

FUNDING AGREEMENT
BETWEEN
THE CITY OF CUPERTINO
AND
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
2016 MEASURE B LOCAL STREETS AND ROADS PROGRAM

THIS AGREEMENT ("Agreement") is between the CITY OF CUPERTINO, 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 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax ("2016 MEASURE B") for 30 years for nine transportation-related program categories; and
2. Whereas, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B for 30 years to pay for the nine transportation-related program categories; and
3. Whereas, on October 5, 2017, the VTA Board of Directors established the 2016 Measure B Program ("PROGRAM") and adopted the 2016 Measure B Program Category Guidelines; and
4. Whereas, the PROGRAM includes a "Local Streets and Roads" program category consisting of a return-to-source formula based on city populations and County of Santa Clara's road and expressway lane mileage; and
5. Whereas, the duration of 2016 MEASURE B will be 30 years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047; and
6. Whereas, VTA and RECIPIENT desire to specify herein the terms and conditions under which the Local Streets and Roads program category ("LS&R CATEGORY") 2016 MEASURE B revenues will be administered by VTA as directed by the VTA Board of Directors; and
7. Whereas, VTA has established a manual for purposes of documenting administrative requirements related to LS&R CATEGORY funds disbursement and expenditure ("VTA LS&R Program Manual").

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

II. AGREEMENT

1. LS&R CATEGORY PROGRAM DEFINITION

The LS&R CATEGORY covers the entirety of public right-of-way and infrastructure, including, but not limited to, pavement, sidewalk, signals, signage, drainage, and pedestrian and public transit amenities.

2. TERM OF AGREEMENT

The term of this Agreement will commence on the Effective Date (as defined in the signature block below) and continue through March 31, 2047, or until LS&R CATEGORY funds allocated to RECIPIENT have been expended entirely, whichever occurs later.

3. ELIGIBLE USE OF FUNDS

RECIPIENT is permitted to use RECIPIENT's allocated LS&R CATEGORY funds for any phase (including but not limited to planning, construction, etc.) and any cost of the maintenance, rehabilitation, reconstruction, minor improvements of, minor enhancements of, and preservation of multi-modal roadway infrastructure. This includes implementation of "Complete Streets" elements. See Attachment A for a definition of Complete Streets.

If RECIPIENT has achieved a jurisdictional average Pavement Condition Index ("PCI") of 70, RECIPIENT may use funds for other congestion relief projects as permitted by 2016 MEASURE B.

Only LS&R CATEGORY costs incurred on or after July 1, 2017, will be eligible for reimbursement.

4. DESIGN STANDARDS

RECIPIENT'S project(s) proposed hereunder must incorporate Complete Streets design, including, but not limited to, best practice design standards and guidelines, such as those published by VTA (e.g. Bicycle Technical Guidelines, Pedestrian Technical Guidelines, and Community, Design, and Transportation Manual), Institute of Transportation Engineers (e.g. Designing Walkable Urban Thoroughfares), American Association of State Highway and Transportation Officials (e.g. Guide for the Development of Bicycle Facilities), National Association of City Transportation Officials (e.g. Urban Street Design Guide, Urban Bikeway Design Guide, Transit Street Design Guide), and Caltrans (e.g. Class IV Bikeway Guidance (Separated Bikeways/Cycle Tracks)).

5. FUNDING ALLOCATIONS

- a. RECIPIENT'S funding allocation for each fiscal year, starting July 1, 2017, will be based upon RECIPIENT's percentage share of the population or road mileage, as applicable, applied to the VTA Board of Directors Adopted Biennial Budget for the LS&R CATEGORY.
- b. The LS&R CATEGORY annual fund distribution formula is calculated every two fiscal years (in line with VTA's budget cycle; a fiscal year begins July 1 and ends June 30) and is based on the following:

