allocates these funds to its Transportation Fund for Clean Air (TFCA) Program, which provides funding to qualifying alternative fuel vehicle and trip reduction projects including bicycle facility projects. The Air District views bicycling as one of the key strategies for reducing single-occupancy motor vehicle trips and subsequently air pollution.

Over the last 25 years, the Air District has provided more than \$11 million in TFCA funding for

eligible bicycle facility improvement projects, which has resulted in the installation of more than 13,000 new secure bicycle parking spots (via racks and lockers) as well as the installation of more than 200 miles of new bikeways and paths. Through the TFCA Program, the Air District competitively solicits projects that will construct new bikeways to encourage travel mode shift with up to \$5 million in 2017 funds available to public agencies that apply.

In June 2017, the City of San Leandro submitted an application for TFCA funds for use in building 9.5 miles of bikeways in the San Leandro West area, including 1.7 miles of Class II Bikeways and 7.8 miles of Class III Bikeways. The Air District Board of Directors approved and awarded the grant to the City in September 2017.

Recently, the Air District sent the City a funding agreement for review and execution. The agreement sets forth the terms, conditions, insurance, and recordkeeping requirements of the grant. A fully executed agreement obligates the Air District to fund the project and obligates the City to construct the project.

Analysis

The Bicycle Network West project is included in the City's adopted Capital Improvement Program as Project No. 2014.0430 (the Project). The award amount of \$139,128 in TFCA funding and the required minimum local match of \$48,372 will be used to fund the construction of the Project. The City has previously appropriated \$250,000 in Measure BB funds for the Project, thus fulfilling the required local match requirement.

The agreement provides two years for project implementation, and further obligates the City to maintain the facilities for at least seven years after construction is completed. The Project is currently in the final design phase and construction is planned for the fourth quarter of 2018.

Current Agency Policies

Maintain and enhance San Leandro's infrastructure

Committee Review and Actions

Several updates on the Project have been presented to the Bicycle and Pedestrian Advisory Committee (BPAC), the most recent occurring on May 4, 2017.

Applicable General Plan Policies

Policy T-2.1 Complete Streets Serving All Users and Modes. Create and maintain "complete" streets that provide safe, comfortable, and convenient travel through a comprehensive, integrated transportation network that serves all users.

Policy T-3.1 Citywide Bikeway System. Develop and maintain a bikeway system that meets the need of both utilitarian and recreational users, reduces vehicle trips, and connect residential neighborhoods to employment and shopping areas, BART stations, schools, recreational facilities and other destinations throughout San Leandro and nearby communities.

Policy T-3.2 Funding. Maximize the City’s eligibility for funding for bicycle and pedestrian improvements, and aggressively pursue such funding to complete desired projects.

Policy T-3.3 Designing for Multiple User Groups. Recognize the dual needs of experienced cyclists relying on bicycles for commute trips and daily travel and less experienced cyclists using bicycles principally for recreation. Where needed, develop facilities designed to serve each user group, with recreational routes primarily using low-volume streets and off street bike paths.

Environmental Review

The Project qualifies for a statutory exemption from the California Environmental Quality Act (CEQA) per California Public Resources Code Section 21080.19 “Restriping of Streets or Highways”.

Fiscal Impacts

The awarded TFCA grant funds in the amount of \$139,128 require a minimum local match of \$48,372. The existing appropriated funds of \$250,000 will be used to meet the match requirement and provide a total of \$389,128 for the project.

Budget Authority

<u>Account No.</u>	<u>Resolution. Appropriation Date</u>	<u>Amount</u>
141-36-356	Res. 2016-075, June 6, 2016	\$250,000

ATTACHMENT

Attachment to Resolution

- Transportation Fund for Clean Air Funding Agreement between the Bay Area Air Quality Management District and City of San Leandro, Project Number 17R21.

PREPARED BY: Reh-Lin N. Chen, Senior Transportation Engineer, Engineering & Transportation Department



City of San Leandro

Meeting Date: May 7, 2018

Resolution - Council

File Number: 18-177 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
Interim City Manager

BY: Keith Cooke
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION to Authorize the City Manager to Enter into an Agreement with the Bay Area Air Quality Management District to Receive \$139,128 in Grant Funding from the Transportation Fund for Clean Air Program and Provide a Minimum Local Match Amount of \$48,372 to Install 9.5 Miles of Bikeways for the Bicycle Network West, Project No. 2014.0430

WHEREAS, the City of San Leandro (the City) submitted an application to the Bay Area Air Quality Management District (the Air District) for the Transportation Fund for Clean Air (TFCA) Regional Funds to be used for the Bicycle Network West Project, Project No. 2014.0430 (the Project), in the adopted Capital Improvement Program; and

WHEREAS, On October 4, 2017, the Air District Board of Directors approved grant funding awards for the TFCA Program for Fiscal Year Ending 2017, and authorized its Executive Officer/Air Pollution Control Officer to execute grant agreements with project sponsors; and

WHEREAS, to receive the awarded \$139,128 in grant funds, the City, as a project sponsor, must execute the TFCA Funding Agreement (the Agreement) between the Air District and City of San Leandro, Project Number 17R21, and must abide by the terms, conditions, insurance, and recordkeeping requirements; and

WHEREAS, the Agreement requires a minimum \$48,372 local funding match that the City will provide from \$250,000 in Measure BB funds previously appropriated for the Project in the adopted Capital Improvement Program; and

WHEREAS, the City must implement the Project within two years, and must maintain the improvements for at least 7-years following completion.

NOW, THEREFORE, BE IT RESOLVED that the City Manager is hereby authorized to accept grant funding in the amount of \$139,128 and execute the Agreement, in substantive form attached hereto as Exhibit A, in a form approved by the City Attorney, and undertake such actions

as may be necessary or appropriate to carry out and implement the terms of the Agreement and intent of this Resolution.

BE IT FURTHER RESOLVED that at least \$48,372 in required matching funds is authorized for expenditure from Measure BB funds as previously appropriated for the Project, in the City's adopted Capital Improvement Program, Account No. 141-36-356.

