

**TRANSPORTATION FUND FOR CLEAN AIR FUNDING AGREEMENT BETWEEN  
WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE  
AND  
CITY OF SAN PABLO**

**WCCTAC TFCA Project 19CC01-EV01**

This AGREEMENT is made and entered into as of December 1, 2018, (the “Effective Date”) by and between the West Contra Costa Transportation Advisory Committee (“WCCTAC”), a Joint Exercise of Powers Agency organized pursuant to California Government Code Section 6500, *et. seq.*, among the cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo, the County of Contra Costa, and the transit agencies AC Transit, Bay Area Rapid Transit District, and Western Contra Costa Transit Authority, with offices located at 6333 Potrero Avenue, Suite 100, El Cerrito, CA 94530, and the City of San Pablo, a municipal corporation.

WCCTAC and the City of San Pablo (“Agency”) shall sometimes be referred to collectively herein as the “Parties” and individually as a “Party.”

**RECITALS**

**WHEREAS**, California Health and Safety Code Sections 44223 and 44225 authorize the Bay Area Air Quality Management District (hereinafter referred to as “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; and

**WHEREAS**, 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”); and

**WHEREAS**, 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; and

**WHEREAS**, Agency affirms that the Project has not commenced, would not have otherwise commenced without TFCA Program funding and will result in surplus emission reductions; and

**WHEREAS**, WCCTAC is authorized to identify projects that are eligible for funding from the TFCA Program and to disburse TFCA funds to such projects; and

**WHEREAS**, Agency’s Project, as further described in the Scope of Work, attached as Attachment A, which is incorporated herein (“Project”), is eligible for TFCA funds; and

**WHEREAS**, 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, the Parties hereby agree as follows:

## **SECTION 1 SCOPE OF WORK**

- 1.1 Scope of Work.** Subject to the terms and conditions set forth in this Agreement, Agency shall perform or cause to perform the work described in the Scope of Work attached as Attachment A, and incorporated herein, and all applicable provisions of federal, state, and local law and WCCTAC TFCA Project 19CC01-EV01 regulations at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Attachment A, the Agreement shall prevail. 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 Project's TFCA Funds Awarded, as specified in Attachment B.
- 1.2 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end three (3) years from the later of either 1) the date of WCCTA'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. The time provided to Agency to complete the services required by this Agreement shall not affect WCCTAC's right to terminate the Agreement.
- 1.3 Standard of Performance.** Agency shall perform or cause to be performed all services required in Exhibit A according to the standards observed by a competent practitioner of the profession in which Agency's consultants or contractors are engaged.
- 1.4 Assignment of Personnel.** Agency shall retain only competent personnel to perform the Project to this Agreement. In the event that WCCTAC, in its sole discretion, desires the reassignment of any such persons, Agency shall, upon receiving notice from WCCTAC, of such desire of WCCTAC, reassign such person or persons.
- 1.5 Time is of the Essence.** Time is of the essence. Agency shall devote such time to the performance of the Project pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, Exhibit A.
- 1.6 Public Works and Department of Industrial Relations Requirements.** Because the Project and Scope of Services described in Exhibit A may include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the Project may constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. In accordance with California Labor Code Section 1773.2, WCCTAC notifies Agency that this Project is subject to the general prevailing wages in the locality in which the services described in Exhibit A are to be performed. Agency shall cause to be paid prevailing wages for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which Agency shall make available on request by contractors and consultants. The Agency, its consultant and contractors engaged in the performance of the Scope of Services described in Exhibit A shall pay no less than these rates to all persons engaged

in performance of the services described in Exhibit A. Agency is also required to comply all relevant provisions of the Labor Code applicable to public works, including enforcement of the contractor registration requirements of the California State Department of Industrial Relations.

