

**COOPERATIVE FUNDING AGREEMENT BETWEEN  
WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE  
AND  
CONTRA COSTA COUNTY**

**San Pablo Avenue Rodeo to Crockett Complete Streets/Bay Trail Gap Closure**

This AGREEMENT is made and entered into as of November 12, 2024, (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 Contra Costa County, a political subdivision of the State of California (“Agency”). WCCTAC and Agency are sometimes referred to herein together as the “Parties,” and each as a “Party.”

**RECITALS**

**WHEREAS**, the members of WCCTAC signed a Master Cooperative Agreement pertaining to the 2019 Subregional Transportation Mitigation Fee Program Update (“2019 STMP”) in West Contra Costa County, including a list of twenty specific projects and the STMP funding commitments to those projects; and

**WHEREAS**, Agency’s Project, the San Pablo Avenue Complete Streets Projects, Project 1a (“Project”), as further described in the Scope of Work, attached as Exhibit A, which is incorporated herein (the “Scope of Work”), is one of the twenty projects identified in the 2019 STMP; and

**WHEREAS**, plans, studies, and cost estimates for Agency’s Project are eligible uses for the STMP funds; and

**WHEREAS**, at its September 29, 2023 meeting, the WCCTAC Board of Directors approved an appropriation of one million, two-hundred thousand dollars (\$1,200,000) in STMP funds to Agency towards the Project.

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 the performance of the work described in the Scope of Work, 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 Exhibit A, the Agreement shall prevail.

- 1.2 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2028, and Agency shall complete the work described in the Scope of Work on or before that date, unless the term of the Agreement is otherwise terminated or extended. The time provided to Agency to complete the services required by this Agreement shall not affect WCCTAC’s right to terminate the Agreement in accordance with Section 3.4.
- 1.3 Standard of Performance.** Agency shall perform or cause to be performed all services required in the Scope of Work 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 assign only competent Agency personnel to oversee the completion of the Project. 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 to the extent permitted under applicable laws.
- 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.
- 1.6 Public Works and Department of Industrial Relations Requirements.** Because the Project and Scope of Work 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 constitutes a public work within the definition of Section 1720(a)(1) of the California Labor Code. In accordance with California Labor Code Section 1773.2, WCCTAC hereby 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. To the extent required by law, the Agency shall require its consultant and contractors engaged in the performance of the Scope of Work described in Exhibit A to 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 applicable provisions of the Labor Code applicable to public works, including enforcement of the contractor registration requirements of the California State Department of Industrial Relations.

## SECTION 2 FUNDING OBLIGATIONS

- 2.1 Funding.** In accordance with the WCCTAC Master Cooperative Agreement pertaining to the 2019 STMP, and subject to available funding, WCCTAC hereby agrees to fund Agency’s Project in a sum not to exceed one million, two-hundred thousand dollars (\$1,200,000) 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 Work, attached as Exhibit 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 Section 2.1.

- 2.2 Invoices.** Agency shall submit invoices, not more often than once each 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;
  - d. Such other information as reasonably requested by WCCTAC.
- 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 Project, 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 cost. 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 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.** During the term of this Agreement and for three years following its expiration or termination, 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. During the term of this Agreement and for three years following its expiration or termination, all records related to funds paid by WCCTAC under this Agreement or otherwise pertaining to this Agreement, including all electronic records, shall be made available to Agency at Agency's request. The Parties' obligations under this Section 2.11 shall survive for three years following the termination or expiration of this Agreement.
- 2.12 Agency Financial Records.** Each 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 connected with the Project, including amounts charged to or disbursed by 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. The Parties' obligations under this Section 2.12 shall survive for three years following the termination or expiration of this Agreement.
- 2.13 Inspection and Audit of Records.** 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 either Party. 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. The Parties' obligations under this Section 2.13 shall survive for three years following the termination or expiration of this Agreement.

### **SECTION 3 GENERAL PROVISIONS**

- 3.1 Funding Limitations and Contingencies.** If, in response to the Request for Proposal(s), it appears that Project costs including contingency, will exceed available funding to Agency, which includes the funding set forth in Section 2.1, the Parties agree that they shall meet to revise Scope of Work to meet available funding. Funding of Agency's Project is strictly contingent upon WCCTAC having received, appropriated, and allocated sufficient STMP funds for the Agency's Project. Funding is also contingent upon this Agreement being fully executed by both WCCTAC and Agency. If the Scope of Work cannot be revised to meet available funding, then WCCTAC reserves the right to terminate this Agreement, or suspend funding, until such time that additional STMP funds are available and allocated to Agency's Project, or Agency secures additional funding other than STMP funds.
- 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. Either Party may terminate this Agreement at any time for cause pursuant to a power created by the Agreement or by law, other than for breach, by giving written notice of termination to either Party, which notice shall specify both the cause and the effective date of termination. Notice of termination under this provision shall be given at least ninety (90) days before the effective date of such termination. All obligations that are still executory will be discharged but any right based upon prior breach or performance shall survive.
  - b. This Agreement may be terminated by a Party for breach of any obligation, covenant, or condition by the other Party, upon notice to the breaching Party. With respect to any breach that is reasonably capable of being cured, the

breaching Party shall have thirty (30) days from the date of the notice to initiate steps to cure. If the breaching Party diligently pursues cure, such Party shall be allowed a reasonable time to cure, not to exceed sixty (60) days from the date of the initial notice, unless a further extension is granted by the non-breaching Party. On termination, the non-breaching Party retains the same rights as a Party exercising its right to terminate under the provisions of Section 3.4, except that the non-breaching Party also retains any remedy for breach of the whole contract or any unperformed balance to the extent permitted by law.

