



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
January 22, 2014**

**TO:** Mayor and City Council

**FROM:** Tim Tucker, City Engineer

**SUBJECT:** Cooperative Agreement No. 17MAR.14 between the Contra Costa Transportation Authority (CCTA) and the City of Martinez

**DATE:** January 13, 2014

**RECOMMENDATION:**

Adopt resolution authorizing the City Manager to execute Master Cooperative Agreement No. 27C.01 between the Contra Costa Transportation Authority and the City of Martinez for the San Francisco Bay Trail Phase II, Berrellesa Street Project.

**BACKGROUND:**

The City is required to execute a master cooperative agreement with CCTA for all projects funded or administered by CCTA. On May 1, 2013, the City Council awarded the construction contract for the construction of the San Francisco Bay Trail Phase II, Berrellesa Street Project and accepted the construction as complete on October 2, 2013. A cooperative agreement is now necessary for the City to receive reimbursement for the eligible expenses incurred in completing the project. CCTA, which administers Transportation Funds for Clean Air (TFCA) funds, approved Resolution 04-09-G on April 21, 2004 authorizing \$87,508 of TFCA funds for the project.

The City and the East Bay Regional Park District (EBRPD) have worked together for several years on completing the San Francisco Bay Trail through Martinez. Phase I of the project constructed the trail from the end of Ferry Street, north of the Intermodal Phase III property, to Berrellesa Street via the pedestrian bridge over Alhambra Creek.

Phase II extended the trail from the Granger's Wharf Staging Area at the end of Berrellesa Street to the Union Pacific Railroad (UPRR) along the east side of Berrellesa. The EBRPD is also planning to construct approximately 1.7 miles of the trail along Carquinez Scenic Drive in the upcoming year.

The original intent of the project was to construct the trail segment along the south side of the railroad right of way, where it will connect to the Nejedly Staging Area on Carquinez Scenic Drive. EBRPD has spent several years attempting to negotiate with the UPRR for easements rights to construct that segment. Unfortunately, the negotiations have been unsuccessful. With those discussions not progressing and the available Transportation Funds for Clean Air (TFCA) funding due to expire this spring, staff elected to change priorities and construct the Berrellesa Street segment. The project was completed last fall.

CCTA, which administers TFCA funds, approved Resolution 04-09-G on April 21, 2004 authorizing \$87,508 of TFCA funds for the project. The agreement will be reviewed and signed by the City Attorney.

**FISCAL IMPACT:**

Execution of the Agreement is a requirement to receive the \$87,508 of TFCA funds for the completed project.

**ACTION:**

Adopt resolution authorizing the City Manager to execute Master Cooperative Agreement No. 17MAR.14 between the Contra Costa Transportation Authority and the City of Martinez.

Attachments:

1. Resolution
2. Cooperative Agreement No. 17MAR.14

**APPROVED BY:**

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Acting City Manager

RESOLUTION NO. -14

**AUTHORIZING THE CITY MANAGER TO EXECUTE MASTER COOPERATIVE AGREEMENT NO. 17MAR.14 BETWEEN THE CITY OF MARTINEZ AND THE CONTRA COSTA TRANSPORTATION AUTHORITY**

**WHEREAS**, the Contra Costa Transportation Authority (Authority) among other things administers Transportation Funds for Clean Air Program (TFCA) which is funded by the Bay Area Air Quality Management District; and

**WHEREAS**, the Authority approved Resolution 04-09-G on April 21, 2004 funding a request by the City of Martinez to use \$87,508 of TFCA funds for Phase II of the San Francisco Bay Trail, Berrellesa Street; and

**WHEREAS**, the City has completed the project in accordance with the request; and

**WHEREAS**, the City must enter into a Master Cooperative Agreement with the Authority as a condition for receiving the \$87,508 TFCA funding.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Martinez authorizes the City Manager to execute Master Cooperative Agreement No. 17MAR.14 between the City of Martinez and the Contra Costa Transportation Authority for the Berrellesa Bay Trail Project.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at an Adjourned Regular Meeting of said Council held on the 22<sup>nd</sup> day of January, 2014, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

