

**COOPERATIVE AGREEMENT BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
THE CITY OF SAN JOSE
FOR
CONSTRUCTION OF THE US 101/BLOSSOM HILL ROAD INTERCHANGE
IMPROVEMENT PROJECT**

This COOPERATIVE AGREEMENT ("AGREEMENT") is entered into by and between THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency organized as a special district under California law ("VTA") and the CITY OF SAN JOSE, a municipal corporation of the State of California ("CITY"), as of the date of the last signature set forth below (the "EFFECTIVE DATE"). Hereinafter, VTA and CITY may be individually referred to as "Party" or collectively referred to as "Parties".

I. RECITALS

- A. WHEREAS, on June 24, 2016 the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax ("2016 MEASURE B") for thirty (30) years for nine (9) transportation related program categories; and
- B. WHEREAS, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B; and
- C. WHEREAS, the duration of the 2016 MEASURE B will be thirty (30) years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047; and
- D. WHEREAS, on October 5, 2017, the VTA Board of Directors established the 2016 MEASURE B Program ("PROGRAM") and adopted the 2016 MEASURE B PROGRAM Category Guidelines ("GUIDELINES"); and
- E. WHEREAS, the PROGRAM includes a Highway Interchanges Program Category ("HIGHWAY INTERCHANGES CATEGORY") that funds eligible highway projects that will provide congestion relief, improved highway operations and freeway access, noise abatement, roadway connection overcrossings, and deploy advanced technology through Intelligent Transportation Systems throughout Santa Clara County; and
- F. WHEREAS, the HIGHWAY INTERCHANGES CATEGORY GUIDELINES require a minimum ten percent (10%) non-2016 Measure B contribution to advance eligible HIGHWAY INTERCHANGES CATEGORY projects; and
- G. WHEREAS, CITY, the sponsor and implementing agency of the environmental and design phases for the US 101/Blossom Hill Interchange Improvement Project

(hereinafter referred to as the "PROJECT"), is currently completing the final design to improve freeway mainline operations and local street circulation; and

- H. WHEREAS, PROJECT is eligible for HIGHWAY INTERCHANGES CATEGORY funds; and
- I. WHEREAS, CITY has contributed approximately \$5,477,000 and will continue contributing approximately \$1,523,000 totaling an amount of seven million dollars (\$7,000,000) toward the preliminary engineering, environmental clearance, final design, and construction support phases of the PROJECT as the required minimum ten percent (10%) non-2016 Measure B contribution to advance the PROJECT; and
- J. WHEREAS, on April 4, 2019 and December 5, 2019 the VTA Board of Directors allocated a total of \$35 million for construction of the PROJECT (the "FUNDS"); and
- K. WHEREAS, CITY has requested that VTA be the implementing agency for the construction phase of the PROJECT and that VTA will use the FUNDS finance this phase; and
- L. WHEREAS, VTA has agreed, pursuant to CITY's request, to be the implementing agency for the construction phase of the PROJECT; and
- M. WHEREAS, the Parties wish to specify herein the terms and conditions and their respective obligations in regard to performance and funding of the PROJECT via this AGREEMENT; and

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

II. AGREEMENT

1. Conduct of the PROJECT.

- (a) VTA shall be responsible for conducting and completing the construction for the PROJECT. The scope and schedule of the PROJECT to be undertaken by VTA pursuant to this AGREEMENT includes, but is not limited to, construction support activities such as: review of the PROJECT's documents, plans, and specifications to have them ready for bid; advertise, award, and administer the construction contract; construction support during construction of the PROJECT, and closeout of the construction phase as discussed in **Exhibit A**. See **Exhibit B** attached hereto for Project Location Map. To this end, VTA shall perform and/or be responsible for the following tasks:
 - i. serve as project manager and construction management team for the construction phase of PROJECT;

