

**FUNDING AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR 2010 MEASURE B VEHICLE REGISTRATION FEE COUNTYWIDE
PROGRAM**

THIS AGREEMENT is between the CITY OF SUNNYVALE, a "Member Agency", referred to herein as "RECIPIENT", and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as "VTA". Hereinafter, RECIPIENT and VTA may be individually referred to as "Party" or collectively referred to as "Parties."

I. RECITALS

1. **Whereas**, on June 3, 2010, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2010 to authorize a \$10 increase in the Vehicle Registration Fee (VRF), referred to hereinafter as PROGRAM, for transportation-related projects and adopted the expenditure plan in Attachment A which allocates the revenue to transportation-related programs and projects that have a relationship or benefit to the persons who pay the fee; and
2. **Whereas**, on October 7, 2010, the VTA Board of Directors adopted administrative procedures for the PROGRAM; and
3. **Whereas**, these administrative procedures state that VTA will execute PROGRAM funding agreements with project sponsors; and
4. **Whereas**, on November 2, 2010, the voters of Santa Clara County enacted the \$10 vehicle registration fee on motor vehicles registered within Santa Clara County to pay for programs and projects bearing a relationship or benefit to the owners of motor vehicles paying the fee; and
5. **Whereas**, the PROGRAM includes a "Countywide Program" that includes Matching Funds for Federal/State/Regional transportation grants as an eligible project category; and
6. **Whereas**, on September 5, 2013, the VTA Board approved VRF Matching Funds for the PROJECT described in Section II-1, and
7. **Whereas**, VTA and RECIPIENT desire to specify herein the terms and conditions under which Intelligent Transportation System PROJECT grants are to be conducted and financed.

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

II. RECIPIENT'S OBLIGATIONS

RECIPIENT agrees:

1. To implement and complete the "Hendy Avenue Complete Streets" project ("PROJECT") in consideration of a PROGRAM grant in amount not to exceed \$400,000 furnished by VTA to RECIPIENT as provided herein.
2. To submit invoices at quarterly intervals to VTA for reimbursement of costs incurred to implement the PROJECT. RECIPIENT shall include auditable back-up documentation (time sheets, bills, etc.) with each invoice.
3. To complete PROJECT and expend all funds within two years of the signing of this agreement.
4. To maintain PROJECT financial records, books, documents, papers, accounting records and other evidence pertaining to costs for five years. RECIPIENT shall make such records available to VTA upon request for review and audit purposes. Financial audits will be performed at VTA's discretion. RECIPIENT will be contacted in writing in advance of any audit or other PROJECT review.
5. To credit VTA's funding contribution on all signage, electronic or printed materials distributed to the public that are related to PROJECT.

III. VTA'S OBLIGATIONS

VTA agrees:

1. To reimburse RECIPIENT's PROJECT costs as provided in Section 2, up to the maximum grant amount shown in Section 2.1. VTA will allocate to RECIPIENT the VRF funds only on a cost reimbursement basis and only for documented legitimate costs of the PROJECT.
2. To reimburse, upon review and approval of invoices and documentation, RECIPIENT within 20 days of invoice submission for all eligible expenditures up to the maximum amount described in Section 2 of this Agreement.
3. To provide a copy of VTA logos to RECIPIENT for use to fulfill the obligation under Section II-5 of this Agreement.

IV. GENERAL TERMS AND CONDITIONS

Both Parties agree:

1. 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 RECIPIENT under or in connection with any work, authority or jurisdiction delegated to VTA or RECIPIENT under this Funding Agreement. Both Parties agree that pursuant to Government Code 895.4, RECIPIENT shall fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind and description brought on for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by RECIPIENT under or in connection with any work, authority or jurisdiction delegated to RECIPIENT under this Funding Agreement. This provision shall survive the termination of this Agreement.
2. Neither RECIPIENT 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 delegated to RECIPIENT or VTA under this Funding Agreement. Both Parties agree that pursuant to Government Code 895.4, VTA shall fully defend, indemnify, and save harmless RECIPIENT from all suits or actions of every name, kind and description brought on for or on account of injury (as defined in Government Code Section 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 Funding Agreement. This provision shall survive the termination of this Agreement.
3. No alteration or variation of the terms of this Funding Agreement shall be valid unless made in writing and signed by both of the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
4. PROJECT costs incurred after September 5, 2013 are eligible expenditures.
5. Funds for the PROJECT described in this Agreement, which are not claimed for reimbursement by invoices submitted more than two years after execution of this agreement, shall not be available to reimburse PROJECT costs unless a project schedule, which extends the project completion date, has been approved by VTA. Any requests for additional time to complete PROJECT beyond two years after execution of this agreement must be submitted in writing to VTA no later than 60 days prior to that date.
6. This Funding Agreement contains the entire understanding between the VTA and RECIPIENT for the PROJECT. It supersedes any and all other agreements, which may have existed between the parties. This Funding Agreement shall not be modified except by written agreement signed by each party. This Funding Agreement shall be

binding upon each party, their legal representatives, and successors for the duration of the PROJECT.

7. The term of this Funding Agreement shall commence when fully executed and continue until September 5, 2018.
8. Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, by the U.S. Postal Service or by certified mail, to the addresses set forth below, or to such addresses which may be specified in writing to the Parties hereto.

VTA:
Manager, Programming and Grants
Santa Clara Valley Transportation Authority
3331 North 1st Street
San Jose, CA 95134

RECIPIENT:
City Manager
City of Sunnyvale
PO Box 3707
Sunnyvale, CA 94088-3707

9. Within 30 days from the Effective Date of this Agreement, RECIPIENT shall notify VTA of RECIPIENT'S PROJECT Liaison and of the Liaison's address, telephone number and email address. The PROJECT Liaison shall be the liaison to VTA pertaining to implementation of this Agreement and shall be the contact for information about the PROJECT. RECIPIENT shall notify VTA of the change of PROJECT Liaison or of the Liaison's contact information in writing no later than 30 days from the date of any change.
10. 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.
11. No Waiver. The failure of either Party to insist upon the strict performance of any of the terms, covenant and conditions 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, covenants, and conditions thereafter.
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

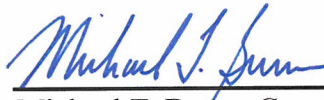
fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the Parties to the extent possible that litigation be avoided as a method of dispute resolution.

13. Governing Law. This Agreement shall be construed and its performance enforced under California law.
14. Venue. In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the State courts of the County of Santa Clara or, if federal jurisdiction is appropriate, exclusively in the United States District Court for the Northern District of California, in San José, California.

**CITY OF SUNNYVALE
(RECIPIENT)**

**SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY (VTA)**

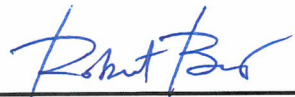
Gary Luebbers, City Manager
Date

 9/12/13

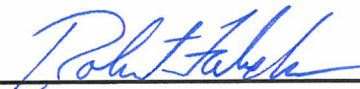
Michael T. Burns, General Manager Date

Approved as to Form:

Approved as to Form:

 10/30/13

Counsel Date

 9/11/13

Counsel Date