- c. By mutual written agreement of both Parties, this Agreement may be terminated at any time.
- d. This Agreement may be terminated by WCCTAC if funding for Agency's Project is no longer available by operation of law
- e. In no event shall the Parties terminate this Agreement if such termination would conflict with, cause a default under, or otherwise violate the terms or conditions of any revenue bonds.

**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, employees, or agents 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, employees, or agents.

**3.6 Indemnity.** Agency shall defend, indemnify and hold harmless WCCTAC, its governing board, member agencies, officers, employees, and agents from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, reasonable 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 any claims brought against Agency by a third party, Agency waives any and all rights of any type to express or implied indemnity by WCCTAC under this Agreement.

**3.7 Notices.** All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- a. When delivered by first class mail, postage prepaid, notice shall be deemed delivered three (3) business days after deposit in the United States Mail.
- b. When mailed by certified mail with return receipt requested, notice is effective upon receipt if delivery is confirmed by a return receipt.
- c. When delivered by overnight delivery by a nationally recognized overnight courier, notice shall be deemed delivered one (1) business day after deposit with that courier.

- d. When personally delivered to the recipient, notice shall be deemed delivered on the date personally delivered.
- e. 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  
Redwood Public Law  
66 Franklin Street, Suite 300  
Oakland, CA 94607

If to Agency:

Warren Lai, Public Works Director  
255 Glacier Drive  
Martinez, CA 94553-4825

**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 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 a writing approved by both Parties, 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, which shall be within its sole discretion to provide.
- 3.14 Successors and Assigns.** This Agreement shall be binding upon the successors, assignees, or transferees of the Parties. 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.** In any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, each Party shall be responsible for paying its own attorney's fees.
- 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 that, taken together, constitute one and the same instrument.



**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.

**Contra Costa County**

**West Contra Costa Transportation  
Advisory Committee**

\_\_\_\_\_  
Warren Lai, Public Works Director

\_\_\_\_\_  
John Nemeth, Executive Director

Approved as to Form:  
Thomas L. Geiger, County Counsel

Approved as to Form:

  
\_\_\_\_\_  
By Stephen M. Siptroth  
Assistant County Counsel

\_\_\_\_\_  
Kristopher Kokotaylo, Legal Counsel

3852446.1

## EXHIBIT A

### SCOPE OF WORK

The Agency agrees to:

1. To act as the lead agency and take responsibility for evaluating prospective consultants and contractors retained by Agency and subsequent award of work consistent with this Agreement.
2. To act as the lead agency and retain, as appropriate, consulting services consistent with this Agreement.
3. To be responsible for providing management of consultant and contractor activities, including responsibility for scheduling, budgeting, and oversight of the services, consistent with the scope of the project.
4. To advance or complete all or a portion of following STMP project identified as funding categories: *San Pablo Avenue Complete Streets Projects, Project 1a.*
5. To use the STMP funds *to design and construct multimodal improvements along San Pablo Avenue between the communities of Rodeo and Crockett including, but not limited to, a Class 1 shared-use path that will complete a 3.2-mile gap of the San Francisco Bay Trail; a 10-foot path with a concrete barrier constructed on top of a two to three-foot-wide buffer lane and a pedestrian hybrid beacon at the A Street intersection.*
6. To produce or complete *the preliminary engineering and design phases as well as construction of a component of the San Pablo Avenue Complete Streets Projects.*
7. To complete the over-all project based on the following initial schedule for the project:

<b>TASK</b>	<b>MONTH or QUARTER and YEAR</b>	
	<b>Begins</b>	<b>Ends</b>
<i>Preliminary Engineering</i>	<i>December 2024</i>	<i>September 2025</i>
<i>Detailed Design (including PS&amp;E)</i>	<i>October 2025</i>	<i>September 2026</i>
<i>Advertise Construction</i>	<i>March 2027</i>	<i>April 2027</i>
<i>Award Contract</i>	<i>June 2027</i>	<i>June 2027</i>
<i>Construction Begins</i>	<i>July 2027</i>	<i>July 2027</i>
<i>Construction Complete/ Open to the Public</i>	<i>December 2027</i>	<i>December 2027</i>
<i>Project Close-Out</i>	<i>July 2028</i>	<i>July 2028</i>

8. To complete the STMP-funded portion of the project based on the estimated completion date of *October 28, 2027.*