

**FUNDING AGREEMENT
BETWEEN
THE CITY OF CUPERTINO
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
2016 MEASURE B BICYCLE & PEDESTRIAN EDUCATION AND ENCOURAGEMENT PROGRAM**

THIS AGREEMENT ("AGREEMENT") is between the CITY OF CUPERTINO, 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 Bicycle & Pedestrian program category ("BIKE/PED CATEGORY") to fund bicycle and pedestrian projects and educational programs; and
5. Whereas, the BIKE/PED CATEGORY consists of three sub-categories, including the education & encouragement program ("BIKE/PED E&E PROGRAM");
6. 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
7. Whereas, VTA and RECIPIENT desire to specify herein the terms and conditions under which the BIKE/PED E&E PROGRAM funds will be administered to RECIPIENT by VTA as directed by the VTA Board of Directors.

NOW, THEREFORE, the PARTIES agree as follows:

II. AGREEMENT

1. BIKE/PED E&E PROGRAM CATEGORY

The BIKE/PED E&E PROGRAM covers activities and the development and distribution of materials that are designed and intended to satisfy the following goals within the RECIPIENT'S jurisdiction: (i) promote, educate, and/or encourage safe walking or bicycling for residents or visitors of every age and ability; (ii) communicate to residents and visitors the benefits of walking and bicycling; and (iii) communicate to school children, residents, and visitors the rights and responsibilities of pedestrians, bicyclists, and motorists.

2. TERM OF AGREEMENT

The term of this AGREEMENT will commence on July 1, 2019, and continue until (i) June 30, 2021, or (ii) until all BIKE/PED E&E PROGRAM funds allocated to RECIPIENT through June 30, 2021, under this AGREEMENT have been expended entirely, whichever occurs later.

At VTA's sole option, VTA may extend the term of this AGREEMENT for two 2-year periods as follows:

Option Period 1: July 1, 2021, through June 30, 2023, or until all BIKE/PED E&E PROGRAM funds allocated to RECIPIENT through June 30, 2023, under this AGREEMENT have been expended entirely, whichever occurs later.

Option Period 2: July 1, 2023, through June 30, 2025, or until all BIKE/PED E&E PROGRAM funds allocated to RECIPIENT through June 30, 2025, under this AGREEMENT have been expended entirely, whichever occurs later.

VTA may exercise these options by providing written notice to RECIPIENT at least 30 days prior to the expiration of the then-current term.

3. ELIGIBLE USE OF FUNDS

RECIPIENT must use RECIPIENT's allocated BIKE/PED E&E PROGRAM funds for only the following activities/projects (each, an "E&E PROJECT"); provided, however, that RECIPIENT must obtain VTA's prior written approval for such E&E PROJECT (VTA approval must be given by the person identified below in Section 8(d), or his/her designee):

- a. Organization and implementation of K-12 Safe Routes to Schools programs and activities.
- b. Organization and implementation of Vision Zero programs. "Vision Zero" is defined by the Vision Zero Network Campaign as the "Strategy to eliminate all traffic fatalities and severe injuries, while increasing safe, healthy, equitable mobility for all", which definition is adopted herein for purposes of this AGREEMENT.
- c. Organization and implementation of open streets events. "Open streets events" are defined by the Open Streets Project (an advocacy project and collaboration between 880 Cities and Street Plans) as "Programs that temporarily open streets to people by closing them to cars", which definition is adopted herein for purposes of this AGREEMENT.