### **1.7 Agency Obligations.**

- a. Agency shall pay all Project costs necessary to complete the Project prior to submission of the Final Invoice to WCCTAC for reimbursement. WCCTAC's funding obligation under this Agreement is limited to partial 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. Agency shall be solely responsible for all costs that exceed the TFCA Funds Awarded.
- b. Agency 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.
- c. Agency 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 1.7(f) below. Agency shall keep Project Records in one central location for a period of three (3) years after the later of a) the date of 511CC's payment, b) the end of the Project Operational Period, or c) the end of the Term of this Agreement.
- d. Agency shall submit the reports specified in Attachment C to WCCTAC by the due dates specified in Attachment C.
- e. Agency shall implement and operate the Project for the duration of the Project Operational Period. Agency may not make any changes to the operational status of the Project without the prior approval of WCCTAC. 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 or component 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 Agency intends to make a change to the Project's operational status, Agency must seek a modification of this Agreement in advance to allow for a change.
- f. Agency shall acknowledge, and require any third party that implements any portion of the Project ("Sub-awardee") to also acknowledge, WCCTAC as a Project funding source at all times throughout the Project Operational Period as specified in Attachment A. Agency shall use, and require any Sub-awardee to use, the 511CC, Air District, and Contra Costa Transit Authority approved logos for the Project also. The required documentation and materials are specified in Attachment C.

- g. Beginning when the Project Starts and throughout the Project Operational Period, Agency 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. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements is a breach of this Agreement.
- h. 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.), Agency 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.
- i. Agency 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.

## **1.8 WCCTAC Obligations**

- a. WCCTAC 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, 511CC shall recalculate its contribution to the Project in accordance with the provisions of Section 3 of Attachment B.
- b. WCCTAC will endeavor to pay the undisputed amount of an approved invoice within thirty (30) calendar days of the date of WCCTAC's approval of such invoice and in accordance with the Invoice and Payment Schedule set forth in Section 5 of Attachment B.
- c. WCCTAC will provide timely notice to Agency prior to conducting any audits of the Project. WCCTAC will make reasonable efforts to conduct audits and inspections during normal business hours of Agency.
- d. WCCTAC will provide Agency with a copy of any fiscal audit of the Project.
- e. WCCTAC will provide the Agency all applicable WCCTAC-approved reporting and invoice forms.
- f. WCCTAC will make its logo, as well as the Air District's and CCTA's logos, available to Agency solely for use to fulfill Agency's obligation under Section 1.7(f) of this Agreement.

## SECTION 2 FUNDING OBLIGATIONS

- 2.1 Funding.** WCCTAC hereby agrees to fund Agency's Project in a sum not to exceed six thousand dollars, (\$6,000) notwithstanding any contrary indications that may be contained in Agency or any third-party proposal for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Agency's Scope of Service, attached as Attachment A, regarding the amount of compensation, the Agreement shall prevail.

The payments specified herein shall be the only payments from WCCTAC to Agency pursuant to this Agreement. Agency shall submit all invoices to WCCTAC in the manner specified herein. Agency shall not bill WCCTAC for duplicate services performed by more than one person.

WCCTAC and Agency acknowledge and agree that funding paid by WCCTAC to Agency under this Agreement is based upon Agency's estimated costs of funding Agency's Project, including salaries and benefits of employees, consultants and contractors of Agency. WCCTAC has no responsibility for such contributions beyond the amount set forth under this Agreement.

- 2.2 Invoices.** Agency shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost it incurs for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
- a. Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
  - b. The beginning and ending dates of the billing period;
  - c. A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion.
- 2.3 Monthly Payment.** WCCTAC shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. WCCTAC shall have 60 days from the receipt of an invoice that complies with all of the requirements above to pay Agency.
- 2.4 Total Payment.** In no event shall Agency submit any invoice for an amount in excess of the maximum amount of compensation provided in Section 2.1, above, either for a task or for the entire Agreement, unless the Agreement is modified in writing prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Reimbursable Expenses.** Reimbursable expenses shall not include a mark-up and are billed as a direct costs. In no event shall expenses be advanced by WCCTAC to the