- i. First, at the same time that VTA plans and finalizes its budget for the two upcoming fiscal years, the VTA Board of Directors determines the allocation of 2016 MEASURE B funds for the two upcoming fiscal years.
 - ii. Second, the VTA Board of Directors determines the amount of 2016 MEASURE B funds to be allocated amongst the PROGRAM categories, including the LS&R CATEGORY.
 - iii. Third, the County of Santa Clara's percentage share of the total budgeted LS&R CATEGORY funds ("SC Percentage Share") is calculated by determining the percentage of the total road and expressway lane mileage recorded in Santa Clara County, California that the County of Santa Clara itself is responsible for maintaining (according to the then most current California Public Road Data report issued by Caltrans).
 - iv. Fourth, the SC Percentage Share is multiplied by the total budgeted LS&R CATEGORY funds to determine the dollar amount allocated to County of Santa Clara.
 - v. Fifth, the budgeted LS&R CATEGORY funds remaining after the allocation of the County of Santa Clara's share described above ("Remaining Funds") are distributed to eligible cities. Each city's percentage share of the Remaining Funds (each, a "City Percentage Share") is calculated by determining the percentage of the total Santa Clara County, California population (excluding unincorporated areas) attributed to each city (according to the then most current California Department of Finance's annual population estimates (Report E-1, or any successor report)).
 - vi. Sixth, each City Percentage Share is multiplied by the Remaining Funds to determine the dollar amount allocated to each city.
- c. RECIPIENT's allocations are subject to change based on variations in annual population or road mileage and actual 2016 MEASURE B receipts for prior fiscal years.
- d. RECIPIENT will receive a one-time advance equivalent to the RECIPIENT's percentage allocation of the LS&R CATEGORY's percentage share of 2016 MEASURE B revenue collections made from April 2017 through June 2017, upon (i) execution of this Agreement, (ii) RECIPIENT's submittal of an invoice for the one-time advance, and (iii) RECIPIENT's first submittal of 1) proposed projects in RECIPIENT's "Annual Program of Projects", 2) maintenance of effort certification (see Section 7.d.), and 3) Complete Streets checklist provided by VTA. Any interest earned or accrued from the one-time advance by RECIPIENT must be expended only on eligible costs as set forth above under ELIGIBLE USE OF FUNDS and DESIGN STANDARDS. RECIPIENT's Annual Program of Projects must contain, at a minimum, the following information:
- i. Brief description of project/s
 - ii. Location of project/s
- e. After the one-time advance, all remaining and future funds, if any, will be available only on a reimbursement basis.

- f. The one-time advance is in addition to RECIPIENT's FY18 and FY19 LS&R CATEGORY allocations.

6. VTA's OBLIGATIONS

VTA will:

- a. Annually update the LS&R CATEGORY formula to reflect the most current populations and road mileage using the California Department of Finance's annual population estimates (Report E-1, or any successor report) and the most current California Public Road Data report issued by Caltrans. VTA shall use the updated LS&R CATEGORY allocation formula in the allocations beginning July 1 immediately following each VTA budget cycle.
- b. Annually update the LS&R CATEGORY PCI for RECIPIENT based on the Metropolitan Transportation Commission release of the prior year's PCI.
- c. Annually report to the public the amount of LS&R CATEGORY revenues allocated and distributed to RECIPIENT.
- d. VTA shall remit the amount due to the RECIPIENT within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice.

7. RECIPIENT's OBLIGATIONS

RECIPIENT will:

- a. Ensure that all 2016 MEASURE B funds are expended on allowable LS&R CATEGORY expenditures as described above in ELIGIBLE USE OF FUNDS and DESIGN STANDARDS.
- b. Annually complete and submit to VTA, by October 1st of each year, RECIPIENT's Annual Program of Projects, in which RECIPIENT will set forth proposed projects, and develop all such projects which are approved as eligible (each a "PROJECT").
- c. Annually submit to VTA, by October 1st of each year, a summary of the prior fiscal year's completed PROJECT(S) and current fiscal year's program of PROJECTS.
- d. Annually submit to VTA, by October 1st of each year, a certification (which certification form will be provided by VTA to RECIPIENT) that RECIPIENT is sustaining a maintenance of effort ("MOE"), meaning that RECIPIENT will maintain a level of expenditures on LS&R CATEGORY eligible activities equivalent to RECIPIENT's expenditures submitted to the California Transportation Commission per 2017 California Senate Bill 1 ("SB1") MOE requirements for the Road Repair and Accountability Act Local Streets and Roads Program. RECIPIENT must submit to VTA an initial MOE base amount and certification of MOE for FY18 upon the execution of this Agreement.

- e. Comply with the VTA Board of Directors-approved Complete Streets requirements. RECIPIENT must submit to VTA a Complete Streets Resolution adopted by the RECIPIENT's governing body upon the execution of this Agreement.
- f. Annually complete and submit to VTA, by October 1st of each year, the VTA Complete Streets checklist and any accompanying reporting requirements for the LS&R CATEGORY Annual Program of Projects.
- g. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for expenditure of the one-time advance funds (which funds, including any and all interest earned or accrued therefrom, must be exhausted in their entirety prior to requesting funds for reimbursement).
- h. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- i. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this Agreement for five (5) years from the date on which the relevant cost(s) was/were incurred. RECIPIENT shall make such records available to VTA upon written request for review and audit purposes. Financial audits will be performed at VTA's discretion.
- j. Submit invoices to VTA, no more frequently than monthly, for reimbursement of work completed on PROJECTS. Invoices must be submitted within one year of the date posted on the contractor's invoice submitted as substantiation for RECIPIENT's invoice, if applicable.