- d. Creation and implementation of marketing to encourage mode shift towards active transportation.
- e. Development and distribution of maps that promote places to walk or bike.
- f. Education of walking and bicycling skills to adults and children.
- g. Working with law enforcement officials to ensure common understanding and consistent application among law enforcement officials of traffic laws related to biking and walking.
- h. Organization and implementation of broad or targeted safety campaigns to promote safe driving, walking, and bicycling behavior.*
- i. Creation and distribution of marketing materials to encourage safe walking, biking, and driving.*
- j. Purchase and distribution of bicycle helmets, lights, reflective vests, or other bicycle/pedestrian safety equipment to be used in education/encouragement activities.
- k. Purchase and distribution of incentives for education/encouragement activities.
- l. Organization and implementation of crosswalk stings or other activities that educate roadway users on traffic laws. Crosswalk stings are activities conducted by law enforcement to educate the public about crosswalk right of way laws that may or may not include citations.
- m. Organization and implementation of special community events focused on achieving the BIKE/PED E&E PROGRAM goals described in Section 1. BIKE/PED E&E PROGRAM CATEGORY, such as community rides or walks.
- n. Energizer stations and other Bike to Work Day activities.
- o. Implementation of valet bicycle parking.
- p. Community-based bicycle/pedestrian surveys of facilities and surrounding areas to learn, observe, and identify bicycle and pedestrian hot spots.
- q. Any other program or activity approved by VTA in writing.

*Any safety campaign or public service announcement targeted to motorists must focus on safe, responsible, and respectful motorist interactions with pedestrians and bicyclists.

RECIPIENT is permitted to use the BIKE/PED E&E PROGRAM funds allocated hereunder for direct costs and staff time costs incurred by RECIPIENT to support E&E PROJECTS. RECIPIENT is permitted to use the BIKE/PED E&E PROGRAM funds allocated hereunder for the costs incurred for evaluation of the E&E PROJECTS (as required under Section 4. EVALUATION REQUIREMENTS).

Notwithstanding any other provision of this AGREEMENT, RECIPIENT is not permitted to use BIKE/PED E&E PROGRAM funds allocated hereunder for capital improvements.

E&E PROJECTS may be targeted and limited to specific demographics (e.g. school children, seniors, people with disabilities, etc.), to the extent not prohibited by applicable law.

Only BIKE/PED E&E PROGRAM costs incurred by RECIPIENT on or after July 1, 2017, will be eligible for reimbursement.

4. EVALUATION REQUIREMENTS

RECIPIENT must identify (i) the project reach and scale of each E&E PROJECT and (ii) one or more metric(s) that will be measured to evaluate whether the goal is achieved. The frequency and schedule of each E&E PROJECT evaluation must also be identified by RECIPIENT and approved by VTA.

Examples of acceptable metrics are set forth in Attachment A.

5. MAXIMUM FUNDING ALLOCATIONS

- a. RECIPIENT's maximum funding allocation for each fiscal year, starting July 1, 2017, will be based upon the VTA Board of Directors Adopted Biennial Budget for the BIKE/PED E&E PROGRAM and the annual fund distribution formula described below.
- b. The BIKE/PED E&E PROGRAM 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 and subcategories, including the BIKE/PED E&E PROGRAM category.
 - iii. Third, each city's percentage share ("CITY PERCENTAGE SHARE") and the County of Santa Clara's percentage share ("SCC PERCENTAGE SHARE") of the total population of Santa Clara County, California (including unincorporated areas) (according to the then most current California Department of Finance's annual population estimates (Report E-1, or any successor report)) ("TOTAL SCC POP") is calculated by dividing the city's or County of Santa Clara's (as applicable) total population by the total population of all of Santa Clara County and multiplying the result by 100.
 - iv. Fourth, an allocation is made to VTA and the County of Santa Clara for countywide (with respect to Santa Clara County) BIKE/PED E&E PROGRAM activities ("COUNTYWIDE ACTIVITIES").
 - v. Fifth, the 2016 MEASURE B funds remaining for the BIKE/PED E&E PROGRAM category allocation are calculated by deducting the amount allocated for COUNTYWIDE ACTIVITIES in (iv) immediately above from the total BIKE/PED E&E PROGRAM category allocation ("REMAINING FUNDS").
 - vi. Sixth, each CITY PERCENTAGE SHARE is multiplied by the REMAINING FUNDS to determine the dollar amount that would be allocated to each city based on their CITY PERCENTAGE SHARE; however, no allocation is yet made at this step. Cities that would receive less than \$10,000 as a result of the calculation described in this section (vi) will be identified ("LOW POP CITIES").