**MASTER COOPERATIVE AGREEMENT NO. 17MAR.14  
BETWEEN  
CONTRA COSTA TRANSPORTATION AUTHORITY  
AND  
CITY OF MARTINEZ**

**THIS MASTER COOPERATIVE AGREEMENT NO. 17MAR.14** (“AGREEMENT”) is made and entered into as of this 1<sup>st</sup> day of July, 2013, by and between the CITY OF MARTINEZ hereinafter referred to as “SPONSOR,” and the CONTRA COSTA TRANSPORTATION AUTHORITY, hereinafter referred to as “AUTHORITY.” SPONSOR and AUTHORITY are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

**RECITALS**

A. AUTHORITY has been designated by resolution adopted by Contra Costa County and a majority of the incorporated cities within Contra Costa County having a majority of the population within the incorporated portion of Contra Costa County as Program Manager for TFCA projects within the County. In accordance with Funding Agreement 04-CC as amended (“FUNDING AGREEMENT”) between DISTRICT and AUTHORITY, AUTHORITY has agreed to act as Program Manager for TFCA funds to be expended on projects within Contra Costa County. A copy of the FUNDING AGREEMENT is attached to this AGREEMENT as EXHIBIT B and incorporated by this reference.

B. SPONSOR desires to implement one or more projects as described and attached to this AGREEMENT as EXHIBIT A, to reduce air pollution from motor vehicles and/or to relieve traffic congestion and /or to provide safe transportation for children, hereinafter referred to as “PROGRAM,” eligible under the Transportation Fund for Clean Air Program, hereinafter referred to as “TFCA,” which is funded by the Bay Area Air Quality Management District, hereinafter referred to as “DISTRICT,” pursuant to Health and Safety Code Section 44220 et seq.

C. AUTHORITY approved Resolution 04-09-G on April 21, 2004 specifying funding to implement SPONSOR project.

NOW, THEREFORE, in consideration of the foregoing, the AUTHORITY and SPONSOR do hereby agree as follows:

**SECTION I**

**SPONSOR AGREES:**

1. Application of Funding.

For each PROGRAM approved and funded by AUTHORITY, to apply a PROGRAM GRANT received under this AGREEMENT to PROGRAM(s) in accordance with the terms and conditions specified in Funding Resolution No. 04-09-G approved by the AUTHORITY.

2. Invoices.

To provide invoices requesting reimbursement of eligible expenditures incurred in the form and detail as requested by AUTHORITY, along with supporting documentation as required by AUTHORITY. Invoices will be submitted monthly or bi-monthly at the discretion of SPONSOR.

3. Audit.

To maintain complete, accurate and clearly identifiable records with respect to all costs and expenses incurred under this Agreement. To allow AUTHORITY, DISTRICT, MTC or any independent auditor selected by any of these parties, to audit all expenditures relating to each PROGRAM funded through this AGREEMENT. For the duration of each PROGRAM, and for four (4) years following completion of the PROGRAM, or earlier discharge of the AGREEMENT, SPONSOR shall make available all records relating to expenses incurred in performance of this AGREEMENT.

4. Reporting.

To submit to AUTHORITY any quarterly, semi-annual and annual reports on each PROGRAM in the format and detail as required by AUTHORITY and specified in the FUNDING AGREEMENTS supporting PROGRAM(s), as applicable.

5. Management.

To provide overall management of PROGRAM(s) including responsibility for schedule, budget, and oversight of services performed by others and to be responsible for evaluation, selection, and management of consultants and contractors.

6. Copies.

To maintain sufficient records demonstrating SPONSOR's compliance with the terms of the Measure J Expenditure Plan and Strategic Plan, including amendments, and this AGREEMENT for a period of five (5) years from the date of this AGREEMENT and to allow the AUTHORITY and its duly authorized representatives, agents and consultants access such records and be audited. SPONSOR shall ensure that audit working papers are made available to the AUTHORITY or its designee upon request for a period of three (3) years from the date the audit report is issued, unless extended in writing by the AUTHORITY.

7. Surplus Personal Property.

To comply with AUTHORITY's Policy on Disposition of Surplus Personal Property Acquired by a Project Sponsor or Recipient of Program Funds and No Longer Required for the Project or Program with respect to the disposal of any surplus property acquired in whole or part with Measure J Commute Alternative Funds. To the extent that surplus personal property has been purchased in whole or in part with TFCA funds, SPONSOR shall comply with the provisions of the FUNDING AGREEMENT with respect to that *pro rata* portion of the surplus personal property.