TRANSPORTATION FUND FOR CLEAN AIR FUNDING AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
CITY OF SAN LEANDRO
PROJECT NUMBER: 17R21

This funding agreement (“Agreement”) is made and entered into between the City of San Leandro, hereinafter referred to as “Project Sponsor,” and the Bay Area Air Quality Management District, hereinafter referred to as the “Air District” (and 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 control projects that result in surplus emission reductions.
- 2) The Air District has established a grant fund, entitled the Transportation Fund for Clean Air (“TFCA”) to implement such projects. 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 (“TFCA 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 Air District’s air quality 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 March 16, 2016, the Air District’s Board of Directors approved funding allocations for the TFCA Program for Fiscal Year Ending (FYE) 2017, under California Health and Safety Code Section 44241, and authorized the Executive Officer/Air Pollution Control Officer (APCO) to execute Grant Agreements for eligible projects funded by the TFCA Program, with individual grant awards up to \$100,000.
- 5) On July 20, 2016, the Air District’s Board of Directors approved the *FYE 2017 TFCA Regional Fund Program Policies* (“Program Policies”), which sets forth requirements for projects that are eligible for funding through the TFCA Program.
- 6) On April 25, 2017, the Air District released the *Application Guidance for Bicycle Facilities Grant Program for FYE 2017* (“Program Guidance”), which includes the Program Policies and sets forth additional requirements for eligible bicycle facility projects.
- 7) On October 4, 2017, the Air District’s Board of Directors approved an award of TFCA Program funds 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 Guidance and the information provided in Project Sponsor’s application (“Project”).
- 8) The Project Sponsor affirms that the Project has not commenced, would not have otherwise commenced without TFCA Program funding, and will result in surplus emission reductions.
- 9) The Parties 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, which is described in “Project Information” (Attachment A), in accordance with the costs, terms, and conditions in the “Project Budget and Payment Process” (Attachment B), and all applicable provisions of federal, state, and local law and regulations. 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 the Air District’s enforcement of the Agreement, termination of the Agreement, a reduction of the Project’s TFCA Funds Awarded that are specified in Attachment B, or other remedies sought by the Air District at its sole discretion.
- 2) The Project Sponsor shall pay all Project costs necessary to complete the Project prior to submission of the Final Invoice to the Air District for reimbursement. Air District’s funding obligation under this Agreement is limited to reimbursement of Eligible Costs, as specified in Attachment B, the amount of which shall not exceed the TFCA Funds Awarded, also as specified in Attachment B. The Project Sponsor shall be solely responsible for all costs that exceed the TFCA Funds Awarded.
- 3) The Project Sponsor is responsible for assuring that all funds received under this Agreement and Matching Funds are expended only in accordance with the requirements of the TFCA Program, this Agreement, and all applicable provisions of law and regulations.
- 4) The Project Sponsor shall allow the Air District and its authorized representatives to conduct performance and fiscal audits of the Project at any time 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 any time during the Project Operational Period. The Project Sponsor shall cooperate with such inspections.

- 5) The Project Sponsor shall prepare and maintain all necessary Project Records to document Project activities and performance, including invoicing documentation set forth in Section 5 of Attachment B, 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.8. The Project Sponsor shall keep Project Records in one central location 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 Operational Period.
- 6) The Project Sponsor shall submit the reports specified in Attachment C to the Air District by the due dates specified in Attachment C. These reports are public documents.
- 7) The Project Sponsor shall implement and operate the Project for the duration of the Project Operational Period. The Project Sponsor may not make any changes to the operational status of the Project without the prior approval of the Air District. Failure to obtain prior approval is a breach of this Agreement.

For purposes of this Agreement, a “change to the operational status” occurs whenever any portion of the Project is removed from active service other than for routine maintenance, relocated to a different location than what is specified in this Agreement (Attachment A), rendered inoperable, sold, or transferred to another entity, before full completion of the Project Operational Period.

If the Project Sponsor intends to make a change to the Project’s to the operational status, the Project Sponsor must seek a modification of this Agreement in advance to allow for a change pursuant to Section IV.3.

- 8) The Project Sponsor shall acknowledge, and require any third party that implements any portion of the Project (“Sub-awardee”) to also acknowledge, the Air District as a Project funding source at all times throughout the Project Operational Period as specified in Attachment A. The Project Sponsor shall use, and require any Sub-awardee to use, the Air District’s approved logo for the Project. The required documentation and materials are specified in Attachment C.

- 9) Beginning when the Project starts and throughout the Project Operational Period, the Project Sponsor shall obtain, maintain, and comply, and require any Sub-awardee to also obtain, maintain, and comply, with the insurance coverage specified in Attachment D, "Insurance Requirements," and with all insurance requirements set forth therein, including the provision of documentation of said insurance coverage.
- 10) 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 Program funds as part of the Project and shall require recipients of any TFCA Program funds, if any, to do the same.
- 11) The Project Sponsor shall use TFCA Program funds only for the implementation of a project that will result in surplus motor vehicle emission reductions within the Air District's jurisdiction and be responsible for demonstrating the emission reductions achieved. 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.
- 12) The Project Sponsor shall comply with all TFCA Program requirements set forth in the Air District's "Board Adopted TFCA Regional Fund Policies and Evaluation Criteria for FYE 2017," which are incorporated therein as Appendix A, and made a part of the "*Application Guidance for Bicycle Facilities Grant Program for FYE 2017*," dated April 21, 2017, 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 TFCA Program funds for this Project in an amount not to exceed the TFCA Funds Awarded, in accordance with the formula set forth in Attachment B. In the event that the Total Project Cost is less than the amount listed in Attachment B, the Air District shall recalculate its contribution to the Project in accordance with the provisions of Section 3 of Attachment B.
- 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 approval of such invoice and in accordance with the Invoice and Payment Schedule set forth in Section 5 of Attachment B.
- 3) The Air District will provide timely notice to the Project Sponsor prior to conducting any audits of the Project. Also, the Air District makes reasonable efforts to conduct audits and inspections during normal business hours of the Project Sponsor.
- 4) The Air District will provide the Project Sponsor a copy of the fiscal audit of the Project as specified in California Health and Safety Code Section 44242.
- 5) The Air District will provide the Project Sponsor all applicable Air District-approved 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.8 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 ("Effective Date").
- 2) **Term:** The term of this Agreement shall commence on the Effective Date of this Agreement and end three (3) years from the later of either 1) the date of the Air District's final payment, or 2) the last day of the Project Operational Period, 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 require an Amendment under this Agreement.

- 4) **Project Liaison:** Within thirty (30) calendar 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) calendar 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) calendar days of 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) **Project Due Dates:** If any Project act or task must be performed by a specific deadline or date, which day falls on a Saturday or holiday (which includes Sunday), that act or task may be performed by the next business day, except where otherwise noted in Special Conditions, Attachment A.
- 7) **Breach and 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. The terminating party shall provide notice that is a minimum of forty-five (45) calendar days from the mailing date of the notice. However, if any payments are due to either party, this Agreement may not be terminated earlier than the date that all parties have received all payments they are due under this Agreement. In this circumstance, each party shall notify the other party of having received all payments due and the date of receipt. The notice of the termination shall be delivered as provided for in Section IV.5.