- ii. advertise, open bids, award, approve, and administer the construction contract in accordance with all applicable laws, regulations, and codes, including but not limited to the California Public Contract Code and the California Labor Code;
- iii. provide a Resident Engineer and construction staff including structure representative, office engineer, civil and bridge inspectors, office administrator, and laboratory testers, that are independent of VTA's construction contractor;
- iv. implement changes to the construction contract through contract change orders ("CCOs"). The Parties will review and concur on all CCOs over \$50,000;
- v. coordinate with CITY and Caltrans on CCOs for the PROJECT;
- vi. VTA will require the PROJECT's construction contractor to furnish payment and performance bonds naming VTA as obligee, and CITY as additional obligee, and to carry liability insurance in accordance with PROJECT specifications; and
- vii. conduct close-out activities for the PROJECT.

Costs and expenses to perform these tasks will be considered allowable costs and expenses pursuant to this AGREEMENT and payable using the FUNDS ("ALLOWABLE COSTS").

- (a) Consultants. VTA may retain 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 will be ALLOWABLE COSTS pursuant to this AGREEMENT.
- (b) Other Project Management Duties. VTA will include CITY as an active participant within VTA's project management process during construction, hold periodic progress meetings as agreed upon by the PROJECT team to assess the progress of PROJECT and address PROJECT issues as they arise. VTA may also prepare monthly reports on PROJECT activity and progress for CITY if requested by CITY.
- (c) Expenditure Updates. VTA will actively monitor actual PROJECT expenditures to ensure that the FUNDS are only used to pay for ALLOWABLE COSTS.

If the lowest responsible construction contract bid is greater than the funding commitment to construction capital, both Parties must be involved in determining how to proceed. If the Parties do not agree in writing on a course of action within fifteen (15) working days, VTA shall not award the construction contract.

If there are insufficient FUNDS to implement applicable commitments and conditions included in the PROJECT's construction, each Party implementing

commitments or conditions accepts responsibility to fund those activities, as they apply to each Party's responsibilities, until such time the Parties amend this AGREEMENT.

If the PROJECT is forecasted to be delayed, VTA and CITY may formulate and implement a strategy to continue the PROJECT.

- (d) CITY's Project Management Duties. CITY shall be responsible for CITY's consultant's cost for Design Support During Construction ("DSDC") for the PROJECT. CITY's administrative costs to procure and manage consultant agreements as well as the actual costs of such consultants will not be allowable costs pursuant to this AGREEMENT.

CITY will provide a landscape architect who will be responsible for all landscaping activities within the State Highway System and CITY right of way. The landscape architect will provide DSDC to VTA, at no cost to VTA, for the duration of construction phase of the PROJECT.

2. VTA's Financial Contribution for PROJECT. VTA will contribute the FUNDS, totaling THIRTY FIVE MILLION dollars (\$35,000,000) towards the construction of the PROJECT.
3. Compliance with Governmental Requirements. Both Parties must comply with all laws, regulations, and codes applicable to the PROJECT.
4. Compliance with 2016 MEASURE B Requirements. Both Parties must comply with all HIGHWAY INTERCHANGES CATEGORY GUIDELINES as identified in **Attachment B** and CITY will be available to present at VTA's Capital Program Committee or VTA 2016 Measure B Citizens' Oversight Committee upon request of VTA.
5. Term. This AGREEMENT will become effective upon full execution and will remain in effect through **December 31, 2025**. Upon written request of VTA, 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.
6. Written Termination. Either Party may terminate this AGREEMENT by giving written notice thirty (30) days to the other Party. Notice must be provided in accordance with this AGREEMENT. CITY is responsible for all costs incurred prior to execution of the AGREEMENT. CITY is responsible for DSDC costs accrued prior to and as a result of termination of the AGREEMENT. VTA and CITY are proportionally responsible for all costs of construction and construction oversight incurred after execution of the AGREEMENT, including, but not limited to the costs associated with early termination.

7. **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.

8. **Parties' Representatives.** The General Manager of VTA is the representative of VTA for all purposes under this AGREEMENT. The Director of Transportation for CITY is the representative of CITY for all purposes under this AGREEMENT.

