

**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 County Board of Supervisors adopted the Comprehensive County Expressway Planning Study - 2008 Update in March 2009;

WHEREAS, the Expressway Planning Study identified the widening of San Tomas Expressway (EXPRESSWAY), from 6-lanes to 8-lanes between El Camino Real and Williams Road in the cities of Santa Clara and San Jose as a Tier 1A priority capacity and operational improvement project;

WHEREAS, these widening improvements are necessary to improve traffic flow, reduce delay to motorists, and reduce traffic congestion in both the CITY and on the COUNTY Expressway;

WHEREAS, CITY has collected development impact fees for a portion of both the design and construction of the widening improvements on San Tomas Expressway between El Camino Real and Stevens Creek Boulevard;

WHEREAS, COUNTY intends to design and construct widening improvements on San Tomas Expressway between El Camino Real and Homestead Road, which improvements will be hereinafter referred to as "PROJECT";

WHEREAS, the PROJECT includes the construction of an additional traffic lane in both the northbound and southbound directions on San Tomas Expressway and the associated intersection improvements which will provide traffic relief throughout this portion of CITY;

WHEREAS, CITY has received grant funding for the San Tomas Aquino Creek Spur Trail, a separate pedestrian and bicycle trail along the west side of the Expressway, a portion of which lies between El Camino Real and Benton Street;

WHEREAS, the PARTIES wish to incorporate the San Tomas Aquino Creek Spur Trail improvements into the planning, design and construction of the PROJECT;

WHEREAS, CITY has acknowledged the future benefit of this PROJECT to CITY and indicated its willingness to contribute funding to the PROJECT; and

WHEREAS, the PARTIES desire to memorialize such agreement in writing.

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) Scope of Work: The scope of work will consist of the design and construction of expressway widening on San Tomas Expressway from 6 to 8 lanes between El Camino Real and Homestead Road. The project includes: maintaining operations of the HOV lane; adding Phase 1 of the San Tomas Aquino Creek Spur Trail from El Camino Real to Benton Street on the west side; adding either sidewalk or Phase 2 of the San Tomas Aquino Spur Trail from Benton Street to Homestead Road on the west side; adding sidewalk on the east side from El Camino Real to Homestead Road; maintaining bicycle accommodations; replacing substandard soundwalls as needed; and installing replacement landscaping as required; and all work necessary to complete the improvements, all of which will hereinafter be referred to as "PROJECT." If CITY is able to

secure funding for the construction of Phase 2 of the Spur Trail from Benton Street to Homestead Road prior to COUNTY completing the Plans Specifications and Estimate (PS&E) level of design, Phase 2 of the Spur Trail will be included in the final PS&E package to be advertised for construction. The PROJECT will be constructed according to the design plans, specifications and estimates approved in writing by both COUNTY and CITY. Attached as Exhibit A and incorporated by reference herein is a PROJECT location map.

- 2) Design, Environmental and Right of Way Phase: COUNTY, as the lead agency on this PROJECT, will prepare, or cause to be prepared, plans, specifications and engineers estimate (PS&E), environmental documents as required and Right of Way clearance for PROJECT. COUNTY will submit to CITY for design review the 30%, 60%, 90%, and PS&E levels of design. CITY will provide review, approval, and written permission to proceed with work, and for CITY issuance of a permit, at no cost to COUNTY, for work within CITY jurisdiction prior to advertisement for contractor bids. CITY will review and provide design review comments to COUNTY within a timely manner.
- 3) Award of Contract and Construction: The construction work will be performed by a contract awarded by competitive bid and administered by COUNTY pursuant to its contracting principles and applicable law. COUNTY will provide CITY with a copy of all approved project schedules. Weekly schedules will be provided to CITY staff representatives at the weekly PROJECT meetings. COUNTY will provide CITY with a copy of the Storm Water Pollution Prevention Plan (SWPPP) and Erosion and Sedimentation Control Action Plan Element (ESCAPE) submittal prior to COUNTY approval. The PROJECT will be completed to the COUNTY's and the CITY's reasonable satisfaction, and such extra work as may be desired within the PROJECT

limits will be accommodated, subject to sufficient PROJECT funds being available to ensure completion of the necessary work.

- 4) PROJECT Cost and Funding: The estimated PROJECT cost and funding sources are as follows:

Project Cost & Funding Sources

Phase	Est Cost	Funding Sources (Rounded)		Timeline
PS&E/ROW	\$3.6M	City Development Impact Fees	\$1.1M	Immediately - work to begin in early 2011
		1996 Measure B	\$1.5M	
		MTA Local Program Reserve	\$0.9M	
		City Spur Trail Grant	\$0.1M	
Construction	\$10.5M	City Development Impact Fees	\$1.7M	Mid-2013 to secure all funding
		To be determined	\$8.8M	

Approximately \$8.8 million for construction of PROJECT has not been identified at this time.