If the Project Sponsor terminates this Agreement, the Project Sponsor shall not be entitled to the full amount of the TFCA Funds Awarded. The Air District will calculate the amount of funds to which the Project Sponsor is entitled based on the Air District's determination of what funds are Eligible Costs and the formula set forth in Attachment B, Section 3. If the Air District has paid the Project Sponsor more than the amount of funds to which the Project Sponsor is entitled, the Project Sponsor shall reimburse any funds owed to the Air District prior to the effective date of termination, which may include all or a portion of the TFCA funds that Project Sponsor has already received but is not entitled to retain.

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 that the Project Sponsor may continue to perform for the specified period of time. The Air District will reimburse Project Sponsor for all Eligible Costs that were expended prior to the date specified in the notice of termination based on the formula set forth in Attachment B.

The Agreement cannot be terminated unless all payments have been fully made.

- B. **Breach.** In the case of Project Sponsor's breach of this Agreement, the Air District will deliver a written notice of breach. The notice will specify the nature of the breach and will direct the Project Sponsor to cease all work immediately upon receipt of the notice, except as specifically provided for in the notice. At its discretion, the Air District may allow the Project Sponsor to cure the breach; in that instance, the notice of breach will specify the date by which such breach must be cured ("Cure Period"). As one of its remedies, the Air District may terminate this Agreement. In that event, the notice of beach will specify the date of termination, which shall be no less than thirty (30) calendar days from the date of mailing of such notice of breach.

The notice of breach will also notify the Project Sponsor that the Project Sponsor may not be entitled to the full amount of the TFCA Funds Awarded. The notice will specify the amount of the TFCA Funds Awarded; the amount of funds the Air District has paid to date, if any; and that some or all of

the TFCA Funds Awarded may be subject to reimbursement to, or withholding by, the Air District. In no event shall the Agreement terminate prior to the Project Sponsor's reimbursement of any funds owed to the Air District.

- 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 the Air District, its officers, employees, agents, and successors-in-interest harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Project Sponsor, its officers, agents, or employees. The Project Sponsor shall require any third party who owns, operates, controls, or implements any portion of the Project to indemnify and hold the Air District, its officers, employees, agents, and successors-in-interest harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the third party, its officers, agents, or employees.
- 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, 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.
- 18) **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 IV.9 and II.5.
- 19) Each of the undersigned expressly affirms that he or she is authorized to execute this Agreement on behalf of the Party whom he or she represents.

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

SIGNATURES:

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

by: _____
Jeff Kay
Interim City Manager
City of San Leandro

Date: _____

Date: _____

Approved as to legal form:

Approved as to legal form (optional):

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

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

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**ATTACHMENT A
PROJECT INFORMATION**

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

1. **Project Number (Section IV.5):** 17R21
2. **Project Sponsor:** City of San Leandro
3. **Project Title:** San Leandro Bikeway Project
4. **Project Description:** Project Sponsor shall construct and maintain 1.7 miles of Class II and 7.8 miles of Class III bikeways in San Leandro, as further described in Sections 8, 9, and 10 of this Attachment A.
5. **Project Goal:** The goal of this Project is to reduce motor vehicle emissions and thereby improve air quality by constructing, installing and maintaining new bicycle facilities to help commuters and residents to mode shift to cycling and walking as alternatives to driving for short and first- and last-mile trips.
6. **Project Operational Period:** Seven (7) years starting from the date the last of the approved bicycle facilities is placed into public service.
7. **Project Schedule:**

<u>Milestone</u>	<u>Date</u>
Project Starts	Effective Date of Agreement
All bicycle facilities are placed into public service, start of the Project Operational Period	Within two (2) years from the Effective Date of Agreement
End of the Project Operational Period	Seven (7) years from the Project Operational Period start date

8. **Special Conditions (Sections II.1, II.4, IV.3):**
 - A. Project Sponsor shall use only State of California-licensed engineers and contractors or Project Sponsor’s qualified employees to perform the Project work.
 - B. Project Sponsor shall site, install, construct, and maintain the Project bicycle facilities in accordance with respective manufacturer’s specifications and requirements, applicable state, federal and local laws and regulations, standards, guidelines, and best practices, including the Americans with Disabilities Act (ADA) and the Caltrans California Highway Design Manual, Information Bulletins and Memos.
 - C. Project Sponsor shall maintain the bicycle facilities in good repair and ensure that they remain accessible to the public for the duration of the Project Operational Period.
 - D. Project Sponsor shall allow the Air District, and its authorized representatives, to collect and share usage information about the Project.

9. Approved Project Bicycle Facilities (Project Components)

Bikeway ID	Bikeway Class*	Bikeway Length (miles)	Eligible Costs	Maximum TFCA Funds Awarded	Percentage of Maximum TFCA Funds Awarded of Eligible Costs	Maximum TFCA Funds Awarded Per Mile
17R21-1	Class III	0.4	\$12,000	\$10,800	90.0000%	\$27,000
17R21-2	Class II	0.4	\$12,000	\$4,968	41.4000%	\$12,420
17R21-3	Class III	0.4	\$12,000	\$10,800	90.0000%	\$27,000
17R21-4	Class III	0.3	\$9,000	\$8,100	90.0000%	\$27,000
17R21-5	Class II	0.4	\$12,000	\$10,800	90.0000%	\$27,000
17R21-6	Class II	0.4	\$12,000	\$10,800	90.0000%	\$27,000
17R21-7	Class III	0.4	\$9,000	\$8,086	89.8450%	\$20,215
17R21-8	Class III	0.3	\$4,500	\$3,824	84.9778%	\$12,747
17R21-9	Class III	0.9	\$13,500	\$12,150	90.0000%	\$13,500
17R21-10	Class III	0.7	\$10,500	\$3,076	29.2953%	\$4,394
17R21-11	Class II	0.4	\$6,000	\$5,400	90.0000%	\$13,500
17R21-12	Class III	1.0	\$15,000	\$13,500	90.0000%	\$13,500
17R21-13	Class III	1.3	\$19,500	\$13,140	67.3847%	\$10,108
17R21-14	Class III	0.7	\$10,500	\$6,922	65.9239%	\$9,889
17R21-15	Class III	0.8	\$12,000	\$1,758	14.6500%	\$2,198
17R21-16	Class III	0.5	\$7,500	\$6,750	90.0000%	\$13,500
17R21-17	Class II	0.1	\$9,000	\$8,100	90.0000%	\$81,000
17R21-18	Class III	0.1	\$1,500	\$154	10.2667%	\$1,540
Total:		9.5	\$187,500	\$139,128		

*Bikeway class is defined in Chapter 1000 – Bicycle Transportation Design of the Caltrans Highway Design Manual