Agency. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

- 2.6 Payment of Taxes.** Agency and its contractors and consultants are solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 Payment upon Termination.** In the event that WCCTAC or Agency terminates this Agreement pursuant to Section 3.4, WCCTAC shall compensate the Agency for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Agency shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.8 Authorization to Perform Services.** The Agency is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from WCCTAC's Executive Director or his designee.
- 2.9 Funding Request.** Agency shall submit the request for funds for specific components of the Project, detailing project scope, schedule and proposed funding plan, at least four (4) months in advance of the initial anticipated cash flow need or reimbursement; to submit subsequent requests at least two (2) months in advance of anticipated need; and to apply any funds received under this Agreement to the Project consistent with the terms and conditions of an approved funding appropriation.
- 2.10 Progress Reports.** Progress reports shall be submitted along with the funding request in Section 2.9. Agency shall submit progress reports in a form satisfactory to WCCTAC based on the cost for services performed.
- 2.11 Records Keeping.** All reports, studies, plans, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Agency prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be made available to WCCTAC at WCCTAC's request.
- 2.12 Agency Financial Records.** Agency shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to WCCTAC under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Agency to this Agreement.
- 2.13 Inspection and Audit of Records.** The Agency shall allow WCCTAC and its authorized representatives to conduct performance and fiscal audits of the Project at any time during the Term of this Agreement. The Agency shall cooperate with such audits and shall make available to WCCTAC all records relating to Project performance and expenses incurred in the implementation of the Project. Any records or documents that Sections 2.11 and 2.12 of this Agreement requires Agency to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request by WCCTAC. Under California Government Code

Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of WCCTAC or as part of any audit of WCCTAC, for a period of 3 years after final payment under the Agreement.

### **SECTION 3 GENERAL PROVISIONS**

- 3.1 Funding Limitations and Contingencies.** Funding of Agency's Project is strictly contingent upon WCCTAC having received, appropriated and allocated sufficient TFCA Funds for the Agency's Project. Funding is also contingent upon WCCTAC receiving a fully executed Agreement from Agency.
- 3.2 Acceptance.** Upon completion of the Project, Agency shall submit a report documenting that the Project is substantially complete. Agency shall be responsible for filing the appropriate notice of completion for the Project and shall provide a copy to WCCTAC for its records.
- 3.3 Alternative Dispute Resolution.** All disputes that arise in connection with interpretation or performance of the Agreement shall first attempted to be resolved informally by the Parties. If not resolved, prior to instituting legal action, the Parties agree to participate in mediation with a mediator jointly selected by the Parties. If the dispute is not resolved by mediation, then the Parties will retain any and all remedies that they otherwise would have at law or equity.
- 3.4 Termination.** This Agreement shall be subject to termination as follows:
- 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 3.7 below. If Agency terminates this Agreement, Agency shall not be entitled to the full amount of the TFCA Funds Awarded. In the event WCCTAC has paid Agency more than the amount of funds to which Agency is entitled, Agency shall reimburse any funds owed to WCCTAC prior to the effective date of termination, which may include all or a portion of the TFCA Funds that Agency has already received but is not entitled to retain. If WCCTAC 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 WCCTAC has specified in the notice of termination that Agency may continue to perform for the specified period of time. The Agreement cannot be terminated unless all payments have been fully made.

- b. **Breach.** In the case of Agency's breach of this Agreement, WCCTAC will deliver a written notice of breach. The notice will specify the nature of the breach and will direct Agency to cease all work immediately upon receipt of the notice, except as specifically provided for in the notice. At its discretion, WCCTAC may allow Agency to cure the breach; in that instance, the notice of breach will specify the date by which such breach must be cured (the "Cure Period"). As one of its remedies, WCCTAC may also include termination of this Agreement. In that event, the notice of breach 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 specify the amount of the TFCA Funds Awarded that WCCTAC has paid (if any); the amount of funds Agency must reimburse WCCTAC, if any; and the reimbursement payment due date. In no event shall the Agreement terminate prior to Agency's reimbursement of any funds owed to WCCTAC. WCCTAC will calculate the amount of funds owed based the formula set forth in Attachment B.
- c. By mutual consent of both Parties, this Agreement may be terminated at any time.

