

**FUNDING AGREEMENT BETWEEN THE CITY OF MORGAN HILL  
AND THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
REGARDING THE PDA PLANNING GRANT PROGRAM**

THIS AGREEMENT (“Agreement”) entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2015 (“Effective Date”) is between the CITY OF MORGAN HILL, a municipal corporation of the State of California (hereinafter referred to as “CITY”) and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency (hereinafter referred to as “VTA”) (collectively referred to as “Parties and individually referred to as a “Party”).

**RECITALS**

1. **Whereas**, on February 6, 2014 the VTA Board of Directors adopted the Priority Development Area (“PDA”) Planning Grant Program to emphasize and support growth in housing, employment, and transportation within Santa Clara County’s PDAs.
2. **Whereas**, on February 11, 2014, VTA issued a call for PDA Planning Grant Program proposals, and CITY submitted a proposal (incorporated by reference herein and attached hereto as Exhibit A) to conduct the following PDA Planning Activities (hereinafter referred to as “PROJECT”):

Conduct planning initiatives to guide implementing actions that achieve the Downtown Specific Plan vision and Plan Bay Area goals: (1) Station Area Master Plan for specific improvement plan; (2) TOD zoning for new high density (18du/ac) infill opportunity; (3) Market demand and financial feasibility analysis to achieve more intense use on 5 PDA opportunity sites; (4) Update seven Planning Elements to align with new realities; and (5) Consolidate zoning provisions from Specific Plan into Code.

3. **Whereas**, on August 7, 2014, the VTA Board of Directors approved the programming of Three Hundred One Thousand Dollars (\$301,000.00) (“Maximum Grant Amount”) to fund the PROJECT.
4. **Whereas**, VTA and the CITY desire to specify herein the terms and conditions under which the PROJECT is to be conducted and financed.

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

- I. **Scope**. VTA hereby agrees to contribute up to the Maximum Grant Amount towards the payment of the consulting fee in connection with the PROJECT in return for CITY’S agreement to implement PROJECT, as more fully described in Exhibit A.
- II. **Term**. The term of this Agreement shall commence \_\_\_\_\_, 2015 and shall continue until either the PROJECT is completed or terminated, or until the close of business on December 31, 2017.

III. **VTA Obligations.** VTA's obligations under this Agreement are as follows:

- a. VTA hereby agrees to engage a consultant who shall serve as Project Manager for the PROJECT ("Consultant");
- b. VTA will prepare the Consultant Scope of Work;
- c. VTA will prepare the Request for Proposal ("RFP");
- d. VTA will advertise the RFP;
- e. VTA will review the proposals;
- f. VTA will select the Consultant;
- g. VTA will negotiate the contract; and
- h. VTA will administer the contract.

IV. **CITY Obligations.** The CITY's obligations under this Agreement are as follows:

- a. To monitor the progress of the PROJECT and provide quarterly project progress reports to VTA (via electronic document or in-person meeting), which shall include, at a minimum, the following:
  - i. Summary of the Consultant's completed work since the last progress report;
  - ii. Completed milestones;
  - iii. Upcoming milestones;
  - iv. Whether the Consultant is meeting the CITY's expectations; and
  - v. Any issues or obstacles to completion
- b. To thoroughly review Consultant invoices and verify to VTA that the work as stated on the invoice was satisfactorily performed by the Consultant; and
- c. To contribute a local match of Thirty Eight Thousand One-Hundred Dollars (\$38,100.00) towards the total PROJECT cost of Three Hundred Thirty-Nine Thousand One Hundred Dollars (\$339,100.00).

V. **Invoicing and Payment.** The Consultant shall invoice VTA directly therefore no reimbursement to the CITY is necessary.

VI. **Naming of Project Liaison.** Within thirty (30) calendar days from the Effective Date of this Agreement, CITY shall notify VTA of the name of the CITY's PROJECT "Liaison" and of the Liaison's address, telephone number, and email address. The Liaison shall be the liaison to VTA in connection with the implementation of this Agreement and shall be the contact person for information about the PROJECT. CITY shall notify VTA of any change of Liaison or Liaison's contact information no later than thirty (30) calendar days prior to the date of any change.

VII. **Maintenance of Records.** CITY shall maintain PROJECT financial records, books, documents, papers, accounting records and other evidence pertaining to costs for three (3) years after the PROJECT's completion. CITY shall make such records available to VTA upon request for review and audit purposes. Financial audits will be performed at VTA's discretion. CITY will be contacted in writing in advance of any audit or other PROJECT review.

VIII. **Credit of Funding Contribution.** CITY shall credit VTA's funding contribution on all signage, electronic, or printed materials related to the PROJECT that are distributed to the public. VTA shall provide a copy of VTA logos to CITY for use in complying with said obligation.

IX. **Indemnities.**

- 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 delegated to VTA or CITY under this Agreement. Both Parties agree that pursuant to Government Code 895.4, CITY 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 in Government Code Section 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 Funding Agreement. This provision shall survive the termination of 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 delegated to CITY or VTA under this Agreement. Both Parties agree that pursuant to Government Code 895.4, VTA shall fully defend, indemnify, and save harmless CITY from all suits or actions of every name, kind and description brought on for or on account of injury (as defined in Government Code Section 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. This provision shall survive the termination of this Agreement.

X. **Changes to Terms of Agreement.** No amendment, alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by both of the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

XI. **Entire Agreement.** This Funding Agreement contains the entire understanding between the VTA and CITY for the PROJECT. It supersedes any and all other agreements, which may have existed between the Parties.

XII. **Binding on Successors and Assigns.** This Agreement shall be binding upon each Party, and any successors and/or assigns.

XIII. **Notices.** Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, by the U.S. Postal Service or by certified mail, to the addresses set forth below, or to such addresses which may be specified in writing to the Parties hereto.

To VTA: Marcella Rensi, Transportation Planning Manager  
Santa Clara Valley Transportation Authority –  
Programming and Grants  
3331 North First Street  
San Jose, CA 95134

To City of Morgan Hill: Andrew Crabtree, Community Development Director  
Planning Division  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

- XIV. **Signature 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.
- XV. **Strict Performance.** The failure of either Party to insist upon the strict performance of any of the terms, covenant and conditions 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 a Party's right to require strict performance of all of the terms, covenants, and conditions thereafter.
- XVI. **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, 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.
- XVII. **Choice of Law; Venue.** This Agreement shall be construed and its performance enforced under California law. In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the State courts of the County of Santa Clara or, if federal jurisdiction is appropriate, exclusively in the United States District Court for the Northern District of California, in San José, California.
- XVIII. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

*Signature of Parties on following page.*

**CITY OF MORGAN HILL  
(CITY)**

**SANTA CLARA VALLEY  
TRANSPORTATION AUTHORITY (VTA)**

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Steve Rymer, City Manager

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Nuria I. Fernandez, General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

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Renee A. Gurza  
City Attorney

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Caroline Kim  
Assistant Counsel