

**AMENDMENT TO
FUNDING AGREEMENT
BETWEEN THE CITY OF SAN JOSE AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE US 101/ZANKER ROAD/SKYPORT DRIVE/FOURTH STREET
INTERCHANGE IMPROVEMENT PROJECT**

This AMENDMENT TO FUNDING AGREEMENT (“**First Amendment**”) dated _____, 2017, for purposes of reference, is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (“**CITY**”), and SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency organized as a special district under California law (“**VTA**”). Hereinafter, CITY and VTA may be individually referred to as “**Party**” or collectively referred to as “**Parties.**”

I. RECITALS

- A. On July 22, 2015, Parties entered into an agreement (“**FUNDING AGREEMENT**”) setting their respective obligations in regard to the US 101/Zanker Road/Skyport Drive/Fourth Street Interchange Improvement Project (“**PROJECT**”).
- B. CITY initially contributed an amount of ONE MILLION FIVE HUNDRED THOUSAND (\$1,500,000) dollars to the PROJECT under the terms of the FUNDING AGREEMENT to identify, evaluate and prioritize a range of possible transportation-related improvements to relieve congestion and improve traffic circulation, leading to the Project Initiation Document (PID) phase of the PROJECT.
- C. The PROJECT’s PID phase was completed on July 7, 2017.
- D. The Parties recognize the need for the continuation of project development for PROJECT.
- E. The Parties wish to amend the FUNDING AGREEMENT to increase the CITY’s contribution from \$1,500,000 to \$ 4,100,000 to continue project development into the Project Approval/Environmental Document (PA/ED) phase.
- F. At the October 5, 2017 VTA Board meeting, the Board adopted a Resolution, establishing the 2016 Measure B Program; and adopted the 2016 Measure B Program Category Guidelines including the Highway Interchanges Program. The 2016 Measure B Highway Interchanges Program FY 18 and FY 19 Projects and Allocation includes an amount of \$3,000,000 for the US 101/Zanker Rd./Skyport Dr./Fourth Street. Interchange Improvements.

NOW, THEREFORE, the Parties agree to amend the FUNDING AGREEMENT as follows:

II. AMENDED AGREEMENT

1. SECTION II, PARAGRAPH 1 Conduct of the PROJECT, is hereby amended to include VTA responsibilities for performing PA/ED tasks for the PROJECT and shall be restated as follow:

“1. Conduct of the PROJECT. VTA shall be responsible for conducting and completing the PROJECT. The scope and schedule of the PROJECT to be undertaken by VTA pursuant to this Agreement includes, but is not limited to those planning and preliminary engineering activities to complete the PROJECT. To this end, VTA shall perform and/or be responsible for the following tasks:

- i. Serving as project manager for the entire PROJECT;
- ii. Coordinating with stakeholders for review and approval of the PROJECT;
- iii. Conduct planning, studies, preliminary engineering activities and analysis leading to the Project Initiation Document (PID) and Project Approval/Environmental Document (PAED) for the Project; and
- iv. Performing close-out of the PROJECT;

Costs and expenses to perform these tasks shall be considered allowable costs and expenses pursuant to this Agreement.

- a. Consultants. VTA may retain design consultants in the performance of the PROJECT. VTA’s administrative costs to procure and manage consultant agreements as well as the actual costs of such consultants shall be allowable costs pursuant to this Agreement.
- b. Other Project Management Duties. VTA shall include CITY staff as an active participant within VTA’s project management process, hold periodic meetings as agreed upon by the PROJECT team to assess the progress of the PROJECT and address PROJECT issues as they arise. VTA shall also prepare quarterly reports on PROJECT activity and progress for CITY.
- c. Expenditure Updates. VTA shall actively monitor actual PROJECT expenditures to ensure that CITY’s Contribution is used to pay for allowable PROJECT expenditures. If PROJECT expenditures are projected not to exceed CITY’s Contribution, VTA, upon completion of the PROJECT, shall reimburse CITY for any unused CITY’s Contribution funds or VTA and CITY may formulate and implement a strategy to expand the scope of VTA services to the satisfaction of VTA and CITY’S Director of Transportation. Any such expansion of the scope of services shall be in writing and approved by both parties.”

2. SECTION II, PARAGRAPH 2 CITY's Financial Contribution for PROJECT, is hereby amended to increase CITY's Contribution by TWO MILLION SIX HUNDRED THOUSAND dollars (\$2,600,000) dollars and shall be restated as follows:

"CITY shall contribute to the PROJECT an amount not to exceed FOUR MILLION ONE HUNDRED THOUSAND dollars (\$4,100,000) (hereinafter, "**CITY's Contribution**"). Upon execution of the Agreement, CITY will deposit the CITY's Contribution into an interest-bearing account. VTA shall thereafter invoice CITY, from time to time, for the work it has completed on the PROJECT and CITY shall pay to VTA the amount set forth in the VTA invoice within thirty (30) calendar days after receipt of such invoice.

3. SECTION II, Paragraph 5 Term of Agreement, is hereby amended to extend the termination date of the Agreement and shall be restated as follows:

"This Agreement shall become effective upon full execution and shall remain in effect through December 31, 2020. Upon written request of VTA, the CITY's Director of Transportation or his/her designee is authorized to extend the term of the Agreement for up to six (6) months after the initial termination date, upon written notice to VTA and without formal amendment of the Agreement."

4. SECTION II, PARAGRAPH 12 Notice, is hereby amended to update VTA's and CITY's address for notices and shall be restated as follows:

"**14. Notice.** Any notice required to be given by either Party, or which either party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority
Carolyn Gonot, Director of Engineering & Transportation Program
Delivery
3331 North First Street, Bldg. B-2
San Jose, CA 95134-1906

To CITY: City of San José
Director of Transportation
200 E. Santa Clara Street, 8th Floor
San Jose, CA 95113

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail."

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

“CITY”
City of San José
a municipal corporation

“VTA”
Santa Clara Valley Transportation Authority
a public agency

By: _____
Toni J. Taber, CMC
City Clerk

By: _____
Nuria Fernandez
General Manager

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Jon Calegari
Deputy City Attorney

By: _____
Victor Pappalardo
Senior Assistant Counsel

DRAFT