- vii. Seventh, each city is allocated \$10,000 ("10K ALLOCATIONS"). LOW POP CITIES will not be allocated any additional funds beyond the 10K ALLOCATIONS made to each city as described in this section (vii).
 - viii. Eighth, the modified REMAINING FUNDS are calculated by subtracting the cumulative total of all 10K ALLOCATIONS from the REMAINING FUNDS ("MOD REMAINING FUNDS").
 - ix. Ninth, a modified Santa Clara County population is calculated by deducting the cumulative populations attributed to the County of Santa Clara (unincorporated areas of Santa Clara County) and all LOW POP CITIES from the TOTAL SCC POP ("MODIFIED POPULATION").
 - x. Tenth, a modified population percentage share ("MOD CITY PERCENTAGE SHARE") is calculated for all cities that are not LOW POP CITIES ("NON-LOW POP CITIES") by dividing the NON-LOW POP CITY's total population by the MODIFIED POPULATION and multiplying the result by 100.
 - xi. Eleventh, each NON-LOW POP CITY's MOD CITY PERCENTAGE SHARE is multiplied by the MOD REMAINING FUNDS to calculate the NON-LOW POP CITY's additional allocation of 2016 MEASURE B funds for the BIKE/PED E&E PROGRAM category. This allocation will be made in addition to the 10K ALLOCATION described above.
- c. RECIPIENT's allocations are subject to change based on variations in annual population and actual 2016 MEASURE B receipts for prior fiscal years.
 - d. BIKE/PED E&E PROGRAM allocations may remain unspent for a maximum of three fiscal years, provided that (i) RECIPIENT provides VTA with a satisfactory explanation for why the allocation is not being spent and (ii) VTA provides RECIPIENT with written approval for such explanation. At the end of the fourth fiscal year, allocations that were unspent for all four fiscal years will be returned by VTA to the pool of 2016 MEASURE B funds allocated to the BIKE/PED E&E PROGRAM category for redistribution in the next allocation cycle pursuant to the formula above.
 - e. All funds will be available to RECIPIENT on a reimbursement basis only.

6. VTA's OBLIGATIONS

VTA will:

- a. Annually update the BIKE/PED E&E PROGRAM formula to reflect the most current populations based on the California Department of Finance's annual population estimates (Report E-1, or any successor report). VTA shall use the updated BIKE/PED E&E PROGRAM allocation formula in the allocations beginning July 1 immediately following each VTA budget cycle.
- b. Annually report to the public the amount of BIKE/PED E&E PROGRAM revenues allocated and distributed to RECIPIENT.

- c. Annually report to the public a summary of E&E PROJECT evaluation metrics submitted by RECIPIENT, as required in Section 4. EVALUATION REQUIREMENTS.
- d. Conduct an assessment regarding the effectiveness of the BIKE/PED E&E PROGRAM using approved metrics and data provided by RECIPIENT (pursuant to Section 4. EVALUATION REQUIREMENTS) related to RECIPIENT's E&E PROJECT(s).
- e. Biennially, or however frequently as VTA determines is appropriate based upon the number of ongoing E&E PROJECTs, report to the public the effectiveness of the BIKE/PED E&E PROGRAM based on the assessment described immediately above in Section 6(d).
- f. Remit the amount due to the RECIPIENT under an invoice within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice complying with the requirements set forth herein.