8. TFCA Funding Requirements

If PROGRAM involves TFCA funds, to comply with all relevant requirements of applicable law relating to the application and/or expenditure of those funds and to be bound by, and to include in any funding or other agreements which it may enter into with recipients of TFCA funds, all relevant requirements of the FUNDING AGREEMENT applicable to recipients of TFCA funds, including, without limitation, the requirements set forth in Section II, Paragraphs 7, 11, 12, 13, 15, 16, 17, 18, 19, 20 and 21 of the FUNDING AGREEMENT.

11. Compliance with Local, State and Federal Requirements

If PROGRAM requires SPONSOR to enter into a contract with a contractor and/or consultant, SPONSOR shall ensure that such contract complies with all applicable local, state and federal requirements and shall give all notices required by law. Additionally, any contractor and/or consultant is responsible for ensuring that subcontractors, at as many tiers of PROGRAM as required, perform in accordance with the terms, conditions and specifications of such contract, including local, state and/or federal requirements. Upon request of AUTHORITY and/or SPONSOR, any contractor and/or consultant shall provide evidence of the steps it has taken to ensure its compliance with the local, state and/or federal requirements, as well as the evidence of the subcontractor's compliance, at all tiers.

## SECTION II

### AUTHORITY AGREES:

1. Reimbursement

Consistent with the procedures specified in Section I, paragraph 2 above, to reimburse SPONSOR for eligible expenses incurred in conducting the PROGRAM up to the amounts stated in SECTION III, Paragraph 14 of this AGREEMENT.

2. Notice of Audit

To provide timely notice if an audit is to be conducted.

3. Compliance with Requirements Applicable to Program Manager

If PROGRAM involves TFCA funds, to comply with requirements of the FUNDING AGREEMENT applicable to Program Manager.

4. Compliance with Requirements Applicable to Recipient

If PROGRAM involves CMAQ funds, to comply with requirements of the FUNDING AGREEMENT WITH MTC applicable to RECIPIENT.

**SECTION III**

IT IS MUTUALLY AGREED:

1. Term

Qualified expenditures for PROGRAM(S) approved under this AGREEMENT shall be eligible for reimbursement from TFCA funds when incurred on or after December 5, 2004.

TFCA funding expires March 30, 2014 hereinafter referred to as Termination Date. Termination Date may be extended only as provided for in FUNDING AGREEMENT and confirmed in writing by the AUTHORITY. Any appropriated but unexpended funds related to this AGREEMENT as of Termination Date shall revert to AUTHORITY and shall be available for other TFCA-eligible projects, or shall be refunded to DISTRICT by AUTHORITY in accordance with FUNDING AGREEMENT. To the extent there are insufficient funds available to reimburse SPONSOR for the full amount of TFCA funds appropriated herein, a *pro rata* portion of available TFCA Funds shall be distributed to SPONSOR.

Funds are expected to be expended by the Termination Date applicable to the expenditure of TFCA funds, as provided above.

This AGREEMENT will remain in effect until discharged or otherwise terminated as provided above or in Paragraph 2 below, except for the provisions relating to indemnity (SECTION III, 4), which shall survive termination of this AGREEMENT.

2. Discharge

This AGREEMENT shall be subject to discharge as follows:

- a. This AGREEMENT may be canceled by a party for breach of any obligation, covenant, or condition hereof by the other party, upon written 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.
- b. By mutual consent of both parties, this AGREEMENT may be terminated in writing at any time.

3. Cap on Aggregate Expenditures

In no event shall the portion of PROGRAM GRANT funded with Measure J funds, when aggregated with amounts of previously allocated Measure J, exceed the Measure J Expenditure Plan program category amount set forth in Recital C and/or D, nor shall the timing of payments to SPONSOR pursuant to this AGREEMENT, together with the timing of payments of Measure J funds pursuant to all previously approved PROGRAM GRANT(s), exceed the amount allocated for such period pursuant to AUTHORITY'S current Strategic Plan. Funds approved under the TFCA program by AUTHORITY as Program Manager for Contra Costa County or under the CMAQ program by AUTHORITY as delegate of MTC included within such PROGRAM GRANT, or as a part of any previously approved PROGRAM GRANT, shall not be included in the calculations set forth in the preceding sentences.

