

**FIRST AMENDMENT
TO
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 amendment ("Amendment") to the "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" ("Agreement") 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") shall become effective on the date that the last of the Parties executes this document.

I. RECITALS

WHEREAS, on April 15, 2013, the Parties entered into the Agreement, which Agreement is still in full force and effect; and

WHEREAS, the Parties desire to amend the Agreement to increase the CITY's financial contribution for the PROJECT and extend the term of the Agreement.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. SECTION II.1, "Scope of PROJECT", is amended and restated to read as follows:

The scope of the PROJECT under this Agreement includes, with all necessary approvals required from any and all governmental or regulatory agencies and entities, 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) and Right-of-Way activities.

2. SECTION II.2 , "CITY'S Financial Contribution for PROJECT," is amended and restated to read as follows:

CITY shall contribute to the PROJECT an amount not to exceed **Eight Million Dollars (\$8,000,000.00)** (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 \$6,000,000 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 PROJECT and shall invoice the CTY 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. VTA will consider the City's contribution of \$8,000,000 as match for future fund sources toward PROJECT.

3. SECTION II.5.a, "Tasks", is amended and restated to read as follows:

VTA shall perform and be responsible for the following tasks to complete the PROJECT:

- i. Service as PROJECT manager for the entire PROJECT;
- ii. Coordination of State review and approval of PROJECT;
- iii. Conduct of a conceptual alternatives analysis for the PROJECT;
- iv. Completion of the Project Initiation Document (PID) work for the PROJECT;
- v. Completion of the Project Approval/Environmental Document (PAED) work for the PROJECT;
- vi. Completion of the final design documents for the PROJECT;
- vii. Completion of the required preconstruction utility relocations for PROJECT;
- viii. Obtaining Caltrans Right-of-Way Certification for PROJECT;
- ix. Preparation of construction bid documents for PROJECT.

4. The first paragraph of SECTION II.5.d, "Expenditure Updates," is amended and restated to read as follows:

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 \$8,000,000.00, VTA shall immediately notify CITY of the change in the projected expenditures. The Parties shall then have the following options:

5. SECTION II.7, "Term of Agreement," is amended and restated to read as follows:

This Agreement shall become effective upon full execution of the Agreement and Amendment and shall remain in effect through December 31, 2018. 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.

6. SECTION II.14, "Notice," is amended and restated to read as follows:

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
Carolyn M. Gonot, Interim Director
Planning and Program Development
3331 North First Street, Bldg. B-2
San Jose, CA 95134-1906

To CITY: City of Sunnyvale
 Manuel Pineda, Director
 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.

7. Unless specifically defined herein, the capitalized terms used in this Amendment shall have the meanings as defined in the Agreement.
8. Except as herein modified, all other provisions of the Agreement, including any addenda and subsequent amendments thereto, shall remain in full force and effect. All references to the Agreement in this Amendment shall refer to the Agreement as amended unless otherwise specifically set forth or otherwise indicated by context.
9. In the event of any conflict between the provisions of this Amendment and the provisions of the Agreement, the provisions of this Amendment shall prevail. Whether or not specifically amended by this Amendment, all of the terms and provisions of the Agreement are hereby amended to the extent necessary to give effect to the purpose and intent of this Amendment.
10. If any provision of the Agreement, as amended by this Amendment, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired or invalidated in any way.

IN WITNESS WHEREOF, this Amendment has been executed by the parties hereto as of the date set forth below:

"CITY"
 City of Sunnyvale a municipal
 corporation

"VTA"
 Santa Clara Valley Transportation
 Authority a public agency

By: _____
 Deanna J. Santana
 City Manager

By: _____
 Nuria I. Fernandez
 General Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
Victor Pappalardo
Senior Assistant Counsel

Date: _____

Date: _____