

FUNDING CONTRIBUTION AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND THE COUNTY OF SANTA CLARA
FOR CENTRAL EXPRESSWAY AUXILIARY LANE
BETWEEN COMMERICAL STREET AND NORTH WOLFE ROAD

This funding contribution agreement (“AGREEMENT”) is made and entered into as of the date it is fully executed by and between the City of Sunnyvale, a 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” and individually as a “PARTY”.

RECITALS

WHEREAS, COUNTY owns and operates Central Expressway between Commercial Street and North Wolfe Road in Sunnyvale; and

WHEREAS, the Expressway Plan 2040 developed by COUNTY with participation from CITY identifies adding auxiliary lanes on Central Expressway between Lawrence Expressway and Mary Avenue as a Tier 2 project; and

WHEREAS, CITY has collected traffic impact fees for the design and construction of an auxiliary lane on westbound Central Expressway between Commercial Street and North Wolfe Road, which improvements will be hereinafter referred to as “PROJECT”; and

WHEREAS, consistent with COUNTY’s Complete Streets Policy adopted by the Board of Supervisors on November 16, 2012, PROJECT will also include constructing a sidewalk within the project limits connecting to the sidewalk on North Wolfe Road; and

WHEREAS, both COUNTY and CITY have determined that PROJECT will improve traffic flow and enhance safety for pedestrians within PROJECT’s limits; and

WHEREAS, COUNTY will serve as the lead agency for the implementation of PROJECT; and

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

WHEREAS, 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, PARTIES agree as follows:

AGREEMENT

1. Scope of Work: The scope of work of PROJECT consists of designing and constructing an auxiliary lane and sidewalk on westbound Central Expressway between Commercial Street and North Wolfe Road. The sidewalk shall continue on the North Wolfe Road off-ramp to connect with the sidewalk on North Wolfe Road. Attached as Exhibit A and incorporated by reference herein is a PROJECT location map.
2. Design, Environmental, Permits, and Right-of-Way: COUNTY, as the lead agency on the PROJECT, will engage a consultant ("CONSULTANT") to be approved by both COUNTY and CITY. COUNTY will be responsible for consultant management during plan preparation including issuance of payment to the CONSULTANT. The CONSULTANT will develop plans, specifications, and engineers estimate ("PS&E"), environmental documents, and right-of-way clearance for the PROJECT. COUNTY will submit to CITY for design review the 35%, 65% and 95% PS&E level of design. CITY will review and provide design review comments to COUNTY in a timely manner. 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.
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 shall provide all construction administration, construction engineering, and inspection services during and through the completion of the construction of the PROJECT. COUNTY will provide CITY with a copy of all approved project schedules. CITY staff representatives will be invited to attend PROJECT meetings with contractors. The PROJECT will be completed in a timely manner to COUNTY's reasonable satisfaction, and such extra work as may be desired within the PROJECT limits will be accommodated, subject to being in compliance with the standards of COUNTY and subject to sufficient PROJECT funds being available to ensure completion of the necessary work.
4. PROJECT Cost and Funding: The PROJECT cost for consultant services and construction contract is estimated to be \$1,000,000, which will be paid for by the CITY. COUNTY will contribute project management and inspection staff time to the PROJECT at no cost to the CITY. Any changes to the scope of work as identified by COUNTY or CITY that are beyond the PROJECT description/scope of work identified in this AGREEMENT, that may increase PROJECT costs above \$1,000,000, shall receive prior written approval and agreement on a funding plan from both COUNTY and CITY. Should the PROJECT's reasonable bid amount (i.e., the engineer's estimate of probable construction costs plus ten percent) combined with the CONSULTANT service costs exceed \$1,000,000, the PARTIES shall convene to determine a mutually agreed course of action prior to advertisement for bids.
5. Timing of PROJECT Funding:
 - a) Within thirty (30) days of execution of a professional services agreement with the CONSULTANT, COUNTY shall invoice CITY for the maximum contract value of the CONSULTANT agreement. CITY shall pay the full invoice amount to COUNTY within thirty (30) days of CITY's receipt of invoice.

- b) Within thirty (30) days of construction contract award, COUNTY shall invoice CITY for the construction contract value. CITY shall pay the full invoice amount to COUNTY within thirty (30) days of CITY's receipt of invoice.
- c) If during construction of the PROJECT, COUNTY receives Contract Change Order ("CCO") requests due to unforeseen conditions that exceed the contract's supplemental work allowance, COUNTY shall notify CITY in writing within forty-eight (48) business hours of receiving such CCO requests and PARTIES shall convene to determine the mutually agreed course of action.
- d) Within sixty (60) days of the final accounting by COUNTY after PROJECT had been completed and accepted by COUNTY, COUNTY shall provide a final cost summary to CITY. If the CONSULTANT services and construction costs are less than the amount deposited by the CITY to the COUNTY, COUNTY shall refund that amount to the CITY.
- e) If PROJECT does not move forward for any reason whatsoever, COUNTY shall promptly return to CITY any remaining funds paid by CITY to COUNTY pursuant to this AGREEMENT, and this obligation of COUNTY shall survive any termination or expiration of this AGREEMENT.

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. Additional Provisions:

- a) A PARTY's 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) 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.