4. Indemnity

It is understood and agreed that neither AUTHORITY, nor any officer, employee, agent or contractor thereof, shall be responsible for, and SPONSOR shall indemnify and hold AUTHORITY and its officers, employees, agents and contractors harmless from, any damage or liability occurring by reason of anything done or omitted to be done by SPONSOR, its officers, employees, consultants or contractors, under or in connection with the services, authority or jurisdiction of SPONSOR or delegated to SPONSOR under this AGREEMENT. Without limiting the generality of the foregoing, it is further specifically understood and agreed that, pursuant to California Government Code Section 895.4, SPONSOR shall fully indemnify and hold AUTHORITY and its officers, employees, agents and contractors harmless from any liability or damages imposed for injury as defined by California Government Code Section 810.8 occurring by reason of anything done or omitted to be done by SPONSOR, its officers, employees, agents or contractors under this AGREEMENT or in connection with any services, authority or jurisdiction of SPONSOR or delegated to SPONSOR under this AGREEMENT.

In addition, SPONSOR shall indemnify and hold harmless the DISTRICT, its employees, agents, representatives, and successors-in-interest against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out

of its performance of a project or operation or use of the equipment that is subject to the FUNDING AGREEMENT.

5. Notices

Any notice which may be required under this AGREEMENT shall be in writing, effective when received, and given by personal service, certified or registered mail (return receipt requested), or courier service to the addresses set forth below, or to such addresses which may be specified in writing by the parties hereto.

Notices to SPONSOR:

Tim Tucker  
City Engineer  
525 Henrietta Street  
Martinez, CA 94553

Notices to AUTHORITY:

Peter Engel  
Program Manager  
Contra Costa Transportation Authority  
2999 Oak Road, Suite 100  
Walnut Creek, CA 94597

By executing this AGREEMENT, each of the parties acknowledges and agrees that the persons identified above, or any other person designated by either party to AGREEMENT by notice to the other party, is authorized to execute documents and to bind the party with respect to this AGREEMENT.

6. 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 the AGREEMENT.

7. Counterparts:

This Agreement may be signed in counterparts, each of which shall constitute an original.

8. Amendment

SPONSOR may, at any time, request an amendment to the work scope and budget of any PROGRAM funded under this AGREEMENT with TFCA funds by submitting a written request indicating the proposed amendment and the reason for the proposed change and a revised cost effectiveness worksheet, if necessary as determined by AUTHORITY. Submittal of these documents shall be construed as SPONSOR's consent to amend this AGREEMENT as specified. AUTHORITY will convey SPONSOR's request, along with supporting documents to the DISTRICT for approval, if required. Upon approval by the DISTRICT, this AGREEMENT will be considered amended per SPONSOR's request.

This AGREEMENT may otherwise be amended by written amendment executed by the parties and shall not be changed, modified, or rescinded except as provided herein. Any attempt at oral modification of this AGREEMENT shall be void and of no effect.

9. Independent Agency

SPONSOR renders its services under this AGREEMENT as an independent agency. None of the SPONSOR's agents or employees shall be agents or employees of AUTHORITY.

10. Assignment

This AGREEMENT may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

11. Binding on Successors

This AGREEMENT shall be binding upon the successor(s), assignee(s), or transferee(s) of AUTHORITY or SPONSOR(s) as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate, or pledge this AGREEMENT other than as provided above.

12. 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, provided that the remainder of this AGREEMENT can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

13. Limitation

All obligations of the AUTHORITY hereunder with respect to TFCA funds are expressly subject to and limited by the terms of FUNDING AGREEMENT and applicable provisions of state and federal law, including, but not limited to, provisions related to the AUTHORITY'S designation as Program Manager. In the event that AUTHORITY loses its designation as Program Manager or otherwise becomes ineligible to receive TFCA funds or if for any reason, such TFCA funds are no longer available to it, AUTHORITY's obligations hereunder shall be terminated without further obligation or liability to SPONSOR.

14. Total Cost

The total cost of this Agreement is **EIGHTY-SEVEN THOUSAND FIVE HUNDRED EIGHT DOLLARS (\$87,508)** from Resolution No. 04-09-G and will not exceed that amount unless amended in writing by all parties.

15. Attorney's Fees

If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

16. Waiver

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

17. Integration

This AGREEMENT represents the entire AGREEMENT of the parties with respect to the subject matter hereof. No representations, warranties, inducements, or oral agreements have been made by any of the parties except as expressly set forth herein or in other contemporaneous written agreements.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year above written.