10. Maps showing location of approved Project Bicycle Facilities (Project Components):

a. Map for bikeway 17R21-1: Doolittle Dr. – Marina to Fairway



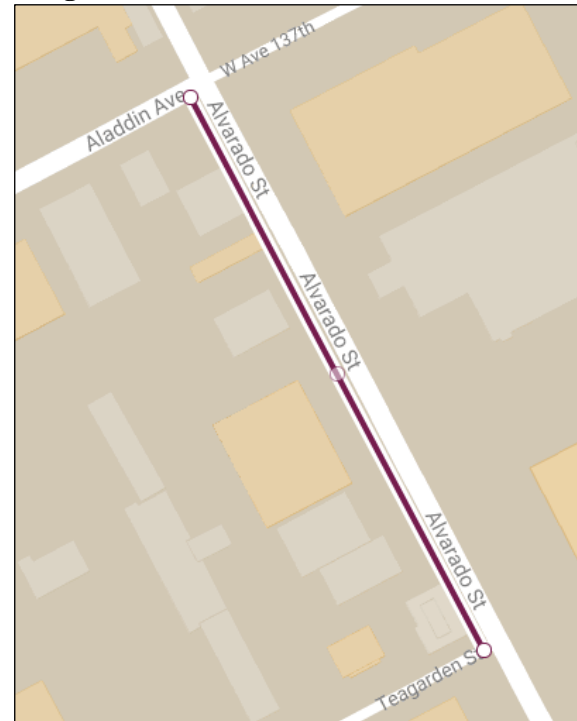
b. Map for bikeway 17R21-2: Monarch Bay Dr.-Marina Blvd. to Fairway Dr.



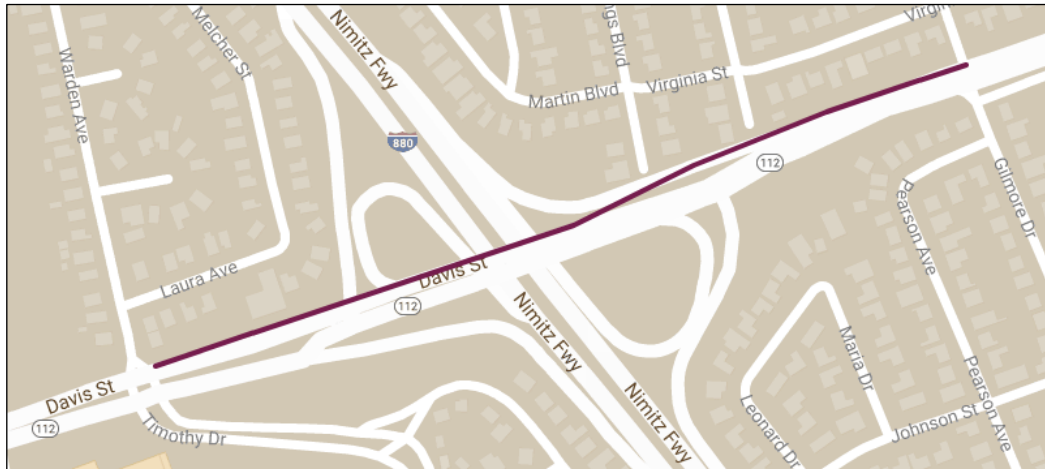
c. Map for bikeway 17R21-3: Merced St.-Fairway Dr. to Burroughs Ave.



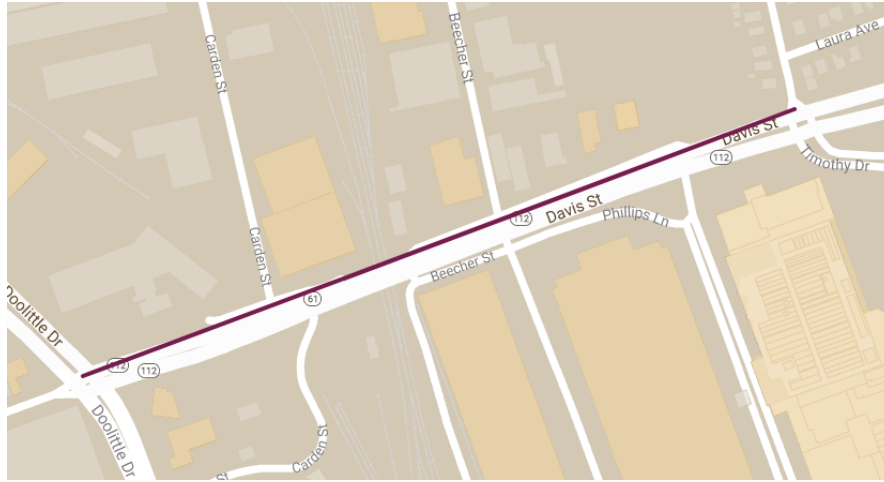
d. Map for bikeway 17R21-4: Alvarado St.-Aladdin Ave. to Teagarden St.



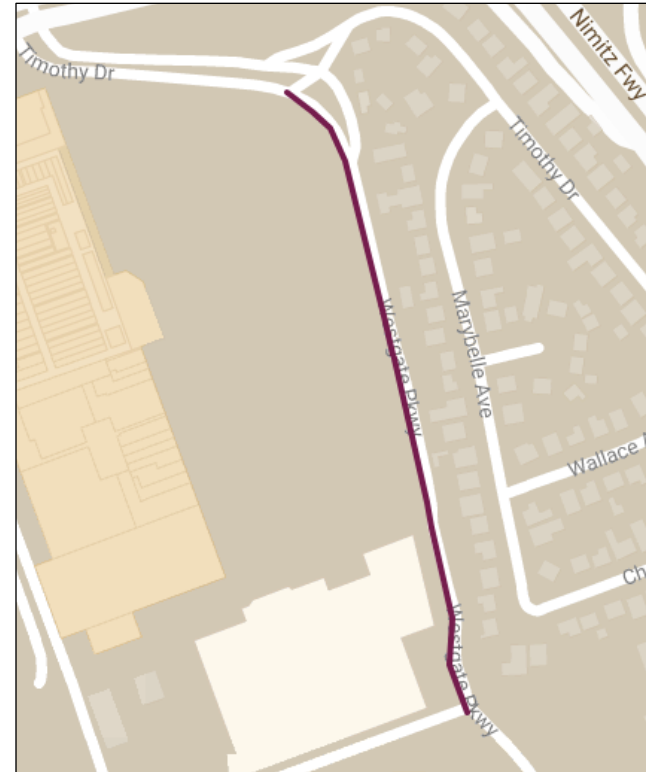
e. Map for bikeway 17R21-5: Davis St.-Frederick Rd. to Westgate Pkwy.