The initial point of contact at VTA is Casey Emoto, Chief Engineering & Program Delivery Officer.

The initial point of contact at CITY is Zahir Gulzadah, Regional & Local Projects Delivery Division Manager.

9. **Indemnification.**

a. Neither VTA nor any officer or employee thereof shall be responsible for any damage or liability arising out of or relating to CITY's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction associated with the AGREEMENT. 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) arising out of or relating to CITY's negligence, recklessness, or willful misconduct 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 arising out of or relating to VTA's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction associated with the AGREEMENT. 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) arising out of or relating to VTA's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction delegated to VTA under this AGREEMENT.

10. **No Waiver.** The failure of either Party to insist upon the strict performance of any of the terms of this AGREEMENT will 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.

11. **Notice.** Any notice required to be given by either Party, or which either party may wish to give, will 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
Casey Emoto, Chief Engineering & Program Delivery Officer
3331 North First Street, Bldg. B-1
San José, CA 95134-1906

To CITY: City of San Jose
John H. Ristow
Director of Transportation
200 E. Santa Clara Street, Tower 8th
San José 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.

12. 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 however, there shall be no affirmative duty on either party to participate in such alternative forms of dispute resolution. It is the intent of the Parties to the extent possible that litigation be avoided as a method of dispute resolution.

13. Entire AGREEMENT. This AGREEMENT constitutes the entire agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations, and understandings of the Parties relative thereto.

14. Amendments. Future amendments to this AGREEMENT will be processed by mutual written agreement of the Parties. Unless otherwise provided herein, any amendments to this AGREEMENT must be approved by CITY Council and VTA's General Manager. Whenever possible, notice to amend this AGREEMENT shall be provided thirty (30) calendar days prior to the desired effective date of such amendment.

15. 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.

16. 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, will 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 José
a municipal corporation

By: _____
Toni J. Taber, CMC
City Clerk

“VTA”
Santa Clara Valley Transportation
Authority
a public agency

By: _____
Nuria Fernandez
General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Jon Calegari
Deputy City Attorney

APPROVED AS TO FORM:

