

**FUNDING AGREEMENT BETWEEN
THE CITY OF SAN JOSE AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE US 101/DE LA CRUZ BOULEVARD-TRIMBLE ROAD
INTERCHANGE PROJECT**

THIS AGREEMENT ("**Agreement**") dated _____, 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. WHEREAS, on October 2, 2014, the VTA Board of Directors ("Board") adopted the Valley Transportation Plan ("VTP") 2040, which provides a planning and policy framework for developing transportation projects in the County of Santa Clara over the next 25 years. Included in the VTP 2040 is the US 101 Southbound/Trimble Road/De La Cruz Boulevard/Central Expressway Interchange Improvements to relieve traffic congestion at the US 101/De La Cruz Boulevard/Trimble Road Interchange ("**PROJECT**").
- B. WHEREAS, on June 21, 2005, the CITY Council adopted the North San Jose Area Development Policy ("Policy") to guide the ongoing development of North San Jose, which included the phasing of certain transportation improvements with specific levels of development and implementing a traffic impact fee ("TIF") to fund those improvements as the development occurred in the area. The PROJECT is identified as a Phase 1 improvement in the Policy.
- C. WHEREAS, all work required for the environmental phase of the PROJECT has been completed and CITY desires to initiate the design phase of the PROJECT, which has an estimated cost of \$7,000,000.
- D. WHEREAS, 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. For FY18 and FY19 projects and allocation, the 2016 Measure B Highway Interchanges Program includes an amount of FOUR MILLION dollars (\$4,000,000.00) for the US 101 Southbound/Trimble Road/De La Cruz Blvd/Central Expressway Interchange Improvements. As of the effective date of this Agreement, however, Measure B funds are not available as a result of

pending litigation.

- E. WHEREAS, CITY will contribute THREE MILLION dollars (\$3,000,000.00) from TIF (or other sources if necessary) to the PROJECT.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

II. AGREEMENT

1. **Conduct of the PROJECT.** VTA is responsible for conducting and completing the PROJECT. For the Plans, Specifications, and Estimates (“PS&E”) and right-of-way phases of the PROJECT, VTA shall perform and/or be responsible for tasks, including but not limited to:
- i. Serving as project manager for the entire PROJECT;
 - ii. Performing final design and right-of-way activities necessary to complete the PROJECT;
 - iii. Coordinating with the State of California and other relevant stakeholders for their review and approval of the PROJECT;
 - iv. Completing activities necessary for the final design documents for the PROJECT;
 - v. Obtaining Caltrans Right-of-Way Certification for the PROJECT;
 - vi. Completing construction contract bid documents for the PROJECT.

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

- a. **Consultants.** VTA may retain design consultants to perform its required tasks for 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 active participants within VTA’s project management process, and VTA shall 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 written reports on PROJECT activity and progress for CITY if requested by the City.
- c. **Project Cost Updates:** VTA shall actively monitor actual PROJECT expenditures to ensure that CITY’s Contribution (as defined below in Section 2. CITY’S Financial Contribution for PROJECT) is used to pay for allowable PROJECT expenditures. When the full amount of CITY’s Contribution has been expended, VTA shall immediately notify CITY of such fact. The Parties will

then choose one of the following courses of action:

- i. The Parties will revise the PROJECT scope in accordance with the available funds, which revision can be accomplished only by written amendment to this Agreement signed by the Parties and approved by the CITY's City Council; or
- ii. The Parties will seek additional funding to complete the scope of the PROJECT by revising the CITY's Contribution, which revision can be accomplished only by written amendment to this Agreement signed by the Parties; or
- iii. VTA will formulate and implement a new strategy to continue the PROJECT to the satisfaction of the CITY'S Director of Public Works, which new strategy will be accomplished only by written amendment to this Agreement signed by the Parties; or
- iv. The Parties may terminate this Agreement in accordance with Section 7 below.

If PROJECT expenditures are projected to not exceed CITY's Contribution, VTA, upon completion of the PROJECT, shall reimburse CITY for any unused amount of CITY's Contribution, or VTA and CITY may formulate and implement a strategy to expand the scope of VTA services for the PROJECT, to the satisfaction of VTA and CITY'S Director of Transportation, such that the remaining amount of CITY's Contribution may be expended on the expanded scope. Any such expansion of the scope of services must be in writing and approved by both Parties.

