

COST SHARING AGREEMENT BETWEEN THE CITY OF SANTA CLARA
AND THE COUNTY OF SANTA CLARA
FOR WIDENING IMPROVEMENTS ON SAN TOMAS EXPRESSWAY,
BETWEEN EL CAMINO REAL AND HOMESTEAD ROAD

This is an agreement made and entered into as of the date it is fully executed by and between the City of Santa Clara, California, a chartered municipal corporation of the State of California (hereinafter referred to as “CITY”), and the County of Santa Clara, a political subdivision of the State of California (hereinafter referred to as “COUNTY”), collectively referred to herein as the “PARTIES.”

RECITALS

WHEREAS, the CITY and the COUNTY previously entered into that certain Cost Sharing Agreement between the City of Santa Clara and the County of Santa Clara for Widening Improvements on San Tomas Expressway, between El Camino Real and Homestead Road, dated April 26, 2011 (“ORIGINAL AGREEMENT”); and

WHEREAS, the ORIGINAL AGREEMENT, expired on December 31, 2017; and,

WHEREAS, the PROJECT as defined in the ORIGINAL AGREEMENT, is not complete and additional funds are necessary in order to successfully complete the PROJECT, including but not limited to funding of necessary change orders to complete extra work; and,

WHEREAS, an additional estimated \$2.5 million in funding is necessary to complete the Project, including approved and anticipated change orders for extra work (the “EXTRA WORK”).

NOW, THEREFORE, for and in consideration of their mutual promises and covenants, and subject to the terms, conditions, and provisions hereinafter set forth, the PARTIES agree as follows:

AGREEMENT

1) 1. Funding Sources for the EXTRA WORK shall be as follows, unless otherwise agreed to in writing by the PARTIES: CITY shall provide \$414,000 and COUNTY shall provide the remaining amount to complete the PROJECT. The PARTIES agree to work together to find other funding sources for the PROJECT.

2) Timing of PROJECT Funding:

Within 30 days after the full execution of this AGREEMENT, CITY will deposit \$414,000 with the COUNTY.

3) Indemnification:

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, COUNTY and CITY agree that, pursuant to Government Code Section 895.4, each of the PARTIES hereto shall fully indemnify and hold each of the other PARTIES, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this AGREEMENT. No party, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other PARTIES hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other PARTIES under this AGREEMENT.

4) Insurance:

COUNTY will require its construction contractor to indemnify CITY, its City Council, commissions, officers, employees, volunteers and agents and to provide automobile, workers compensation, bodily injury insurance, property damage insurance and contractual liability coverage during the performance of the PROJECT. The COUNTY will also require that the CITY, its City Council, commissions, officers, employees, volunteers and agents be designated as additional insureds on the construction contractor's commercial general liability policy.

5) Additional Provisions:

- a) The parties' waiver of any term, condition or covenant, or breach of any term, condition, or covenant shall not be construed as a waiver of any other term, condition or covenant or breach of any other term, condition or covenant.
- b) This agreement is the entire AGREEMENT between COUNTY and CITY relating to the PROJECT. Any prior agreements, promises, negotiations, or representation not expressly set forth in this agreement are of no force or effect.
- c) If any term, condition or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement will be valid and binding on COUNTY and CITY.
- d) This agreement will be governed and construed in accordance with the laws of the State of California.
- e) This agreement may be executed in counterparts and will be binding as executed.
- f) The term of this agreement will commence upon execution of the agreement by both PARTIES and shall remain in effect until terminated by mutual agreement of the PARTIES or pursuant to Section 8(h). If not terminated earlier, the AGREEMENT will expire on December 31, 2019.

- g) All changes or extensions to the AGREEMENT must be in writing in the form of an amendment and approved by both PARTIES.
 - h) Either COUNTY or CITY may terminate the agreement at any time prior to award of the construction contract for the PROJECT upon thirty (30) days written notice. Once the construction contract for the PROJECT has been awarded, the agreement can be terminated only upon the mutual written consent and terms acceptable to both PARTIES.
 - i) The designated project manager for COUNTY for the duration of the PROJECT is Craig Petersen, or his designee. COUNTY's project manager will have all the necessary authority to direct technical and professional work within the scope of the agreement and will serve as the principal point of contact with COUNTY. The CITY Traffic Engineer, Dennis Ng, or his designee, will serve as the principal point of contact for the CITY, responsible for coordinating design review of the proposed project plans for the CITY, for obtaining the necessary CITY approvals and permits, including an encroachment permit for this PROJECT and for authorizing work which may result in additional cost.
 - j) The AGREEMENT does not change any authority or responsibility between COUNTY and CITY with regard to design, maintenance, operation or future repair responsibility.
- 9) Notices – Notices required by this agreement may be delivered by first class mail addressed to the appropriate party at the following addresses and deemed received when sent to:

To CITY: CITY OF SANTA CLARA
1500 Warburton Avenue,
Santa Clara, CA 95050
Attn: Craig Mobeck, Director of Public Works

To COUNTY: ROADS AND AIRPORTS DEPARTMENT
101 Skyport Drive,
San Jose, CA 95110-1302
Attn: Harry Freitas, Director

IN WITNESS WHEREOF, the PARTIES have entered into this AGREEMENT as of the date it is fully executed.

“CITY”
CITY of Santa Clara,

“COUNTY”
County of Santa Clara

Deanna J. Santana
City Manager

S. Joseph Simitian, President
Board of Supervisors

Attest:

Attest:

Jennifer Yamaguma
Acting City Clerk

Megan Doyle
Clerk of Board of Supervisors

APPROVED AS TO FORM:

APPROVED AS TO FORM &
LEGALITY:

Brian Doyle
City Attorney

Christopher R. Cheleden
Lead Deputy County Counsel