

**FUNDING AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE STATE ROUTE 17 CORRIDOR CONGESTION RELIEF PROJECT**

THIS AGREEMENT ("**AGREEMENT**") dated as of the last date of signature by the parties hereto, as set forth in the signature block below ("**Effective Date**"), is made and entered into by and between the TOWN OF LOS GATOS, a municipal corporation of the State of California ("**TOWN**"), and SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency organized as a special district under California law ("**VTA**"). Hereinafter, TOWN 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;
3. 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;
4. 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;
5. Whereas, the PROGRAM includes a "Highway Interchange" program category ("**HIGHWAY CATEGORY**"), which includes a list of eligible projects, that funds highway projects throughout Santa Clara County;
6. WHEREAS, to the PARTIES desire to implement a project to improve traffic operations and circulations, and to relieve congestion on State Route ("**SR**") 17 and SR 9 in the Town of Los Gatos, Santa Clara County, California, as further described herein(the "**PROJECT**");
7. Whereas, the PROJECT is an eligible project identified in the Program and therefore eligible for HIGHWAY CATEGORY funds;
8. Whereas, the 2016 Measure B Program Category Guidelines for the HIGHWAY CATEGORY require a minimum 10% non-2016 Measure B contribution for development of PROJECT;

9. WHEREAS, on March 19, 2019, the TOWN's Council approved and supported the PROGRAM which includes improvements to SR 17 and SR 9; and
10. WHEREAS, the PARTIES wish to set forth in this AGREEMENT their respective obligations in connections with the PROJECT.

NOW, THEREFORE, in consideration of the mutual promises contained in this AGREEMENT, the PARTIES agree as follows:

II. AGREEMENT

1. **PROJECT Description.** The PROJECT includes the construction of a new State Route 17 – State Route 9 Interchange and a widening of State Route 17 between Lark Avenue and State Route 9 to accommodate new auxiliary lanes as shown in Attachment A, attached hereto and incorporated herein ("**PROJECT LOCATION MAP**").
2. **Scope of Work** The scope of work of this AGREEMENT ("**Scope of Work**") includes, but is not limited to: (i) all necessary approvals required from any and all governmental or regulatory agency or entity for the Project Initiaion Document ("**PID**") and Project Approval/Environmental Document ("**PAED**"), (ii) those planning and design activities necessary to complete the PID and PAED.
3. **Cost of Scope of Work** The estimated cost of PROJECT's PID and PA/ED phases is Six Million Dollars (\$6,000,000).
4. **VTA's Financial Contribution for Cost of Scope of Work.** VTA will contribute to the PROJECT up to Five Million, Four Hundred Thousand Dollars (\$5,400,000) of HIGHWAY CATEGORY funds (herein after, "**VTA's Contribution**") towards the development and completion of PID and PA/ED.

2016 MEASURE B Funds Limitation. Notwithstanding any funding obligations set forth in this Agreement, 2016 MEASURE B funds must not be used to finance more than ninety percent (90%) of the Total Scope of Work Costs.

5. **TOWN's Financial Contribution for Cost of Scope of Work.** TOWN will contribute to the PROJECT Six Hundred Thousand Dollars (\$600,000) (hereinafter, "**TOWN's Contribution**") as the non-2016 Measure B project contribution towards the development and completion of PID and PA/ED.

Upon execution of the AGREEMENT, VTA will invoice the TOWN for the TOWN's Contribution and, upon receipt, will deposit the TOWN's Contribution into an interest-bearing account. The

TOWN must pay to VTA the amount set forth in the VTA invoice within thirty (30) calendar days after receipt of invoice.

The TOWN's Contribution and any interest earned will be considered toward the required minimum 10% non-2016 Measure B contribution for the listed cost of PROJECT as identified in the 2016 Measure B Program Category Guidelines for the HIGHWAY CATEGORY.