**CONTRA COSTA  
TRANSPORTATION AUTHORITY**

by: Randell H. Iwasaki  
Randell H. Iwasaki  
Executive Director

ATTEST:

by: Danice J. Rosenbohm  
Danice Rosenbohm, Board Secretary

APPROVED as to legal form.

by: Malathy Subramanian  
Malathy Subramanian, Authority Counsel

**CITY OF MARTINEZ**

by: \_\_\_\_\_  
Alan Shear  
Acting City Manager

ATTEST:

by: \_\_\_\_\_  
Richard G. Hernandez, City Clerk

APPROVED as to legal form.

by: \_\_\_\_\_  
Jeffery Walters, City Attorney

# **EXHIBIT A**

## **Project Descriptions**

PROJECT INFORMATION

A. Project Number: 04CC13 B. Project Sponsor: City of Martinez

C. Project Contact: Richard Pearson D. Contact Phone #: (925) 372-3525

E-mail: rpearson@cityofmartinez.org

E. Project Title: San Francisco Bay Trail, Phase II

F. TFCA \$ Allocated: \$ 87,508 G. Total Project Cost: \$ 1,032,508

Other Funding:	Amount	Source
	<u>\$ 325,000</u>	<u>Association of Bay Area Governments / Costal Conservancy</u>
	<u>\$ 300,000</u>	<u>Contra Costa Transportation Authority (Measure C Trails)</u>
	<u>\$ 270,000</u>	<u>MTC Regional Bicycle-Pedestrian Funds (application in process)</u>
	<u>\$ 50,000</u>	<u>City of Martinez (Local Measure C)</u>

G. Project Description: The Bay Trail is proposed 400-mile ring trail around the San Francisco Bay. The proposed project will complete a gap in the Bay Trail in Martinez, and connect the current Bay Trail terminus on Carquinez Scenic Drive to the Martinez Intermodal Project with its bus and rail transit. It will also provide bicycle storage facilities. Phase II of the trail will include constructing 1,900 lineal feet of Class 1 bicycle/pedestrian trail along Union Pacific Railroad right-of-way and 400 lineal feet along Berellesa Street (public street). The integration of the Intermodal Facility into the Bay Trail connection will provide greater regional access to employment and residential areas, as well as recreational opportunities.

H. Project Schedule: Start Date (mo/yr) October 2004 Final Report Due Date (mo/yr) September 2007

I. Final Report Content: Complete and submit *Project Monitoring Form 3, Bicycle Projects*.

# **EXHIBIT B**

## **Bay Area Air Quality Management District Funding Agreement**

FUNDING AGREEMENT  
BETWEEN  
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
AND  
CONTRA COSTA TRANSPORTATION AUTHORITY

04-CC

This Funding Agreement (Agreement) is entered into between the Contra Costa Transportation Authority, hereinafter referred to as "Program Manager," and the Bay Area Air Quality Management District, hereinafter referred to as "Air District" on the date shown on page 5. Attachment A, which specifies the projects covered by this Agreement, is hereby incorporated into this Agreement by this reference.

SECTION I

RECITALS:

- 1) The Air District is authorized under Health and Safety Code Sections 44223 and 44225 to levy a fee on motor vehicles. Funds generated by the fee are referred to as the Transportation Fund for Clean Air (TFCA) and are used to implement projects to reduce air pollution from motor vehicles.
- 2) Health and Safety Code Section 44241 limits expenditure of collected revenues to specified transportation control measures included in the plan adopted pursuant to Health and Safety Code Sections 40233 and 40717 and limits the allocation of the funds to public agencies within the Air District's jurisdiction.
- 3) Health and Safety Code Section 44241(d) stipulates that forty (40) percent of funds generated within a county where the fee is in effect shall be allocated by the Air District to one or more public agencies designated to receive the funds.
- 4) The Air District has been notified, in a communication dated September 16, 1992, that the Program Manager is the duly authorized recipient of forty (40) percent of the funds collected in Contra Costa County, and has been so designated by resolutions adopted by the Contra Costa County Board of Supervisors and by the City Councils of a majority of the cities representing a majority of the population in the incorporated area of the county. The resolutions specify the terms and conditions for the expenditure of funds by Program Manager.
- 5) The Air District and Program Manager, pursuant to Health and Safety Code Section 44241, hereby enter into this Funding Agreement to implement specified projects to improve air quality in the San Francisco Bay Area Air Basin. This Agreement covers those projects specified in Attachment A.