COUNTY and CITY shall work together in an effort to secure the remaining construction funding from various local, state and federal funding sources. CITY has secured Development Impact Fees of \$1,117,080 for design and \$1,671,258 for construction of the widening project and intersection improvements, and received a funding grant for design and construction of the Spur Trail Phase 1. It is anticipated that the 1996 Measure B, and the MTA Local Program Reserve funds will not be available until the early spring of 2011. However, PARTIES wish to proceed with design of the widening and Spur Trail projects as soon as possible using the City Development Impact Fees. The timing for securing funding for the project is listed under Section 5) Timing of PROJECT Funding.

Any changes to the scope of work as identified by COUNTY or CITY that is beyond the PROJECT description identified in this agreement, that may increase design or construction costs, shall receive prior written approval and agreement on a funding plan from both COUNTY and

CITY. COUNTY will not authorize its consultants or contractors to perform work which would result in any additional cost above and beyond the agreed amount as set forth in this AGREEMENT, without prior agreement and written approval from CITY.

5) Timing of PROJECT Funding:

- a) Within 45 days after the full execution of this AGREEMENT, CITY will deposit \$1,117,080 for the widening project design and \$100,000 for both Phase 1 and Phase 2 of the Spur Trail design with COUNTY to begin environmental and preliminary engineering.
- b) It is anticipated that in spring 2011, the remaining funds of \$2,400,000 (\$1.5M Measure B and \$0.9M VTA Local Program Reserve funds) for the completion of environmental, design and right-of-way purchase will become available. Once these funds become available, COUNTY will complete this phase of the project and identify any funds remaining for use during the construction phase of PROJECT.
- c) If PARTIES secure the \$8.8 million additional funding for construction of PROJECT prior to February 1, 2014, COUNTY shall proceed to advertise the contract for construction of PROJECT.
- d) 30 days prior to construction contract advertisement for bids by COUNTY for PROJECT, CITY will deposit \$1,617,258 for the Expressway widening and intersection improvements, and, based on the final PS&E estimate, the estimated amount for both Phase 1 and Phase 2 for construction of the Spur Trail with COUNTY. CITY shall fund 100% of the construction costs for the Spur Trail, which costs shall include inspection and construction engineering costs and bid contingency. However, should the total estimated Spur Trail construction costs for both Phase 1 and Phase 2 exceed \$1,500,000, COUNTY shall immediately inform CITY,

and COUNTY and CITY shall convene and discuss if CITY wishes to proceed with construction of the Spur Trail.

- e) COUNTY will obtain all necessary written approvals from CITY, including approval of PS&E, and necessary encroachment permits from Caltrans and other concerned agencies, prior to PROJECT advertisement, bidding addendum, contract award, extra work and/or change order approval. If the PARTIES cannot agree on a final version of PS&E, prior to PROJECT advertisement, then PARTIES will convene and determine a mutually agreed course of action. PROJECT advertisement will not be made until PARTIES agree to the final version of PS&E.
 - f) COUNTY will provide CITY with a set of vellum original "As Built" construction plans after the PROJECT is completed as part of the final accounting.
 - g) If PARTIES are not able to secure the \$8.8 million additional funding for construction of PROJECT prior to February 1, 2014, PROJECT shall not proceed, and PARTIES shall meet to discuss options for completing construction of PROJECT or construction of Phase 1 and Phase 2 of the Spur Trail in the future. COUNTY shall provide CITY an accounting of funds remaining, if any, after completion of PS&E level of design, and PARTIES shall mutually agree as to their disposition.
 - h) Prior to completion of the construction of the Spur Trail, PARTIES shall enter into an agreement for CITY's operation and maintenance of the Spur Trail.
- 6) 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.

7) 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.