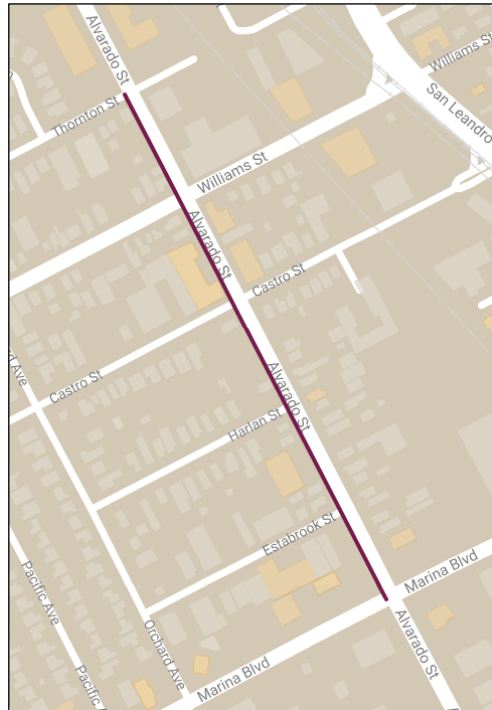
e. Map for bikeway 17R21-6: Davis St.-Westgate Pkwy to Doolittle Dr.



f. Map for bikeway 17R21-7: Timothy Dr./Westgate Pkwy-Davis St. to Walmart Driveway



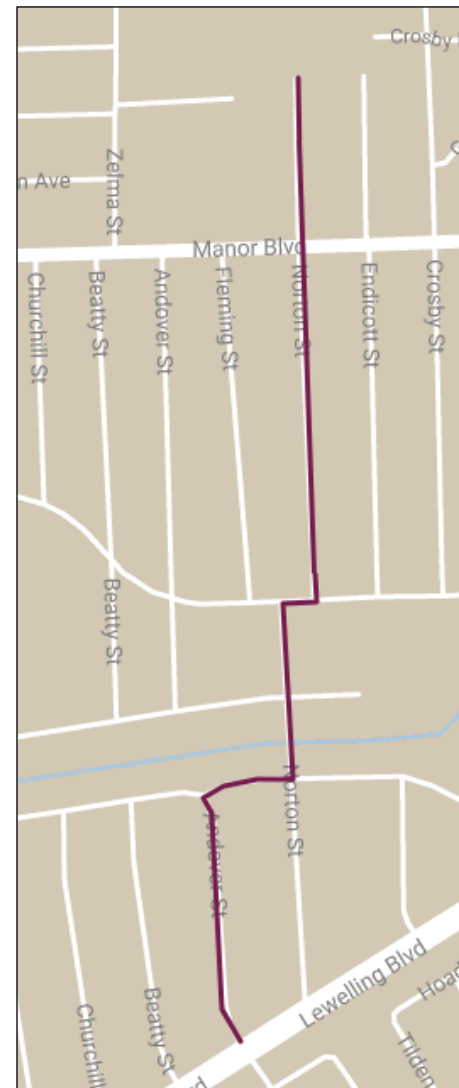
g. Map for bikeway 17R21-8: Alvarado St.-Thornton St. to Marina Blvd.



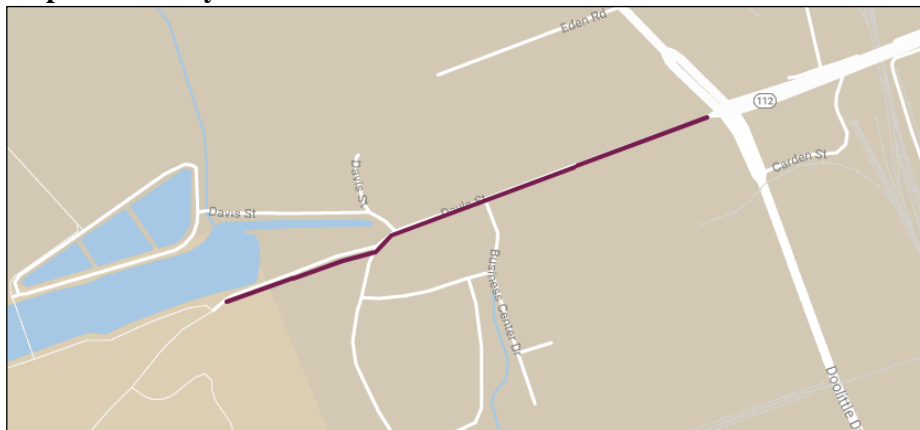
**h. Map for bikeway 17R21-9: Alvarado St., Portola Dr., Monterey Blvd.-
Fremont Ave. to Washington Ave.**



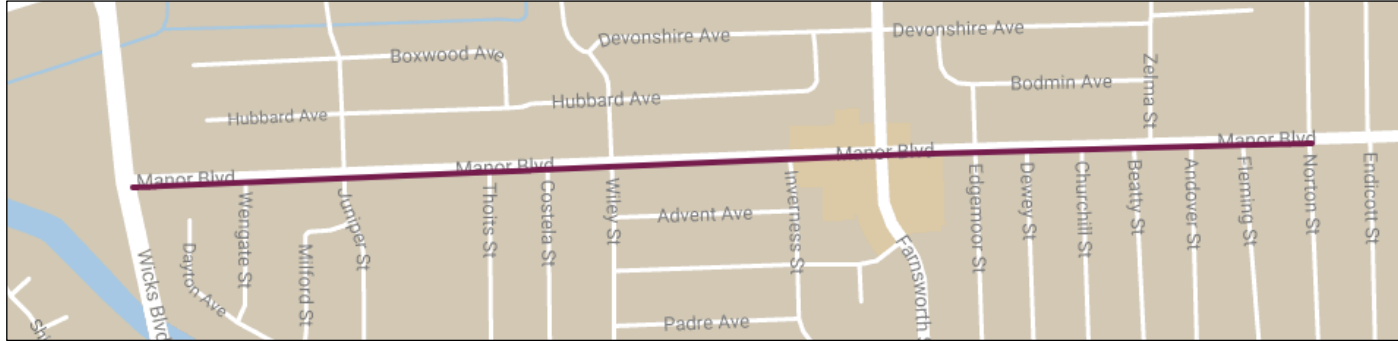
**i. Map for bikeway 17R21-10: Norton St., Andover-
Washington Manor park to Lewelling Blvd.**



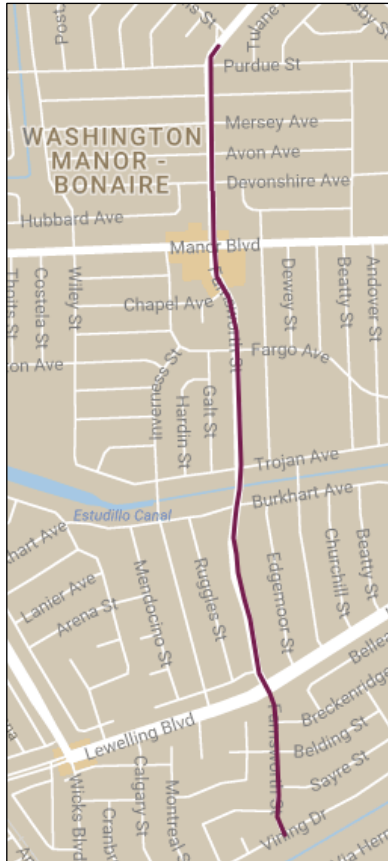
j. Map for bikeway 17R21-11: Davis St.-Doolittle to Western Termius