SECTION II

PROGRAM MANAGER AGREES:

- 1) To apply all funds received under this Agreement to the projects listed in Attachment A consistent with the mutually agreed to terms and conditions contained in this Agreement.
- 2) To maintain, at all times during the term of this Agreement, a separate account or sub-ledger for all funds received under this Agreement and to withdraw funds from this separate account only for the reimbursement of costs to implement approved projects. Failure to comply with this paragraph shall constitute grounds for termination pursuant to Section IV.2 below.

- 3) To maintain, or cause to be maintained, adequate records to document and demonstrate to Air District staff and auditors the receipt, interest accrual, and expenditures of Air District funds.
- 4) To apply all interest accrued from funds received under this Agreement toward projects approved by the Air District Board of Directors. The distribution of any such interest shall be at the discretion of the Program Manager after consultation with the Air District.
- 5) To apply any funds and associated interest unencumbered at the time of completion or termination of an approved project or projects towards other projects approved by the Air District Board of Directors. The distribution of any such funds and associated interest shall be at the discretion of the Program Manager after consultation with the Air District.
- 6) To return to the Air District any funds and associated interest, or both, unexpended within two years of the date of receipt of the funds unless a project schedule which extends beyond the two years has been approved by the Program Manager.
- 7) To limit administrative costs in the handling of these funds to no more than five (5) percent of the funds received and interest earned on those funds.
- 8) To allow the Air District to audit all expenditures relating to the projects funded through this Agreement. For the duration of the projects as described in Attachment A and for three (3) years following completion of the projects, Program Manager will make available to the Air District, or to an independent auditor selected by the Air District, all records relating to project performance and expenses incurred in implementing the projects.
- 9) To maintain employee time sheets documenting those hourly labor costs incurred by employees of the Program Manager, which are paid with funds received under this Agreement to fulfill the Program Manager's obligations under this Agreement, or to establish an alternative method to document Program Manager staff costs charged to this grant.
- 10) To require that any recipients of funds allocated through this Funding Agreement shall, for the duration of projects as described in Attachment A and for three (3) years following completion of the projects, in a timely fashion make available to the Air District, or to an independent auditor selected by the Air District, all records relating to project performance and expenses incurred in implementing the project or projects for which funding was received.
- 11) To require that any recipients of funds allocated through this Funding Agreement maintain employee time sheets documenting those hourly labor costs incurred in the implementation of the projects described in Attachment A, which are paid with funds received under this Funding Agreement, or to establish an alternative method to document staff costs charged to the funded project.
- 12) To distribute TFCA funds allocated to any recipient of funds only on a cost reimbursement basis, on the basis of documented legitimate expenditures for the intended purpose of the approved project.
- 13) To keep necessary records of the performance of the project or projects as specified in Attachment A in order to expedite evaluation of emissions reductions achieved from implementation of the project or projects.
- 14) To submit a report to the Air District within (4) months of the end of each fiscal year which itemizes (a) the expenditure of the funds, (b) progress to date in the implementation of each funded project or projects and (c) the results of the monitoring of the performance of the project or projects as specified in Attachment A. Annual reports shall be prepared and submitted in accordance with the Air District's format and shall be submitted until all projects listed in Attachment A are completed.

- 15) To use the Air District's approved logo for the TFCA for any projects implemented directly by Program Manager under this Agreement, as specified below:
  - a) the logo will be used on signs posted at the site of any construction;
  - b) the logo will be displayed on any vehicles operated with or obtained as part of a project;
  - c) the logo will be used on any printed material intended for public consumption associated with any project, including project related transit schedules, brochures, handbooks, maps created for public distribution, and promotional material.
- 16) To require all recipients of funds for projects funded under this Agreement to use the Air District's approved logo for the TFCA as specified in Section II.15 above.
- 17) To acknowledge the Air District as a funding source in any related articles, news releases or other publicity materials for the projects funded under this Agreement which are implemented directly by the Program Manager, and to require recipients of funds for projects funded under this Agreement to do the same.
- 18) To assure that all funds received under this Agreement are expended only in accordance with all applicable provisions of law for projects which are implemented directly by the Program Manager, and to require recipients of funds for projects funded under this Agreement to expend the funds only in accordance with all applicable provisions of law.
- 19) To the extent not otherwise prohibited by law, and to the extent required by the California Public Records Act, to place in the public domain any software, written document, or other product developed with funds received through this Agreement, and to require recipients of funds for projects funded under this Agreement to do the same.
- 20) To require that any recipient of TFCA funds for the purchase of any vehicles must either obtain approval from the Program Manager for alternate use of the vehicles or return to the Program Manager any funds realized from the sale of any vehicles purchased with TFCA funds if such reuse or sale occurs within the industry standards for the useful life from the date of purchase of the vehicles. The amount of funds returned to the Program Manager shall be proportional to the percentage of TFCA funds originally used to purchase the vehicles. Any such funds returned to the Program Manager shall be reallocated to eligible projects approved by the Air District.