**3.5 Waiver of Claims Against WCCTAC.** Agency waives all claims by Agency, its directors, supervisors, officers, employees, or agents against WCCTAC, its commissioners, officers, and/or employees for damages, loss, injury and/or liability, direct or indirect, resulting from Agency's participation in the Project. Agency's waiver shall not apply to liability arising from and caused by the sole negligence or willful misconduct of WCCTAC, its commissioners, officers, and/or employees.

**3.6 Indemnity.** Agency shall defend, indemnify and hold harmless WCCTAC, its governing board, member agencies, officers, and employees from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Agency's performance of any work under this Agreement, except such Liability caused by the sole negligence or willful misconduct of WCCTAC. With respect to third party claims against Agency, waives any and all rights of any type to express or implied indemnity against WCCTAC. Agency shall require any third party who owns, operates, controls, or implements any portion of the Project to defend, indemnify and hold harmless WCCTAC, its governing board, member agencies, officers, and employees from and against any and all Liability of every nature arising out of or in connection with the third party's performance of any work under this Agreement, except such Liability caused by the sole negligence or willful misconduct of WCCTAC.

**3.7 Notices.** All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing. Notice 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). Each Party shall promptly inform the other of any changes for notice. All correspondence shall reference the Project Number. The place for delivery of all notices under this Agreement shall be as follows:

If to WCCTAC:



John Nemeth, Executive Director  
West Contra Costa Transportation Advisory Committee  
6333 Potrero Avenue, Suite 100  
El Cerrito, CA 94530

with a Copy to:

Kristopher J. Kokotaylo, Legal Counsel  
Meyers Nave Riback Silver & Wilson  
555 12th Street, Suite 1500  
Oakland, CA 94607

If to Agency:

Jill Mercurio, Public Works Director  
City of San Pablo, Public Works Department  
13831 San Pablo Ave.  
San Pablo, CA 94806

- 3.8 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 and instruments, as shall be reasonably requested to carry out the provisions, intent, and purpose of this Agreement.
- 3.9 Integration.** This Agreement, including all attachments hereto, represents the entire agreement of the Parties with respect to the subject matter. No representations, warranties, inducement, or oral agreements have been made by any of the Parties except as expressly set forth in this Agreement.
- 3.10 Governing Law.** The laws of the State of California shall govern this Agreement. Agency and any consultants and contractors shall comply with all laws, including, but not limited, all statutes, regulations, local ordinances, and decisional authority, applicable to the Scope of Work hereunder. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Agency and any subcontractors shall comply with all applicable rules and regulations to which WCCTAC is bound by the terms of such fiscal assistance program.
- 3.11 Amendment.** This Agreement may not be changed, modified, or rescinded except by the written approval of the legislative bodies of each Party, and any attempt of oral modification of this Agreement shall be void and of no effect.
- 3.12 Independent Contractor.** Agency and WCCTAC render their services under this Agreement as independent contractors. None of the agents or employees of either shall be agents or employees of the other.
- 3.13 Assignment.** This Agreement may not be assigned, transferred, hypothecated, or pledged by any Party without the express written consent of the other Party.

- 3.14 Successors and Assigns.** This Agreement shall be binding upon the successors, assignees, or transferees of WCCTAC or Agency as the case may be. This provision shall not be constructed as an authorization to assign, transfer, hypothecate, or pledge this Agreement other than as provided above.
- 3.15 Severability.** Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either Party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, so long as the remainder, absent the excised portion, can be reasonably interpreted to give effect to the intentions of the parties.
- 3.16 Jurisdiction and Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 3.17 Attorney's Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 3.18 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 3.19 Counterparts.** This Agreement may be executed in counterparts.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed and attested by their respective officers, duly authorized so to act, as of the date set forth in the first paragraph of this Agreement.

**City of San Pablo**

**West Contra Costa Transportation  
Advisory Committee**

---

Jill Mercurio, Public Works Director

---

John Nemeth, Executive Director

Approved as to Form:

Approved as to Form:

---

Agency Counsel

---

Kristopher Kokotaylo, Legal Counsel