8) 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, 2017.
- 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: Rajeev Batra, Director of Public Works/City Engineer


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


CITY CLERK FILE COPY
CITY OF SANTA CLARA

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

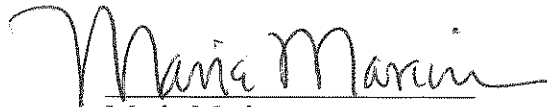

Jennifer Sparacino
City Manager
Approved by Council: 3/15/11


Dave Cortese, President
Board of Supervisors

Attest:


Attest:

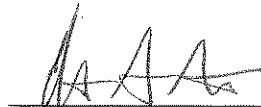

Rod Diridon, Jr.
City Clerk


Maria Marinos
Clerk of Board of Supervisors

APPROVED AS TO FORM:

APPROVED AS TO FORM &
LEGALITY:


Elizabeth H. Silver
Interim City Attorney

 04/05/2014
Elizabeth G. Pianca
Deputy County Counsel

Meeting Date:

3/15/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item #

7B.11



Date:

March 8, 2011

To:

City Manager for Council Action
Executive Director for Redevelopment Agency Action

From:

Director of Public Works/City Engineer

Subject:

Cost Sharing Agreement with the County of Santa Clara for Widening Improvements on San Tomas Expressway from El Camino Real to Homestead Road

EXECUTIVE SUMMARY:

The County's Expressway Planning Study contains a project for widening of San Tomas Expressway from El Camino Real to Homestead Road. The improvements will add an additional thru lane in both the northbound and southbound directions on San Tomas Expressway. The project will also install a sidewalk on the eastside and the San Tomas Aquino Creek Spur Trail on the westside of the Expressway. County of Santa Clara staff has prepared an Agreement in conjunction with City staff, in order to specify funding, plan preparation, and construction administration responsibilities. The County will act as the lead agency on the project, prepare plans and specifications, obtain environmental clearance, perform construction administration and inspections, and obtain the necessary permits. This agreement has been reviewed and approved by the City Attorney's Office and by County Counsel. A copy of this agreement has been placed in Council offices for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The proposed cost sharing agreement will allow the City to provide fair share traffic mitigation fees collected from Yahoo! and Nvidia Corporation for impacts to San Tomas Expressway from their respective developments to the County of Santa Clara to implement the required improvements. This will allow the County of Santa Clara to proceed with design and construction of the widening project, most of which is within the County right of way. The proposed cost sharing agreement will also allow the City to efficiently, cost effectively, and cooperatively work with the County to construct the San Tomas Aquino Creek Spur Trail along the west side of San Tomas Expressway in conjunction with the widening project.

ECONOMIC/FISCAL IMPACT:

The latest cost estimate from the County of Santa Clara for the widening of the Expressway and modification of the intersections to allow the additional thru lanes is \$14.1 million. Yahoo! and Nvidia Corporation will be providing \$1,117,080 and \$1,671,258 respectively (for a total of \$2,788,338) for design and construction costs of improvements as part of their fair share mitigation for impacts on the Expressway from each development project. The City will be contributing \$1,600,000 in Redevelopment Agency funds for the design and construction of the San Tomas Aquino Spur Trail along this segment. Of the \$1,600,000 contribution of Redevelopment Agency funds, \$100,000 will be due 45 days after full execution of the Cost Sharing Agreement. The remaining \$1,500,000 is anticipated to be due at the time of advertising of the construction contract, estimated to be in February 2014. Redevelopment Agency – CIP North of Bayshore

City Manager for Council Action

Cost Sharing Agreement with the County of Santa Clara for Intersection Improvements on San Tomas Expressway at El Camino Real and Additional Appropriations

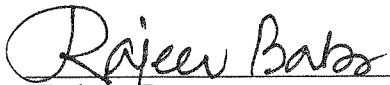
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Fund, San Tomas Aquino Saratoga Creek Trail – Spur Trail to Central Park project (939-4433-80100-9069) currently has funds available to provide the County \$100,000 for design of the Spur Trail. The future \$1,500,000 obligation to the County of Santa Clara may be available in this Redevelopment Agency project (depending on future funding) or in the Regional Transportation Fee Fund. Staff will provide an appropriation recommendation when the funds are required.

RECOMMENDATION:

That the Council/Agency:


1. Approve the Cost Sharing Agreement with the County of Santa Clara for widening improvements on San Tomas Expressway from El Camino Real to Homestead Road for an amount not to exceed \$4,388,338; and
2. Authorize the City Manager to execute and to make minor, non-substantive modifications to the Agreement if necessary.



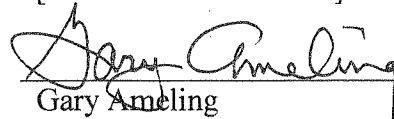
Rajeev Batra
Director of Public Works / City Engineer

APPROVED:



 Jennifer Sparacino
City Manager
Executive Director for Redevelopment Agency

Certified as to Availability of Funds: ^{OK}₃₂
[939-4433-80100-9069] \$100,000.00



Gary Ameling
Redevelopment Agency Treasurer

Documents Related to this Report:

- 1) ***Cost Sharing Agreement Between City of Santa Clara and County of Santa Clara for Widening Improvements on San Tomas Expressway from El Camino Real to Homestead Road***