### SECTION III

#### AIR DISTRICT AGREES:

- 1) To forward the funds for the projects described in Attachment A in two payments. The first payment will be forwarded within thirty (30) working days of the Air District receiving from the California Department of Motor Vehicles all the revenues that comprise the payment. The first payment will represent forty (40) percent of the revenues generated from motor vehicles registering in Contra Costa County between January 1, 2004 and June 30, 2004, less Air District's management and audit costs. The second payment will represent forty (40) percent of the revenues generated from motor vehicles registering in Contra Costa County between July 1, 2004 and December 31, 2004, less Air District's management and audit costs. The second payment will be forwarded within thirty (30) working days of the Air District receiving from the DMV all the revenues that comprise the payment. Payments will only be made after this Agreement has been signed by both the Program Manager and the Air District.
- 2) To provide timely notice prior to conducting an audit.

- 3) To provide the Program Manager, and any other requesting party, a copy of the fiscal and performance audits as specified in Section 44242 of the Health and Safety Code.
- 4) To provide the Program Manager with a standard format and content summary for the report described in Section II.14 above.

#### SECTION IV

##### IT IS MUTUALLY AGREED:

- 1) Term: This Agreement will remain in effect for three (3) years after the completion of all the projects listed in Attachment A, unless it is terminated as provided below.
- 2) Termination: Either party may terminate this Agreement at any time by giving written notice of termination to the other party which shall specify the effective date thereof. Notice of termination under this paragraph shall be given at least ninety (90) days before the effective date of such termination. This Agreement shall also terminate at the end of the fiscal year during which the Contra Costa Transportation Authority loses designation as Program Manager for Contra Costa County.
- 3) Indemnity: Program Manager shall indemnify and save harmless the Air District from all claims, suits or actions resulting from the performance by Program Manager of its duties under this Agreement. Air District shall indemnify and save harmless Program Manager from all claims, suits or actions resulting from the performance by Air District of its duties under this Agreement.
- 4) Notices: Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, by U.S. Postal Service mail, or by certified mail (return receipt requested), to the addresses set forth below, or to such addresses which may be specified in writing to the parties hereto.  
  
Robert McCleary, Executive Director  
Contra Costa Transportation Authority  
3478 Buskirk Avenue, Ste. 100  
Pleasant Hill, CA 94523  
  
Jack P. Broadbent  
Air Pollution Control Officer  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109
- 5) Contacts: Liaison with the Air District with regard to the day to day activities of the projects and programs included on Attachment A shall be with Karen Chi. Liaison with the Program Manager with regard to the day to day activities of the projects and programs included on Attachment A shall be with Arielle Bourgart. Notification of change of status of contact persons shall be made in writing within thirty (30) days of the effective date of the change of status.
- 6) 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 reasonably required to carry out the provisions, intent and purpose of this Agreement.
- 7) Integration: This Agreement including all attachments hereto, represents the entire agreement of the parties with respect to the subject matter described in this Agreement, and no representation, warranties, inducements or oral agreements have been made by either of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

- 8) 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. The Air District contact person and the Program Manager contact person identified pursuant to paragraph IV.5 above may jointly authorize, in writing, any schedule revisions, or changes to the Project scope of work that do not diminish the emission reductions associated with the Project. Any other amendments to this Agreement shall be executed in writing by the signators to this Agreement. Any change in Project scope shall be approved by the Air District prior to implementation of the change by the recipient of funds.
- 9) Independent Contractor: Program Manager renders its service under this Agreement as an independent contractor. None of the Program Manager's agents or employees shall be agents or employees of the Air District. This paragraph does not apply to elected officials serving concurrently on the governing boards of both the Program Manager and the Air District.
- 10) Assignment: This Agreement may not be assigned by either party without the express written consent of the other party.
- 11) Severability: Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, reasonably be interpreted to give effect to the intentions of the parties.
- 12) Force Majeure: Neither the Air District nor Program Manager shall be liable or deemed to be in default for any delay or failure in performance under this Funding Agreement or interruption of services, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of the Air District or Program Manager.
- 13) Governing Law: This Funding Agreement shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California.