- c) This AGREEMENT will be governed and construed in accordance with the laws of the State of California.
 - d) This AGREEMENT may be executed in counterparts and will be binding once executed by all PARTIES.
 - e) 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 7(g), whichever first occurs. If not terminated earlier, the AGREEMENT will expire on December 31, 2021.
 - f) All changes or extensions to the AGREEMENT must be in writing in the form of an amendment and approved in writing by both PARTIES.
 - g) Either COUNTY or CITY may terminate the AGREEMENT at any time prior to award of the design consultant contract upon thirty (30) days' written notice. Once the consultant contract has been awarded, the AGREEMENT can be terminated only upon the mutual written consent and terms acceptable to both PARTIES; provided, nothing in this section in any way limits CITY's or COUNTY's respective ability to seek damages, restitution, or other remedies at law or in equity for damages or other harms incurred or otherwise arising out of this AGREEMENT.
 - h) The designated project manager for COUNTY for the duration of the PROJECT is Roy Cabaltera 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 for COUNTY. The CITY Director of Public Works, Manuel Pineda, or his designee, will serve as the principal point of contact for CITY, responsible for coordinating the review of the design for CITY and for obtaining the necessary CITY approvals.
 - i) This AGREEMENT does not address or change any authority or responsibility between COUNTY and CITY with regard to maintenance, operation, or future repair responsibility for Central Expressway.
8. 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 two (2) business days after placed in the U.S. mail, postage paid and sent to:

IN WITNESS WHEREOF, the PARTIES have entered into this AGREEMENT as of the date it is fully executed.

“CITY”
City of Sunnyvale

“COUNTY”
County of Santa Clara

Deanna J. Santana
City Manager

Dave Cortese, President
Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

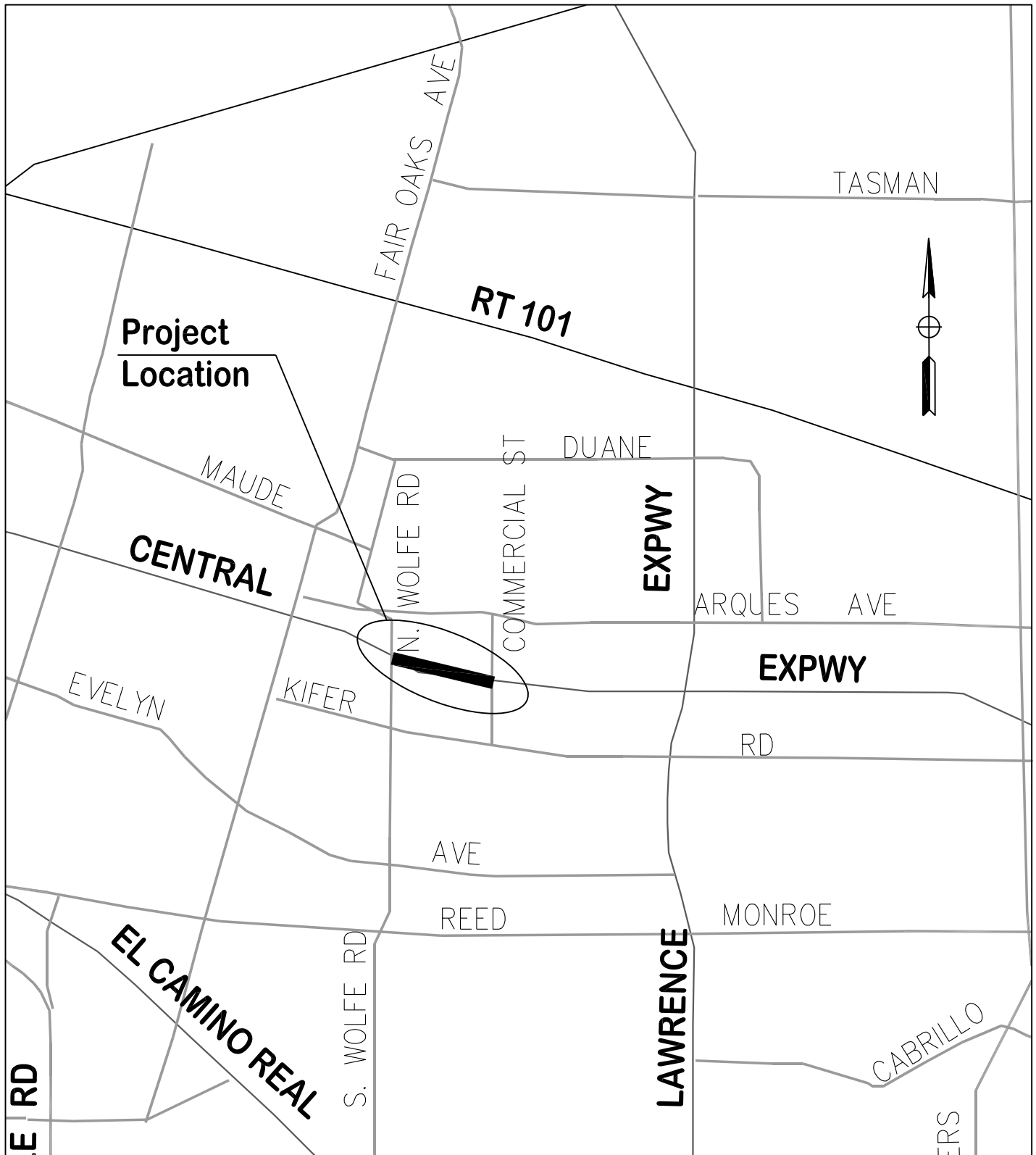
John A. Nagel
City Attorney

Megan Doyle
Clerk of Board of Supervisors

APPROVED AS TO FORM &
LEGALITY:

Christopher Cheleden
Lead Deputy County Counsel

Exhibit A – Location Map



LOCATION MAP

**CENTRAL EXPRESSWAY AUXILIARY LANE (WB ONLY)
BETWEEN COMMERCIAL STREET & NORTH WOLFE ROAD**