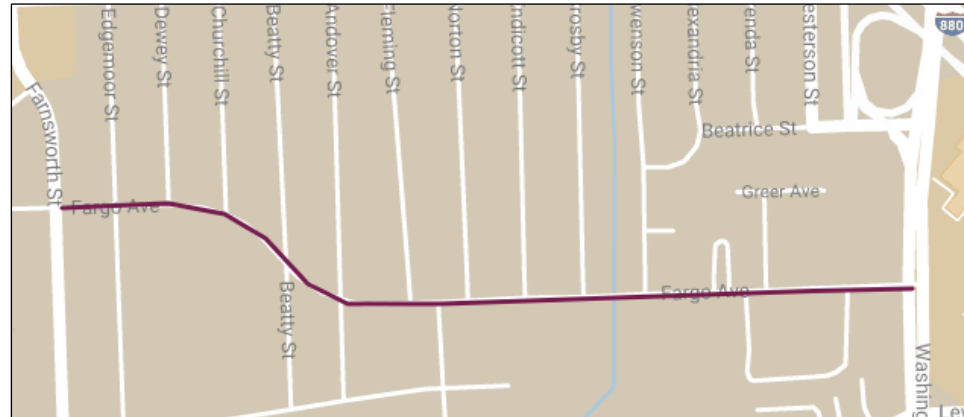
k. Map for bikeway 17R21-12: Manor Blvd.-Norton to Wicks Blvd.



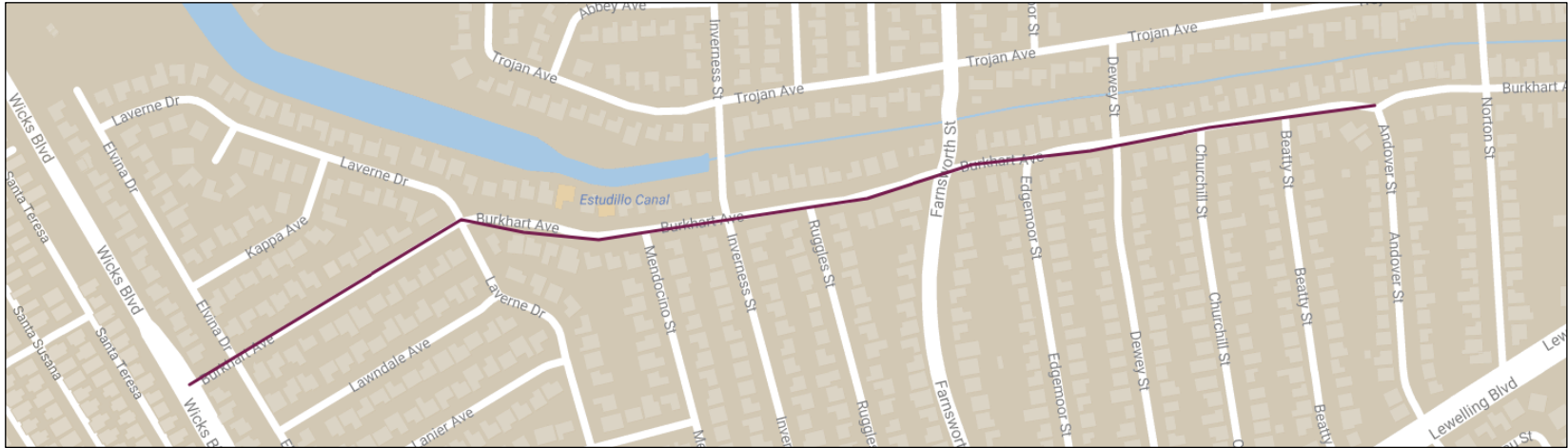
l. Map for bikeway 17R21-13: Floresta Blvd., Farnsworth-Corvallis to Vining Dr.



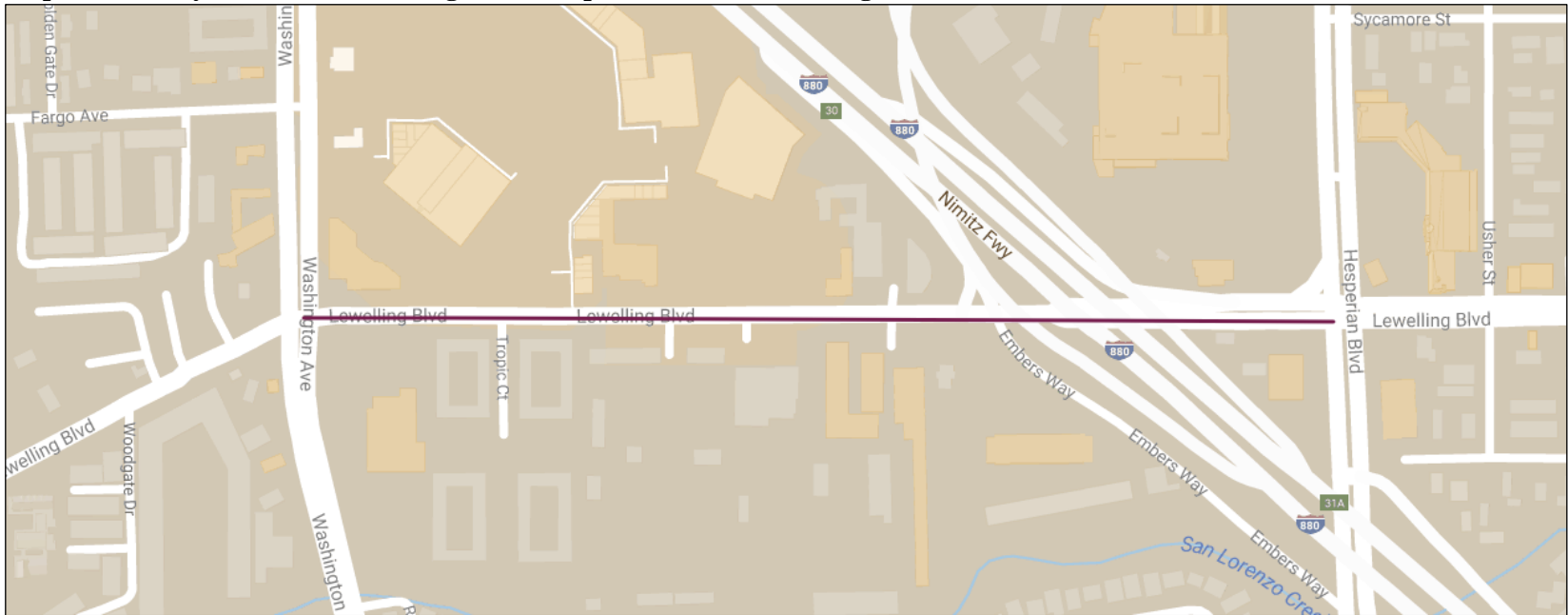
m. Map for bikeway 17R21-14: Fargo Ave.-Washington Ave. to Farnsworth St.