8. GENERAL TERMS AND CONDITIONS

- a. **Indemnity.** Neither VTA nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to RECIPIENT's negligence, recklessness, or willful misconduct under or in connection with any work, authority, or jurisdiction associated with this Agreement. 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 by California Government Code §810.8) arising out of or relating to RECIPIENT's negligence, recklessness, or willful misconduct under or in connection with any work, authority, or jurisdiction delegated to RECIPIENT under this Agreement. This provision will survive the termination or expiration of this Agreement.
- b. **Amendment.** No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by both of the Parties hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the Parties hereto.
- c. **Incorporation of Documents; Entire Agreement.**
 - i. In addition to the terms set forth herein, this Agreement is subject to the provisions of (i) the 2016 Measure B Program Category Guidelines and (ii) the VTA

LS&R Program Manual, both of which are incorporated herein by this reference. VTA may, in its sole discretion, make changes to the 2016 Measure B Program Category Guidelines and/or LS&R Program Manual at any time. If VTA makes such changes, VTA will make reasonable efforts to provide RECIPIENT with advance notice of such changes. Copies of the 2016 Measure B Program Category Guidelines and the VTA LS&R Program Manual are available at the VTA website (www.vta.org) or upon request to VTA.

- ii. This Agreement, along with the 2016 Measure B Program Category Guidelines and VTA LS&R Program Manual, contains the entire understanding between VTA and RECIPIENT relating to the subject matter hereof. This Agreement supersedes any and all other agreements which may have existed between the Parties, whether oral or written. This Agreement, along with the 2016 Measure B Program Category Guidelines and VTA LS&R Program Manual, is binding upon each Party, their legal representatives, and successors for the duration of the Agreement.
- d. **Notices.** Any notice which may be required under this Agreement must be in writing, will be effective when received, and must be given by personal service or certified mail to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the Parties hereto.

VTA:
Marcella Rensi
Deputy Director, Programming and Grants
Santa Clara Valley Transportation Authority
3331 N First Street
San Jose, CA 95134
Email: marcella.rensi@vta.org

RECIPIENT:
Roger Lee
Acting Director of Public Works
City of Cupertino
10300 Torre Avenue
Cupertino, CA, 95014
Email: RogerL@cupertino.org

Written notification to the other Party must be provided, in advance, for changes in the name or address of the individuals identified above.

The individual identified above for RECIPIENT is RECIPIENT's LS&R CATEGORY Liaison ("LIAISON"). The LIAISON shall be (i) the liaison to VTA pertaining to implementation of this Agreement and (ii) the contact for information about the LS&R CATEGORY and PROJECTS.

- e. **Representation of Authority.** 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.

- f. **No Waiver.** The failure of either Party to insist upon the strict performance of any of the terms, covenant and conditions of this Agreement will not be deemed a waiver of any right or remedy that either Party may have, and will not be deemed a waiver of either Party's right to require strict performance of all of the terms, covenants, and conditions hereunder.
- g. **Dispute Resolution.** If a question or allegation arises regarding (i) interpretation of this Agreement or its performance, or (ii) 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 greatest extent possible to avoid litigation as a method of dispute resolution.
- h. **Severability.** If any of the provisions of this Agreement (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and RECIPIENT shall negotiate an equitable adjustment in the provisions this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- i. **Governing Law.** The laws of the State of California will govern this Agreement, as well as any claim that might arise between RECIPIENT and VTA, without regard to conflict of law provisions.
- j. **Venue.** Any lawsuit or legal action arising from this Agreement must be commenced and prosecuted in the courts of Santa Clara County, California. RECIPIENT agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

Signatures of parties on following page.

IN WITNESS WHEREOF, VTA and RECIPIENT have executed this Agreement as of the last date set forth below ("Effective Date").

***Santa Clara Valley
Transportation Authority***

RECIPIENT

Nuria I. Fernandez
General Manager/CEO

Timm Borden
Interim City Manager

Date

Date

Approved as to Form

Approved as to Form

Megan Gristch
Staff Attorney II

Heather Minner
Cupertino City Attorney

ATTACHMENT A
Definition of Complete Streets

Complete Streets are generally defined as streets:

- That are planned, designed, funded, constructed, operated and maintained for the safe travel of all users.
- Where designs are context sensitive and incorporate a balanced network approach.
- Which prioritize the safety, comfort, and convenience of pedestrians, bicyclists, transit riders (including access and operations), as appropriate for the local context, while still providing safe accommodations for motorists and other roadway users.
- Where capital projects, once completed, should not degrade the safety, comfort, or convenience of pedestrians, bicyclists, or access to transit, nor should they degrade the travel time of transit operations (recognizing that there may be situations where one of these modes may need to be prioritized over another).
- Where designs are developed with input from the community and support future conditions.

This definition was set forth in VTA Board Memo No. 6096, dated May 25, 2017, and presented at the VTA Board meeting held June 1, 2017 (“Measure B Complete Streets Reporting Requirements”).