By: _____
Uzma Saeed
Assistant Counsel

EXHIBIT A – PROJECT SCOPE OF WORK

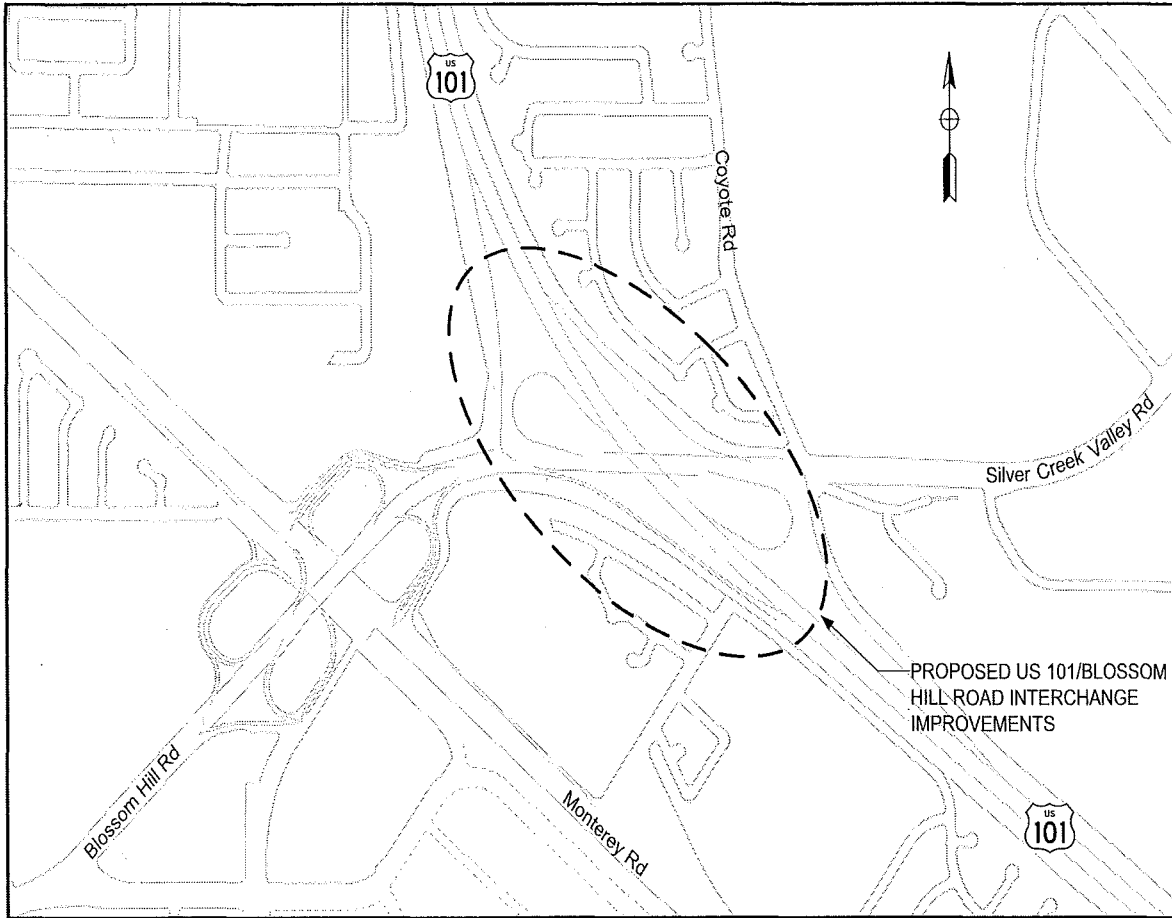
US 101/Blossom Hill Road Interchange Improvement

The scope of work of this PROJECT as identified in the final Plans, Specifications, and Estimate includes, but not limited to, the following:

- A new overcrossing structure over U.S. 101 will be constructed between the two existing overcrossing bridge decks to accommodate one additional lane of traffic in each direction plus an eastbound dedicated lane leading to the northbound loop onramp. The bridge will be a two-span structure that is approximately thirty-six (36) feet wide and 350 feet long. The potential structure types include cast-in-place post tensioned box girders and precast-prestressed girders.
- The existing southbound off-ramp will be widened as it approaches the ramp terminus to accommodate three right-turn lanes and one left-turn lane. The existing traffic signal at the intersection of this ramp with Blossom Hill Road will also be modified.
- The existing northbound off-ramp will be widened as it approaches the ramp terminus to accommodate two left-turn lanes, one through lane, and one right-turn lane.
- The eastbound approach to the Blossom Hill Road/northbound off-ramp/Coyote Road intersection will be reconfigured to accommodate two left-turn lanes and two through lanes. The existing traffic signal at this intersection will also be modified.
- Coyote Road will be widened on its east side to add a merge lane, which may also result in the relocation of a power pole, or protection of the power pole with metal beam guard railing.
- The entrances to the existing southbound and northbound loop on-ramps will be realigned to improve traffic operations.
- The existing connector ramp from Monterey Road to eastbound Blossom Hill Road will be modified to increase the weaving distance between Monterey Road and the diagonal U.S. 101 southbound on-ramp.
- The project will include typical safety and operational features such as guard rails, lighting, and sign. The entrances to the existing southbound and northbound loop on-ramps will be realigned to improve traffic operations.
- A Class I Bicycle/Pedestrian path, approximately 0.6 mile in length, will be constructed through the interchange between Monterey Road on the west and Coyote Road on the east. The path will be located along the north side of Blossom Hill Road and will be grade-separated under the southbound off-ramp and southbound loop on-ramp, and over the northbound diagonal on-ramp. Details of this path are as follows:
 - The path will be elevated on a structure over the northbound on-ramp, which will include a lowering of the profile of the on-ramp by approximately ten (10) feet. The main span over the on-ramp will be a steel truss type structure that is approximately one-hundred (100) feet long and ten (10) feet wide. The main span will connect to concrete deck slab structures to the east and west, each approximately forty (40) feet long and twelve (12) feet wide.