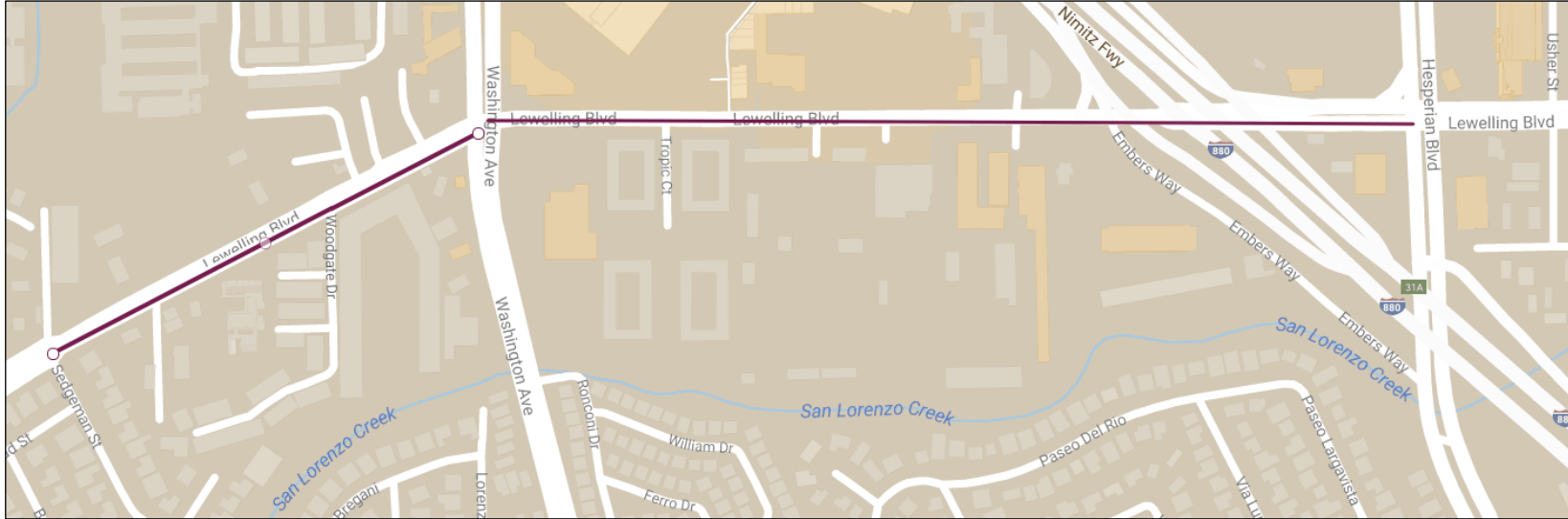
n. Map for bikeway 17R21-15: Buckhart Ave.-Norton St. to Wicks Blvd.



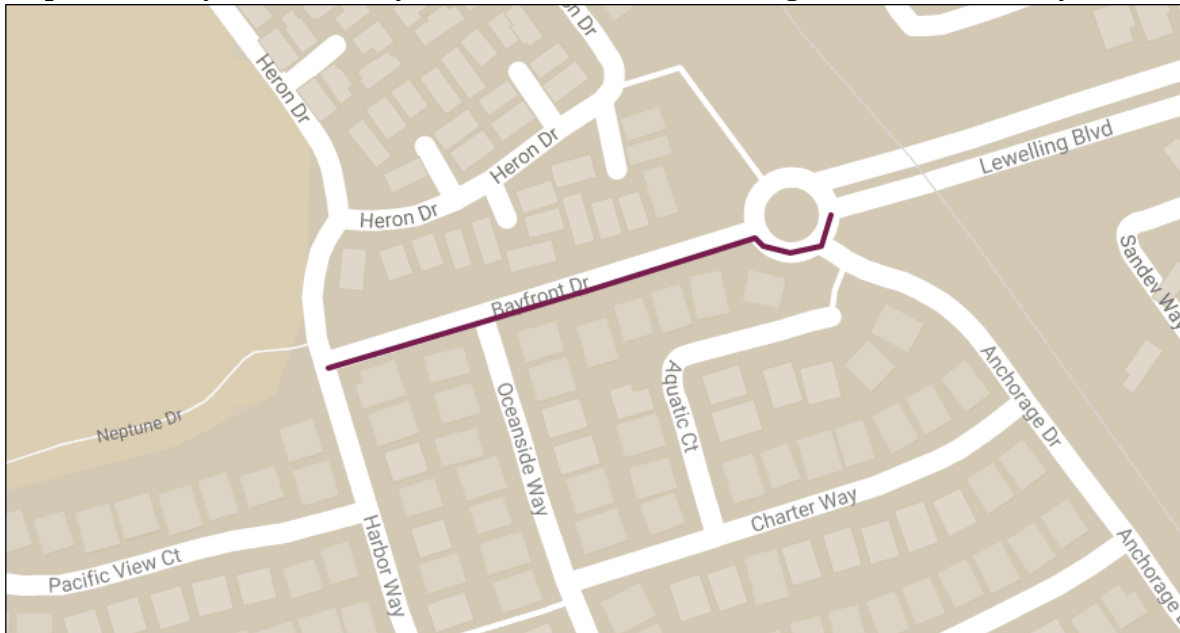
o. Map for bikeway 17R21-16: Lewelling Blvd.-Hesperian Blvd. to Washington Ave.



p. Map for bikeway 17R21-17: Lewelling Blvd.-Washington Ave. to 350 ft. to the west



q. Map for bikeway 17R21-18: Bayfront Dr.-RR Tracks/Lewelling Blvd. to Harbor Way



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**ATTACHMENT B
PROJECT BUDGET AND PAYMENT PROCESS**

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

1. **Total Project Cost (Section II.2):** \$187,500

The Total Project Cost is the sum of the Eligible Costs that are listed in Section 4 of Attachment B.

2. **Matching Funds (Sections II.2, 3):** The Project Sponsor is responsible for all project costs that are not covered by the TFCA Funds Awarded.