7. RECIPIENT's OBLIGATIONS

RECIPIENT will:

- a. Ensure that all 2016 MEASURE B funds are expended on only allowable BIKE/PED E&E PROGRAM expenditures as described above in Section 3. ELIGIBLE USE OF FUNDS.
- b. Annually complete and submit to VTA, by October 1st of each year, RECIPIENT's proposed work program for the BIKE/PED E&E PROGRAM, in which RECIPIENT will set forth proposed E&E PROJECTs, and develop all such E&E PROJECTs that are approved by VTA as eligible. RECIPIENT's proposed metrics and frequency of E&E PROJECT evaluation must be included with the proposed work program (see Section 4. EVALUATION REQUIREMENTS); VTA must provide approval of these proposed metrics and the frequency of evaluation.
- c. Annually submit to VTA, by October 1st of each year, a summary of the prior fiscal year's completed E&E PROJECTs.
- d. Submit to VTA, on a frequency as approved by VTA, the evaluation of the completed E&E PROJECT pursuant to Section 4. EVALUATION REQUIREMENTS.
- e. If applicable, annually submit to VTA, by October 1st of each year, an explanation of why no BIKE/PED E&E PROGRAM funds are planned for expenditure during the upcoming fiscal year.
- f. Annually complete and submit to VTA, by October 1st of each year, any accompanying reporting requirements for the BIKE/PED E&E PROGRAM.
- g. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- h. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this AGREEMENT for five (5) years. RECIPIENT shall

make such records available to VTA upon VTA's written request for review and audit purposes. Financial audits will be performed at VTA's sole discretion.

- i. Submit invoices to VTA, no more frequently than monthly, for reimbursement of eligible E&E PROJECT costs (see Section 3. ELIGIBLE USE OF FUNDS). RECIPIENT must submit invoices within one year of the date RECIPIENT incurs the cost submitted on the invoice for reimbursement (unless otherwise approved by VTA in writing).

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 acts or omissions under or in connection with any work, authority, or jurisdiction associated with this AGREEMENT. RECIPIENT shall fully defend, indemnify, and save harmless VTA from any liability imposed for injury (as defined by California Government Code §810.8) arising out of or relating to RECIPIENT's acts or omissions 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. **Entire Agreement.** This AGREEMENT 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, relating to the subject matter hereof. This AGREEMENT 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, Grants & Allocations
Santa Clara Valley Transportation Authority
3331 N First Street
San Jose, CA 95134
Email: marcella.rensi@vta.org

RECIPIENT:
David Stillman
Transportation Manager
City of Cupertino
10300 Torre Avenue
Cupertino, CA, 95014

Email: davids@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 BIKE/PED E&E PROGRAM liaison ("LIAISON"). The LIAISON will be (i) the liaison to VTA pertaining to implementation of this AGREEMENT and (ii) the contact for information about the BIKE/PED E&E PROGRAM and E&E 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, covenants 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.

***Santa Clara Valley
Transportation Authority***

RECIPIENT

Nuria I. Fernandez
General Manager/CEO

Deborah L. Feng
City Manager

Date

Date

Approved as to Form

Approved as to Form

Megan Gritsch
Assistant Counsel

Heather Minner
Cupertino City Attorney

ATTACHMENT A

Example Evaluation Requirement Metrics

- Project reach
 - Hypothetical Example: Online media safety campaign had 10,000 unique views, resulting in 2,000 people taking the “I will drive, walk, and bike safely and responsibly” pledge.
- Mode shift
 - Hypothetical Example: At the end of the school year, 200 bicycles were counted in the bike cage, an increase of 20% over the number of bicycles counted at the beginning of the year.
- Behavior change
 - Hypothetical Example: Individualized marketing packets were provided to 1,200 households. 200 households requested additional information. Before and after surveys showed that 5% of households that requested additional information switched to biking, walking, or taking transit more.
- Safety improvements
 - Hypothetical Example: After the crosswalk sting, motorists were observed yielding to pedestrians 8 out of 10 times, an increase of 10% over the yielding rate before the crosswalk sting. However, these rates decreased over time, suggesting that continued events or infrastructure changes are needed to permanently improve driver behavior.
- Community Engagement
 - Hypothetical Example: At the end of five Train the Trainer events, of the 25 trainees, ten agree to lead Safe Routes to School activities at their schools.