- The path will pass under the southbound off-ramp and the southbound loop on-ramp in two concrete undercrossing structures, each approximately fifty (50) feet long. An open-air area is proposed between the two undercrossing structures.
- On the Blossom Hill Road bridge structure over U.S. 101, the path will be separated from vehicular traffic by a thirty-six (36) inch high concrete barrier.
- A retaining wall, approximately 470 feet long, will be constructed along westbound Blossom Hill Road at the depressed northbound on-ramp to U.S. 101. The height of this wall will be up to approximately seventeen (17) feet.
- Two retaining walls, each approximately 180 feet long, will be constructed on the sides of the path east of the northbound on-ramp to U.S. 101. The wall heights will vary up to a maximum of approximately eight (8) feet.
- A retaining wall, approximately 250-feet long, will be constructed between the path and westbound Blossom Hill Road west of the southbound offramp from U.S. 101. The height of this wall will vary from approximately six (6) to ten (10) feet.

EXHIBIT B – PROJECT LOCATION MAP
US 101/Blossom Hill Road Interchange Improvement



Project Overview

The purpose of the project is to relieve congestion, improve circulation and enhance safety at the US 101/Blossom Hill Road interchange.

Milestones

| | |
|--|-------------|
| Project Approval/Environmental Document | 2018 Summer |
| Final Design | 2019 Fall |
| Construction | 2022 Fall |
| Landscape (Plant Establishment) & Project Close-out | 2025 Fall |

Project Funding Details

| | |
|---------------------|--------------------------|
| \$35,000,000 | VTa 2016 Measure B Funds |
| \$ 7,190,477 | City of San José Funds |
| \$42,190,477 | Total |

ATTACHMENT B – HIGHWAY INTERCHANGES PROGRAM GUIDELINES

Definition from Resolution No. 2016.06.17

To fund highway projects throughout the valley that will provide congestion relief, improved highway operations and freeway access, noise abatement, roadway connection overcrossings, and deploy advanced technology through Intelligent Transportation Systems (ITS). Candidate Projects are set forth in Attachment B.

Total Funding

- \$750 million in 2017 dollars.

Distribution

- VTA Board of Directors will allocate funding on a 2-year cycle.
- Funds will be distributed through two programs: capital projects and noise abatement.
- Funds will be available on a reimbursement basis.

Implementation

- VTA staff will work with local agency staff to identify and prioritize projects in the Highway Interchange Program Candidate List on 2016 Measure B Attachment B. The following criteria will be considered:
 - Project Readiness
 - Level of local contribution
 - Geographic consideration
- VTA staff will work with member agency staff to advance projects.
- Noise Abatement projects will be a separate category within the Highway Interchange Program.
 - Projects identified in the 2011 VTA Soundwall Study will receive higher consideration during Call for Projects.
- Funds will be available on a reimbursable basis. Agencies may submit invoices to VTA on a monthly, quarterly or annual basis. Invoices must be submitted within one year of the date posted on the contractor's invoice.
- The cost of each phase of a proposed Highway Interchanges project will be finalized with execution of agreements with VTA for project funding.

Criteria

- Only VTA, Caltrans and Member Agencies can serve as an implementing agency.
- Only projects and programs currently listed on 2016 Measure B Attachment B are eligible.

Requirements

- Projects require a minimum 10% non-2016 Measure B contribution.
- Reporting requirements will be detailed in agreements executed with VTA for project funding.
- All applications must include a delivery schedule.
- All projects must comply with VTA's Complete Streets Reporting Requirements.
 - All collateral material will be required to display a 2016 Measure B logo.