IN WITNESS WHEREOF, Program Manager and Air District have entered into this Funding Agreement as of the date listed below.

**FOR PROGRAM MANAGER:**

by: Robert McCleary  
 Robert McCleary, Executive Director  
 Contra Costa Transportation Authority

Approved as to legal form:

by: Greg Taylor  
 Legal Counsel  
 Contra Costa Transportation Authority

**FOR AIR DISTRICT:**

by: Jack P Broadbent Date: 9/21/04  
 Jack P Broadbent, Executive Officer/APCO  
 Bay Area Air Quality Management District

Approved as to legal form:

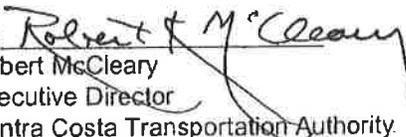
by: Paul C. Bong  
 District Counsel  
 Bay Area Air Quality Management District

**Funding Agreement Amendment #1  
Contra Costa Transportation Authority  
Fiscal Year 2004/2005**

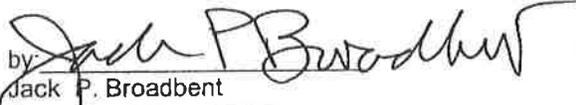
The Bay Area Air Quality Management District ("Air District") and the Contra Costa Transportation Authority ("Program Manager") mutually agree to amend the Funding Agreement between the Air District and the Program Manager originally signed on September 27, 2004. Attachment A of the Funding Agreement is amended to add the following new project:

<u>Project #</u>	<u>Project Title</u>	<u>TFCA Funding</u>
04-CC-13	San Francisco Bay Trail Phase II	\$ 87,508

Project descriptions for this project is attached to this amendment and are incorporated herein by this reference.

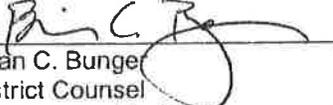
by:   
Robert McCleary  
Executive Director  
Contra Costa Transportation Authority

Date: 29 Nov 2004

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

Date: 12-05-04

Approved as to form:

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

## PROJECT INFORMATION

A. Project Number: 04CC13 B. Project Sponsor: City of Martinez

C. Project Contact: Richard Pearson D. Contact Phone #: (925) 372-3525

E-mail: rpearson@cityofmartinez.org

E. Project Title: San Francisco Bay Trail, Phase II

F. TFCA \$ Allocated: \$ 87,508 G. Total Project Cost: \$ 1,032,508

Other Funding:	Amount	Source
	<u>\$ 325,000</u>	<u>Association of Bay Area Governments / Costal Conservancy</u>
	<u>\$ 300,000</u>	<u>Contra Costa Transportation Authority (Measure C Trails)</u>
	<u>\$ 270,000</u>	<u>MTC Regional Bicycle-Pedestrian Funds (application in process)</u>
	<u>\$ 50,000</u>	<u>City of Martinez (Local Measure C)</u>

G. Project Description: The Bay Trail is proposed 400-mile ring trail around the San Francisco Bay. The proposed project will complete a gap in the Bay Trail in Martinez, and connect the current Bay Trail terminus on Carquinez Scenic Drive to the Martinez Intermodal Project with its bus and rail transit. It will also provide bicycle storage facilities. Phase II of the trail will include constructing 1,900 lineal feet of Class 1 bicycle/pedestrian trail along Union Pacific Railroad right-of-way and 400 lineal feet along Berellesa Street (public street). The integration of the Intermodal Facility into the Bay Trail connection will provide greater regional access to employment and residential areas, as well as recreational opportunities.

H. Project Schedule: Start Date (mo/yr) October 2004 Final Report Due Date (mo/yr) June 2006

I. Final Report Content: Complete and submit *Project Monitoring Form 3, Bicycle Projects*.