The TOWN's Contribution towards PS&E, ROW and Construction phases will be subject to future negotiation and mutually agreed upon written amendment.

6. **Cost of Scope of Work Savings.** If the PID and PA/ED are anticipated to be delivered under budget, HIGHWAY CATEGORY funds will be reduced in proportion to Town's Contribution to development and completion of the Scope of Work.
7. **Use of the TOWN's Contribution.** VTA will use the TOWN's Contribution and the interest earned thereon for allowable costs and expenses for the sole purpose of completing the Scope of Work, as set forth in this AGREEMENT.
8. **TOWN's Obligations.** The TOWN is the sponsor of the PROJECT. During the term of the AGREEMENT, the TOWN shall provide TOWN staff oversight of, and participation in, the PROJECT, and necessary and appropriate coordination with all departments of the TOWN. The TOWN shall provide timely reviews, comments, and approvals of PROJECT's documents submitted by VTA to the TOWN. The TOWN costs to administer and participate in PROJECT as described in this AGREEMENT will not be allowable costs against TOWN's Contribution.
9. **VTA's Role in PROJECT.**
 - a. **Tasks.** VTA shall perform and/or be responsible for the following tasks to complete the PROJECT:
 - i. Service as project manager for PROJECT;
 - ii. Coordination with the State of California for its review and approval of PROJECT;
 - iii. Conduct of a conceptual alternatives analysis for PROJECT;
 - iv. Completion of PID work for PROJECT;
 - v. Completion of the PA/ED work for PROJECT;
 - vi. Support Town Staff in obtaining Town Council approval of the project; and
 - vii. Completion of PS&E, ROW and Construction work for the PROJECT, subject to future funding availability and agreement amendment.

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 9(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 the TOWN 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 the TOWN.
- d. Project Cost Updates/ Amendments to TOWN's Contribution. VTA shall actively monitor actual expenditures for PROJECT to ensure that TOWN's Contribution is used to pay for allowable PROJECT expenditures. If, at any time, planned PROJECT expenditures are projected to exceed the TOWN's Contribution, VTA shall immediately notify the TOWN 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 TOWN'S Town Council;
 - ii. Seek additional funding to complete scope of PROJECT by revising the TOWN'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 TOWN'S Director of Parks and 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 12 below.

10. Compliance with Governmental Requirements. The PARTIES shall comply with all applicable laws and regulations pertaining to the AGREEMENT.

11. Compliance with 2016 Measure B Requirements. The PARTIES must comply with and must ensure PROJECT compliance with all 2016 MEASURE B requirements set forth in the 2016 Measure B Program Category Guidelines for the HIGHWAY CATEGORY as identified in Attachment B, attached hereto and incorporated herein.

12. 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.

13. Refund of TOWN's Contribution. Any balance of TOWN'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 9.d.(iv) and 12 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 TOWN. VTA shall refund to the TOWN 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.

14. Audit and Record Retention. The TOWN 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 TOWN for inspection upon request.

15. 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 Parks and Public Works for the TOWN or the Director's designee is hereby made the representative of the TOWN for all purposes under this Agreement.

16. 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 the TOWN under or in connection with any work, authority or jurisdiction associated with the AGREEMENT. In addition, pursuant to Government Code §895.4, the TOWN shall fully indemnify and hold VTA harmless from any liability imposed for injury (as defined by Government Code §810.8) arising out of or relating to the TOWN's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction delegated to the TOWN under this AGREEMENT.

B. Neither the TOWN 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 AGREEMENT. In addition, pursuant to Government Code §895.4, VTA shall fully indemnify and hold the TOWN harmless from any liability imposed for injury (as defined by Government Code §810.8) arising out of or relating to VTA's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction delegated to VTA under this AGREEMENT.

17. 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 the PARTY's right to require strict performance of all of the terms thereafter.

