

**FUNDING AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE SR 237/US 101/MATHILDA AVENUE INTERCHANGE IMPROVEMENTS
PROJECT**

THIS AGREEMENT ("Agreement") dated April 15, 2013, for purposes of reference, is made and entered into by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California ("CITY"), and the 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 for modifications to both the US 101/Mathilda Avenue and SR 237/Mathilda Avenue Interchanges to relieve congestion and improve circulation in the City of Sunnyvale in the County of Santa Clara as identified in the 2004 "State Route 237 Corridor Study."

B. Parties wish to set forth in this Agreement their respective obligations in connection with the modifications to both the US 101/Mathilda Avenue and SR 237/Mathilda Avenue Interchanges (PROJECT) within the Mini-Triangle area in the City of Sunnyvale, which is bounded by SR 237, US 101, and Mathilda Avenue.

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

II. SCOPE OF AGREEMENT

1. **Scope of PROJECT.** The scope of the PROJECT under this Agreement includes, with all necessary approvals required from any and all governmental or regulatory agency and entity, those planning and design activities necessary to complete the Project Initiation Document (PID), Project Alternatives/Environmental Document (PA/ED) and the Plans, Specifications, and Estimates (PS&E).

2. **CITY's Financial Contribution for PROJECT.** CITY shall contribute to the PROJECT an amount not to exceed **Four Million Dollars (\$4,000,000.00)** (hereinafter, "CITY's Contribution"). The CITY's Contribution is comprised of \$2,000,000 from a grant awarded to the CITY from VTA LPR funds and \$2,000,000 from the CITY funds. Upon execution of the Agreement, CITY shall invoice VTA for the grant award amount of **Two Million Dollars (\$2,000,000.00)** and will deposit the award into an interest-bearing account and make funds available to VTA upon review and approval for invoices for services to complete the PROJECT. VTA shall provide services to complete the

notify CITY of the change in the projected expenditures. The Parties shall then have the following options:

- i. Revise the project scope in accordance with the available funds, which revision can be accomplished only by written amendment mutually agreed upon by the Parties and approved by the CITY's City Council;
- ii. Seek additional funding to complete scope of PROJECT by revising the Contributions of both Parties; the Contributions of both Parties can be accomplished only by written amendment to this Agreement;
- iii. Terminate this Agreement which can be accomplished by either Party giving written notice to the other party of such termination consistent with Section 8 below.

6. Compliance with Governmental Requirements. VTA shall comply with all laws and regulations pertaining to the PROJECT.

7. Term of Agreement. This Agreement shall become effective upon full execution of the Agreement and shall remain in effect through December 31, 2016. The CITY's Director of Public Works 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.

8. Written Termination. This Agreement may be terminated as mutually agreed to by the Parties.

9. Refund of Grant Award. Any balance of grant award, including interest, remaining after completion of the PROJECT or, if the PROJECT does not proceed for any reason, upon early termination of the PROJECT, less any amounts necessary to pay for eligible expenses incurred prior to the date of completion of the PROJECT or the effective date of the termination of the Agreement, shall be refunded to VTA. CITY shall refund to VTA the remaining balance, if any, within thirty (30) calendar days of the effective date of completion of the PROJECT or sooner termination of the Agreement.

10. 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.

11. Parties' Representatives. The General Manager of VTA or his 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.

PROJECT and shall invoice the City for those services. VTA shall use CITY's Contribution, including interest earned thereon, for the sole purpose of completing the PROJECT, as set forth in this Agreement.

3. Use of CITY's Contributions. VTA will invoice CITY quarterly for reimbursement of allowable costs and expenses related to the PROJECT. CITY shall pay VTA invoice within thirty (30) days of receipt of invoice.

4. CITY's Role in PROJECT. CITY is the sponsor of the PROJECT. During the term of the PROJECT, CITY shall provide CITY staff oversight and participation, and necessary and appropriate coordination with all departments of the CITY. The CITY shall provide timely reviews, comments, and approvals submitted by VTA to CITY. CITY costs to administer and participate in PROJECT as described in this Agreement will not be allowable costs against CITY's Contribution.

5. VTA's Role in PROJECT. VTA will administer the PROJECT on behalf of CITY.

a. **Tasks.** VTA shall perform and be responsible for the following tasks to complete the PROJECT:

- i. Serve as PROJECT manager for the entire PROJECT;
- ii. Coordinate State review and approval of PROJECT;
- iii. Conduct a conceptual alternatives analysis for the PROJECT;
- iv. Complete the Project Initiation Document (PID) work for the PROJECT;
- v. Complete the Project Approval/Environmental Document (PAVED) work for the PROJECT;
- vi. Complete final design documents for the PROJECT.

b. **Consultants.** VTA may retain consultants to perform any of the functions listed in Section 5(a).

c. **Other PROJECT Management Duties.** VTA shall include CITY staff as active participants within VTA's PROJECT management process, hold periodic meetings as agreed upon by the Project Team to assess the progress of PROJECT development and address PROJECT issues as they arise. VTA shall also prepare regular reports on PROJECT activity and progress for CITY.

d. **Expenditure Updates.** VTA shall actively monitor actual PROJECT expenditures to ensure that CITY's Contribution will be sufficient to pay for planned PROJECT expenditures. If, at any time, planned PROJECT expenditures are projected to exceed \$4,000,000.00, VTA shall immediately

12. Indemnification. Pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify, defend and hold the other Party, its officers, employees and agents, harmless from any 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 any work, authority or jurisdiction delegated to such Party under this Agreement. Neither Party nor any officer, employee or agent thereof, shall be responsible for any damage or liability occurring by reason and to the extent of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other Party under this Agreement.

13. 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.

14. 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
John H. Ristow, Chief, Congestion Management Agency
3331 North First Street, Bldg. B-2
San Jose, CA 95134-1906

To CITY: City of Sunnyvale
Kent Steffens, Director, Public Works
Department of Public Works
456 West Olive Avenue
Sunnyvale, CA 94086

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

15. 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 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.

16. 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.

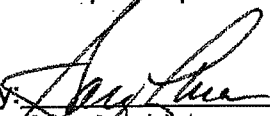
17. Amendments. Future amendments to this Agreement shall be processed by mutual written agreement of the Parties. Unless otherwise provided herein, any amendments to this Agreement must be approved by CITY's City Council. Whenever possible, notice to amend this Agreement shall be provided ninety (90) calendar days prior to the desired effective date of such amendment.

18. 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.

19. 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 set forth below.

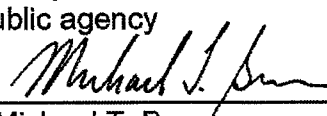
"CITY"
City of Sunnyvale
a municipal corporation

By: 

Gary Luebbers
City Manager

Date: 4-2-13

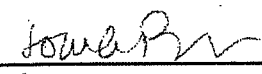
"VTA"
Santa Clara Valley Transportation
Authority
a public agency

By: 

Michael T. Burns
General Manager

Date: 4/15/13

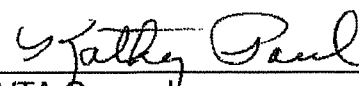
APPROVED AS TO FORM:

By: 

City Attorney

Date: 3/30/13

APPROVED AS TO FORM:

By: 

VTA Counsel

Date: April 10, 2013