

**FUNDING AGREEMENT
BETWEEN THE CITY OF SANTA CLARA AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE STATE ROUTE 237 CORRIDOR PROJECTS**

THIS AGREEMENT (**Agreement**) dated _____, 2020, for purposes of reference, is made and entered into by and between the CITY OF SANTA CLARA, 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. **CITY** and **VTA** each recognize the need to improve traffic operations of impacted freeway segments, provide added transportation capacity on parallel facilities, and improve circulation in the City of Santa Clara in the County of Santa Clara.
- B. As a condition of development related to the Santa Clara Square Residential/Mixed Use Project, located at 2600 Augustine Drive in the City of Santa Clara, the developer, Irvine Company (not a party to this Agreement) has agreed to make a voluntary contribution of \$103,000 to **CITY**. **CITY** will allocate this amount to **VTA** to assist in various freeway improvement activities outside the **CITY**'s jurisdiction.
- C. The Parties wish to set forth in this Agreement their respective obligations in regard to the SR 237 Improvements from Lawrence Expressway to US 101 (**PROJECT**).

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

II. AGREEMENT

- 1. **Scope of PROJECT.** The scope of **PROJECT** includes, but is not limited to: (i) activities necessary to procure all necessary approvals required from any and all governmental or regulatory agency or entity; and (ii) those project development activities necessary to complete various phases of project delivery for **PROJECT**. This will include conducting a study to identify potential improvements along the corridor leading to the preparation of a Caltrans Project Initiation Document to obtain Caltrans conceptual approval.
- 2. **CITY's Financial Contribution for PROJECT.** **CITY** shall contribute to the **PROJECT** an amount not to exceed ONE-HUNDRED AND THREE THOUSAND (\$103,000) dollars (hereinafter, "**CITY's Contribution**") towards the development of **PROJECT**.

Upon execution of the Agreement, VTA shall invoice CITY for the CITY's Contribution, and, upon receipt, will deposit the CITY's Contribution into an interest-bearing account. CITY shall pay to VTA the CITY's Contribution within thirty (30) calendar days after receipt of the invoice.

3. **Use of CITY's Contribution.** VTA will use the CITY's Contribution and the interest earned thereon for allowable costs and expenses related to work on the PROJECT, as set forth in this Agreement.

4. **VTA's Role in PROJECT.**

- a. **Tasks.** VTA shall perform and/or be responsible for the following tasks to complete the PROJECT:
- i. Serve as project manager for PROJECT;
 - ii. Coordinate with the State of California for its review and approval of PROJECT;
 - iii. Obtain all necessary permits and rights of way for PROJECT; and
 - iv. Conduct preliminary engineering and planning activities for PROJECT.

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

- b. **Consultants.** VTA may retain design consultants to perform any of the functions listed in Section 4(a). 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.
- c. **Project Cost 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 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 Public Works. Any such expansion of the scope of services shall be in writing and approved by both Parties.
5. **Compliance with Governmental Requirements.** VTA shall comply with all laws and regulations pertaining to the PROJECT.
6. **Term of Agreement.** This Agreement shall become effective upon full execution and shall remain in effect through the earlier of: (i) VTA's full expenditure of CITY's Contribution on PROJECT related expenses; (ii) **December 31, 2021**; or (iii) completion of PROJECT. If the PROJECT is delayed beyond December 31, 2021 or cancelled completely, either Party may terminate this Agreement, by giving written

notice to the other Party of such termination in accordance with **Section 12** below.

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. **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 PROJECT. During this period, VTA shall make these records available within a reasonable time to the CITY for inspection upon request.
9. **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 the Public Works for CITY or the Director's designee is hereby made the representative of CITY for all purposes under this Agreement.
10. **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, 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, 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.
11. **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.
12. **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
Casey Emoto, Director of Engineering and Program Delivery
3331 North First Street, Bldg. A
San Jose, CA 95134-1906

To CITY: City of Santa Clara
Craig Mobeck, Director of Public Works
Department of Public Works
1500 Warburton Avenue
Santa Clara, CA 95050

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

13. 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 non-binding 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.

14. 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.

15. Amendments. Unless otherwise provided herein, any amendments to this Agreement must be in writing and approved by the City Council and VTA Board.

16. 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.

17. 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 Santa Clara
a municipal corporation

By: _____
Deanna J. Santana
City Manager

“VTA”

Santa Clara Valley Transportation Authority
a public agency

By: _____
Nuria Fernandez
General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Brian Doyle
City Attorney

APPROVED AS TO FORM:

By: _____
Shannon Smyth-Mendoza
Senior Assistant Counsel