18. Notice. Any notice required to be given by either PARTY, or which either PARTY may wish to give, must 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

Gene Gonzalo, Highway Capital Program Manager
3331 North First Street, Bldg. B-2
San Jose, CA 95134-1906

To TOWN: Town of Los Gatos
Matt Morley, Director, Parks and Public Works
Department of Public Works
110 East Main Street
Los Gatos, CA 95030

Notice will be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

- 19. 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 must give written notice thereof to the other PARTY. The PARTIES must 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 binding 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.
- 20. Entire AGREEMENT** This AGREEMENT constitutes the entire understanding between the PARTIES pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations, and understandings of the PARTIES relative thereto.
- 21. Term of AGREEMENT** This AGREEMENT will become effective upon the Effective Date and will remain in effect through June 30, 2024. Upon written request of VTA, the Director of the Parks and Public Works for the TOWN or a 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. Extensions of more than six (6) months must be incorporated by the formal Amendment process in Section 22.
- 22. Amendments** Future amendments or changes to this AGREEMENT must be made by mutual written agreement of the PARTIES. Whenever reasonably practicable, the PARTY proposing the amendment will provide the other PARTY with a written request to amend this AGREEMENT ninety (90) calendar days prior to the desired effective date of such amendment.
- 23. 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.

24. Severability. If any term, covenant, condition or provision of this AGREEMENT, or the application thereof to any person or circumstance, is, to any extent, 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, will remain in full force and effect and will in no way be affected, impaired, or invalidated thereby.

WITNESS THE EXECUTION HEREOF the day and year set forth below.

“TOWN”: TOWN OF LOS GATOS,
a California charter city and municipal
corporation

By: _____
Laurel Prevetti
Town Manager

APPROVED AS TO CONTENT:

Matt Morley
Park and Public Works Director

APPROVED AS TO FORM:

Robert Schultz
Town Attorney

ATTEST:

Shelley Neis, MMC, CPMC, Town Clerk

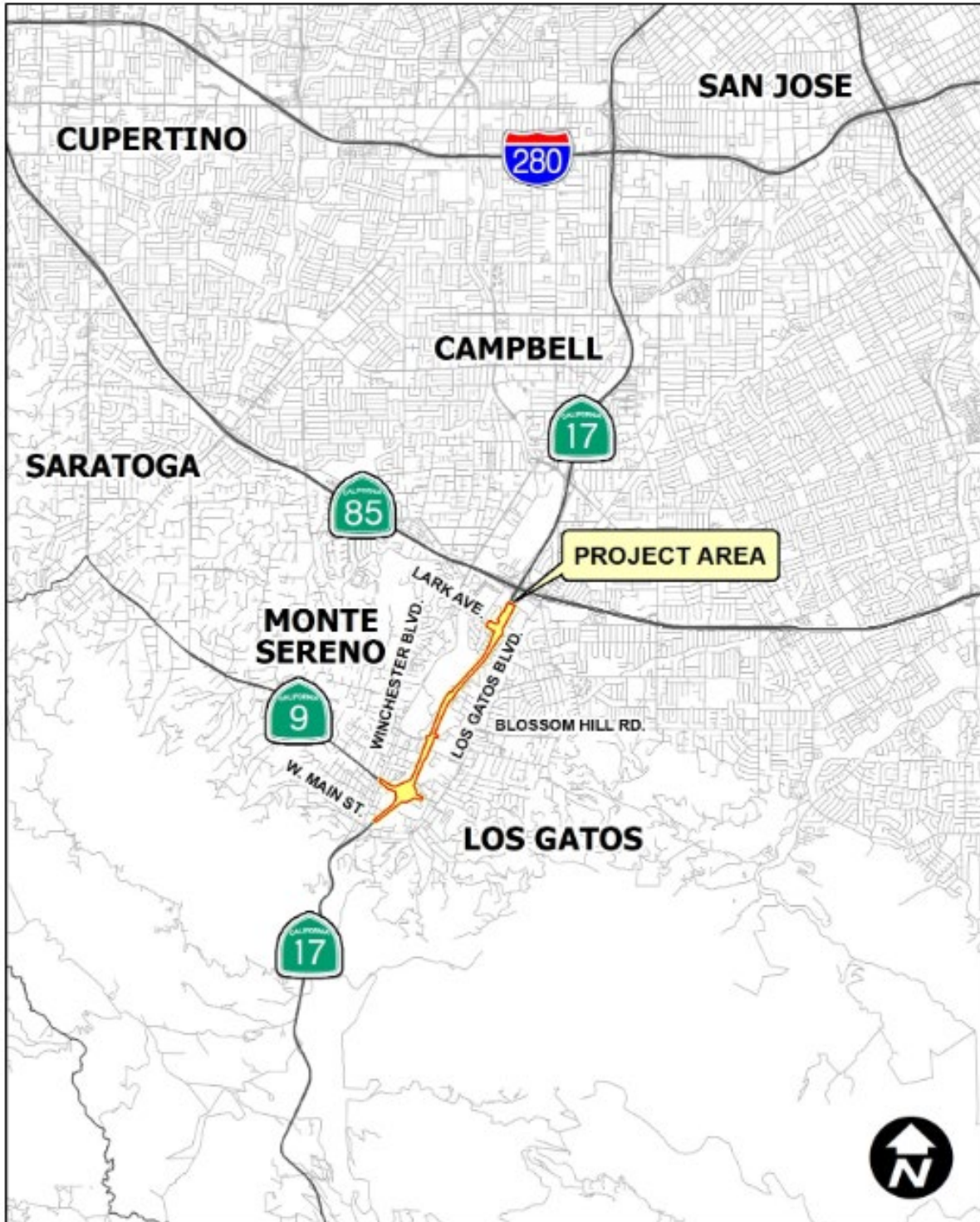
“VTA”: SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY, a public
agency

