

**FUNDING AGREEMENT
BETWEEN THE CITY OF CUPERTINO AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE I-280/WOLFE ROAD INTERCHANGE IMPROVEMENTS PROJECT**

THIS AGREEMENT ("**Agreement**") dated January 25, 2016, for purposes of reference, is made and entered into by and between the CITY OF CUPERTINO, 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 for modifications to I-280/Wolfe Road interchange to relieve congestion and improve circulation in the City of Cupertino in the County of Santa Clara.

B. The Parties wish to set forth in this Agreement their respective obligations in regard to the modifications to the I-280/Wolfe Road Interchange Improvements Project (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) all necessary approvals required from any and all governmental or regulatory agency or entity, (ii) those planning and design activities necessary to complete the Project Initiation Document (PID), Project Approval/Environmental Document (PAED) and the Plans, Specifications, and Estimates (PS&E).
2. **CITY's Financial Contribution for PROJECT.** CITY shall contribute initially to the PROJECT an amount not to exceed One Million Two Hundred Thousand (\$1,200,000) dollars (hereinafter, "**CITY's Contribution**") towards the development and completion of the PID. 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 amount set forth in the VTA invoice within thirty (30) calendar days after receipt of invoice. CITY's financial contribution towards the PAED and PS&E activities will be subject to future negotiation and mutually agreed upon written amendment. CITY's contribution to the PROJECT shall solely be limited to the extent it receives funds received from third-parties including developers, property owners, or other applicants contributing to the traffic impact at this intersection.

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

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 of, and participation in, the PROJECT, and necessary and appropriate coordination with all departments of the CITY. The CITY shall provide timely reviews, comments, and approvals of PROJECT's documents 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 PROJECTS.**

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. Conduct a conceptual alternatives analysis for PROJECT;
- iv. Complete the Project Initiation Document (PID) work for PROJECT;
- v. Complete the Project Approval/Environmental Document (PAED) work for PROJECT subject to future funding;
- vi. Complete the final design documents for PROJECT subject to future funding.

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

b. **Consultants.** VTA may retain design consultants to perform any of the functions listed in Section 5(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. **Other Project Management Duties** VTA shall include CITY staff as an active participant within VTA's project management process, hold periodic meetings as agreed upon by the project team(s) to assess the progress of development for PROJECT and address PROJECT issues as they arise. VTA shall also prepare regular reports on activity and progress of PROJECT for CITY.

d. **Project Cost Updates.** VTA shall actively monitor actual expenditures for PROJECT to ensure that CITY's Contribution is used to pay for allowable PROJECT expenditures. If, at any time, planned PROJECT expenditures are projected to exceed the CITY's Contribution, VTA shall immediately notify CITY of such facts. 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 revision the CITY's Contribution to be accomplished only by written amendment to this Agreement;
- iii. VTA may formulate and implement a strategy to continue the PROJECT to the satisfaction of the CITY'S Director of Public Works.
- iv. The Parties may terminate this Agreement which can be accomplished by either Party giving written notice to the other party of such termination consistent with Section 9 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, 2020. The CITY's Director of Public Works or his designee and VTA's General Manager or her designee, each in his or her sole discretion, are authorized to extend the term of the Agreement for up to six (6) months after the initial termination date, without formal amendment of this Agreement. Any further extension of the term must be approved by the City Council and VTA Board.
8. **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.
9. **Refund of CITY's Contribution.** Any balance of CITY's Contribution, including interest, if applicable, remaining after the first to occur of: (a) expiration of the term of this Agreement, or (b) termination of this Agreement in its entirety as provided in Sections 5.d.(iv) and 8 above, or (c) completion of PROJECT, less any amounts necessary to pay for eligible expenses incurred prior to the date of completion of PROJECT or the effective date of the expiration or termination of the Agreement, shall be refunded to the CITY. VTA shall refund to CITY such remaining balance, if any, within thirty (30) calendar days after the effective date of completion of PROJECT or sooner termination of the Agreement. For purposes of this Agreement a PROJECT shall be deemed complete only upon concurrence by both Parties of such completion.
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 PROJECTS 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.
11. **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.

12. 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, pursuant to Government Code §895.4, 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, pursuant to Government Code §895.4, 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.

13. 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.

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

To CITY: City of Cupertino
Timm Borden, Director of Public Works
Department of Public Works
10300 Torre Avenue, Cupertino, CA 95014

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 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 the City Council and VTA Board. 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 first hereinabove set forth.

"CITY"
City of Cupertino
a municipal corporation

By: 
David Brandt
City Manager

"VTA"
Santa Clara Valley Transportation
Authority
a public agency

By: 
Nuria Fernandez
General Manager

Date: 1/25/16

APPROVED AS TO FORM:

By: 
Colleen Winchester
Acting City Attorney

FOR

APPROVED AS TO FORM:

By: 
Victor Pappalardo
Senior Assistant Counsel