3. **TFCA Funds Awarded (Sections II.2, II.11, III.1, IV.7):** \$139,128

If the scope of the Project is modified, the Air District will recalculate the Maximum TFCA Funds Awarded based on the actual length constructed and the Maximum TFCA Funds Awarded Per Mile as specified in Section 9 of Attachment A for each of the Project bikeways. The Air District will cancel this Agreement if the amount of TFCA Funds Awarded is reduced to below \$10,000.

If the actual cost of the Project is less than the Total Project Cost, the Air District will recalculate the Maximum TFCA Funds Awarded based on the Percentage of Maximum TFCA Funds Awarded of Eligible Costs specified in Section 9 of Attachment A for each of the Project components.

If this Agreement is terminated pursuant to Section IV.7 of this Agreement, the Air District will calculate the final TFCA Funds Awarded, which is the amount of funds to which the Project Sponsor is entitled, by first determining the TFCA Funds Awarded based on the actual length constructed, the Maximum TFCA Funds Awarded, the Percentage of Maximum TFCA Funds Awarded of Eligible Costs, and the Maximum TFCA Funds Awarded Per Mile, as specified in Section 9 of Attachment A, and the actual eligible project cost, for each of the approved bicycle facility components, multiplying the ratio of actual Project Operational Period completed, which is the number of days after the start date of the Project Operational Period, during which the Project is in compliance with the Agreement, to the total number days in the Project Operational Period specified in Section 6 of Attachment A:

$$\text{Final TFCA Funds Awarded} = \text{TFCA Funds Awarded} \times (\text{number of days of actual Project Operational Period completed} \div 2,555 \text{ days})$$

4. **Eligible Costs:** Eligible Costs may only be incurred on or after the Effective Date of this Agreement and prior to the start date of the Project Operational Period, and must be directly and solely related to the implementation (site preparation, installation and construction) of the Project.

For the purpose of determining eligibility of Project costs, the date for equipment costs incurred shall be the date the Project Sponsor submits a signed purchase order or other document that commits the order, and for direct labor costs incurred shall be the date such services were rendered.

Eligible Costs include:

- A. Costs for the purchase of equipment and material(s) (i.e., concrete, asphalt, and other materials) including tax, and shipping fees;
- B. Equipment rental costs (i.e., dump truck, concrete road paver, and other equipment) including tax, and shipping fees;
- C. Documented labor charges (salaries, wages, and benefits);
- D. Contractor labor charges; and
- E. Permit fees.

Costs that are not included in the list above are not Eligible Costs, for example:

- A. Costs related to maintenance, repairs, rehabilitation, or upgrade of existing bicycle facilities;
- B. Costs related to any other work performed or equipment purchased that is not required for the Project;

- C. Operating costs (e.g., salaries after the Project is open for public use, ongoing training/support, advertising, and rent/leases);
- D. Costs related to planning activities not directly related to the implementation of the Project or feasibility studies; and
- E. Indirect and administrative costs.

5. **Invoice and Payment Schedule (Section III.2):** The Project Sponsor shall submit a single invoice (Final Invoice) along with the Expenditure Report as specified in Attachment C.

The Final Invoice shall be prepared on the Air District's General Invoice Form and shall include:

- A. The Project Number;
- B. An itemized list of all expenses incurred by the Project Sponsor, specifying which are Eligible Costs and dates labor was performed and equipment was purchased;
- C. The total funds being requested;
- D. Supporting documentation of Project Sponsor's payments made for goods and services incurred, such as copies of receipts for services paid; invoices from vendors, consultants, or contractors, with an explanation of the goods or services provided for the Project; and time sheets documenting hourly labor costs incurred.

The Air District will not process the Final Invoice until all current Project reporting obligations are fulfilled.

The Air District shall retain fifteen percent (15%) of the final TFCA Funds Awarded until the Air District receives and approves the Final Report specified in Attachment C.

ATTACHMENT C
MONITORING OF PROJECT PERFORMANCE

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

1. **Semi-annual Reports (Section II.6):** 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 sixty (60) calendar days after the Effective Date, every April 15 and October 15 until the Expenditure Report has been submitted.

2. **Expenditure Report (Sections II.6, II.8):** The Project Sponsor shall submit an Expenditure Report to the Air District. Expenditure Report shall be prepared on the Air District's Expenditure Report form.

Due Date: By April 1, 2020

The Expenditure Report shall include the following information:

- A. A table that contains the applicable information for each of the Project bicycle facilities:
 - a. Activity centers or transit stop serviced by, and distance from, the bicycle facility;
 - b. Date construction or installation completed and bicycle facilities are placed into public service;
 - c. For bikeways: length, "cross section", page and section numbers of Chapter 1000 of the California Highway Design Manual pertaining to the design of the Project bikeways, and two (2) or more days of pre-project bicycle count data using methodology and count forms from the National Bicycle and Pedestrian Documentation Project;
 - d. For bicycle racks and lockers: address or exact location (i.e. cross street), physical features and dimensions, security features and mechanism for gaining access, and maximum number of bicycles that can be accommodated per locker/rack at any given time.
 - B. Maps showing the location of each of constructed Project bicycle facilities.
 - C. Photographs that demonstrate that all the bicycle facilities are installed or constructed.
 - D. Documentation that the Project Sponsor has acknowledged the Air District as a Project funding source, such as photographs of the funded equipment with Air District logos attached; documentation of use of the Air District's logo on promotional materials, brochures, handbooks, and maps that promote or inform the public about the Project services; and copies of press releases and newsletter articles related to the Project.
 - E. A discussion of any pertinent issues or problems experienced with the Project to date.
3. **Final Report (Section II.6):** The Project Sponsor shall submit a Final Report to the Air District. Final Report shall be prepared on the Air District's Final Report form.

Due Date: By April 1, 2021

The Final Report shall be prepared and submitted after the bicycle facilities have been in service for a minimum of 12 months and shall include the following information:

- A. A description of the Project;
- B. A discussion of any pertinent issues or problems experienced with the Project to date;
- C. A description of the use of each of the Project bicycle facilities;
- D. For bikeways: two (2) or more days of bikeway post-project bicycle count data using methodology and count forms from the National Bicycle and Pedestrian Documentation Project.

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**ATTACHMENT D
INSURANCE REQUIREMENTS**

Verification of Coverage

Project Sponsor shall provide, and require any sub-awardee to 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 thirty (30) calendar days advanced notice of cancellation from the insurers.

The Project Sponsor may submit evidence that listed insurance is not required for the Project.

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 Project Operational Period, Project Sponsor shall obtain and maintain in full force and effect the insurance as set forth below, and shall require any third to obtain and maintain in full force and effect the insurance as set forth below. Project Sponsor must initial next to each insurance requirement to confirm understanding and Agreement with the applicable Project insurance requirements:

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.

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.

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.

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