By: _____
Evelynn Tran
General Counsel and
Interim General Manager/CEO

APPROVED AS TO FORM:

Victor Pappalardo
Senior Assistant Counsel

Attachment A:
Project Location Map



ATTACHMENT B
Highway Interchanges Program Guidelines

Definition from Resolution No. 2016.06.17

To fund highway projects throughout the valley that will provide congestion relief, improved highway operations and freeway access, noise abatement, roadway connection overcrossings, and deploy advanced technology through Intelligent Transportation Systems (ITS).

Total Funding

- \$750 million in 2017 dollars.

Distribution

- VTA Board of Directors will allocate funding on a 2-year cycle.
- Funds will be distributed through two programs: capital projects and noise abatement.
- Funds will be available on a reimbursement basis.

Implementation

- VTA staff will work with local agency staff to identify and prioritize projects in the Highway Interchange Program Candidate List on 2016 Measure B. The following criteria will be considered:
 - Project Readiness
 - Level of local contribution
 - Geographic consideration
- VTA staff will work with member agency staff to advance projects.
- Noise Abatement projects will be a separate category within the Highway Interchange Program.
 - Projects identified in the 2011 VTA Soundwall Study will receive higher consideration during Call for Projects.
- Funds will be available on a reimbursable basis. Agencies may submit invoices to VTA on a monthly, quarterly or annual basis. Invoices must be submitted within one year of the date posted on the contractor's invoice.
- The cost of each phase of a proposed Highway Interchanges project will be finalized with execution of agreements with VTA for project funding.

Criteria

- Only VTA, Caltrans and Member Agencies can serve as an implementing agency.
- Only projects and programs currently listed on 2016 Measure B are eligible.

Requirements

- Projects require a minimum 10% non-2016 Measure B contribution.
- Reporting requirements will be detailed in agreements executed with VTA for project funding.
- All applications must include a delivery schedule.
- All projects must comply with VTA's Complete Streets Reporting Requirements.
- All collateral material will be required to display a 2016 Measure B logo.