2. **CITY's Financial Contribution for PROJECT.** CITY shall contribute to the PROJECT an amount not to exceed THREE MILLION dollars (\$3,000,000.00) (hereinafter, "**CITY's Contribution**"). Upon execution of the Agreement, VTA shall invoice CITY for CITY's Contribution and, upon receipt thereof, will deposit CITY's Contribution into an interest-bearing account. CITY shall pay VTA the amount set forth in the VTA invoice within thirty (30) calendar days after receipt of invoice.
3. **VTA's Financial Contribution for PROJECT.** If VTA is successful in resolving litigation related to its 2016 Measure B funds, such that the entirety of those funds become available to VTA for the purposes set forth in Measure B, VTA will seek approval from the VTA Board of an amendment to this Agreement requiring VTA to contribute FOUR MILLION dollars (\$4,000,000) from such funds toward the development of the PROJECT.
4. **Use of CITY's Contribution.** VTA will use CITY's Contribution and the interest earned thereon for allowable costs and expenses related to PROJECT.
5. **Compliance with Governmental Requirements.** The Parties shall comply with all laws and regulations pertaining to the PROJECT.
6. **Term of Agreement.** This Agreement will become effective upon full execution of

the Agreement and will remain in effect through June 30, 2020. If requested by VTA in writing, the CITY's Director of Transportation or his 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 this Agreement.

7. **Written Termination.** In addition to termination pursuant to the terms of the preceding section, this Agreement may be terminated upon mutual written agreement of the Parties.
8. **Refund of CITY's Contribution.** Any balance of CITY's Contribution, including interest, remaining after completion of the PROJECT or, if the PROJECT does not proceed for any reason, upon early termination of the Agreement, less any amounts necessary to pay for eligible expenses incurred prior to the date of completion of the PROJECT or the effective date of the termination of the Agreement, will be refunded to CITY. VTA shall refund to CITY the remaining balance, if any, within thirty (30) calendar days of the effective date of completion of the PROJECT or sooner termination of the Agreement.
9. **Audit and Record Retention.** CITY may audit the expenses incurred in the performance of this Agreement. VTA shall retain all records related to the PROJECT for three (3) years after the completion of the PROJECT. During this period, VTA shall make these records available within a reasonable time to the CITY for inspection upon request.
10. **Parties' Representatives.** The General Manager of VTA or the General Manager's designee is hereby made the representative of VTA for all purposes under this Agreement. The Director of Transportation for CITY or the Director of Transportation's designee is hereby made the representative of CITY for all purposes under this Agreement.
11. **Indemnification.**
 - a. Neither VTA nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction associated with the PROJECT. In addition, pursuant to Government Code §895.4, CITY shall fully indemnify and hold VTA harmless from any liability imposed for injury (as defined by Government Code §810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.
 - b. Neither CITY nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by VTA under or in connection with any work, authority or jurisdiction associated with the PROJECT. In addition, pursuant to Government Code §895.4, VTA shall fully indemnify and hold CITY harmless from any liability

imposed for injury (as defined by Government Code §810.8) occurring by reason of anything done or omitted to be done by VTA under or in connection with any work, authority or jurisdiction delegated to VTA under this Agreement.

12. **No Waiver.** The failure of either Party to insist upon the strict performance of any of the terms of this Agreement shall not be deemed a waiver of any right or remedy that either Party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms thereafter.

13. **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 and Program Delivery
3331 North First Street, Bldg. A
San Jose, CA 95134-1906

To CITY: City of San Jose
Director of Transportation
200 E. Santa Clara Street, Tower 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.

14. **Dispute Resolution.** If a question arises regarding interpretation of this Agreement or its performance, or the alleged failure of a Party to perform, the Party raising the question or making the allegation shall give written notice thereof to the other Party. The Parties shall promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation or arbitration, may be pursued by mutual agreement. It is the intent of the Parties to the extent possible that litigation be avoided as a method of dispute resolution.

15. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties pertaining to the subject matter contained therein and supersedes all prior or contemporaneous agreements, representations and understandings of the Parties relative thereto.

16. **Amendments.** Future amendments to this Agreement must be processed by mutual written agreement of the Parties. Unless otherwise provided herein, any amendments to this Agreement must be approved by CITY's Director of Transportation and VTA's General Manager. Whenever possible, a request to amend this Agreement will be provided to the other Party thirty (30) calendar days prior to the desired effective date of such amendment.

17. **Warranty of Authority to Execute Agreement.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.
18. **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

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

“CITY”
City of San Jose
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: _____
Megan Gritsch
Staff Attorney II