

**FUNDING AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
LOS GATOS CREEK TRAIL CONNECTOR TO HIGHWAY 9 PROJECT**

This Agreement (“AGREEMENT”) is between the TOWN of Los Gatos (“TOWN”) and the Santa Clara Valley Transportation Authority (“VTA”) is entered into as of the last date of signature below (“EFFECTIVE DATE”). 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;
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 Bicycle & Pedestrian Program Guidelines, attached as Attachment “A” (“GUIDELINES”);
5. Whereas, the PROGRAM includes a Bicycle and Pedestrian program category (“BIKE/PED CATEGORY”) to fund bicycle and pedestrian projects and educational programs;
6. Whereas, the BIKE/PED CATEGORY consists of three sub-categories, including a Capital Projects Competitive Grant Program (“BIKE/PED CAPITAL PROGRAM”);
7. Whereas, on October 3, 2019 the VTA Board of Directors adopted the BIKE/PED CAPITAL PROGRAM criteria;
8. Whereas, on December 3, 2019, VTA released the Fiscal Year 2020 (July 1, 2019 to June 30, 2020) (“FY2020”) to Fiscal Year 2030 (July 1, 2029 to June 30, 2030) (“FY2030”) BIKE/PED CAPITAL PROGRAM call for projects;
9. Whereas on June 4, 2020, the VTA Board of Directors approved the FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM;
10. Whereas, the Kennedy Road Sidewalk and Class II Bike Lanes is an eligible project on the fiscally-constrained portion of the VTA Board of Directors-approved FY2020 to FY2030 10-year priority

project list for the BIKE/PED CAPITAL PROGRAM, and the Los Gatos Creek Trail Connector to Highway 9 (“PROJECT”) is an eligible project on the unconstrained portion of the VTA Board of Directors-approved FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM;

11. Whereas, on September 1, 2022, the VTA Board of Directors approved moving the PROJECT into the fiscally-constrained portion of the FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM and moved funding from the construction phase of the Kennedy Road Sidewalk and Class II Bike Lanes to the construction phase of the PROJECT; and
12. Whereas, VTA and TOWN desire to specify herein the terms and conditions under which VTA will administer the BIKE/PED CAPITAL PROGRAM funds to TOWN as directed by the VTA Board of Directors.

NOW, THEREFORE, for good and valuable consideration, the PARTIES agree as follows:

II. AGREEMENT

1. PROJECT DESCRIPTION

The PROJECT will construct new bike and pedestrian connectors to the Los Gatos Creek Trail at Highway 9. Two connectors will be constructed to allow access to the trail from both the north and south sides of Highway 9. A pedestrian and bicycle bridge crossing the creek will be constructed along the south side of Highway 9. On the north side of Highway 9, the existing unofficial path will be replaced with an ADA-accessible pedestrian path to connect Highway 9 and the Trail.

2. SCOPE OF WORK

The SCOPE OF WORK (“SOW”) for this AGREEMENT is the construction phase for the PROJECT, which includes: construction management services, construction inspection and testing services, construction, and construction contract. A project map is included as Attachment “B”.

VTA must approve any changes to the PROJECT’s design layout, major features, and urban design elements in the SCOPE OF WORK. TOWN must inform VTA, in writing, of any desired modifications to the PROJECT including, but not limited to, changes in the PROJECT area, design, or construction. VTA must approve such changes with written authorization from the Program Manager (“VTA PM”) or the VTA PM’s designee before TOWN may proceed. If the modifications to the PROJECT result in a change in TOTAL PROJECT COST, as described in Section 4 below, VTA’s financial contribution to the PROJECT will change pursuant to the terms in Section 5.

3. TERM OF AGREEMENT

The term of this AGREEMENT will commence on the EFFECTIVE DATE and continue through the earlier of: (i) June 30, 2025, (ii) completion of SOW, (iii) cancellation of the PROJECT, or (iv) other termination of this AGREEMENT pursuant to its terms.

4. COST OF PROJECT

- a. **Total Project Cost.** The total cumulative dollar amount actually incurred and expended toward the Project PROJECT by all PARTIES involved, as measured at the completion or termination of the PROJECT (“TOTAL PROJECT COST”) is \$6,442,000.
- b. **Construction Phase Cost.** The total cost of the Construction Phase SOW is estimated not to exceed \$5,800,000.

5. FINANCIAL CONTRIBUTION TO COST OF SOW

- a. VTA’s Financial Contribution to the SOW. VTA will contribute an amount not to exceed \$693,500 of BIKE/PED CAPITAL PROGRAM funds to be used by TOWN for completion of the SOW. All funds will be available on a reimbursement basis only for ELIGIBLE COSTS (as described in Section 7 below), pursuant to this AGREEMENT.
- b. Additional Funds. TOWN will be solely responsible for any additional funds required to complete the SOW.
- c. Scope of Work Savings. If the PROJECT is delivered under budget, VTA’s Financial contribution for the SOW will be reduced in proportion to TOWN’s Financial contribution to the overall PROJECT.

6. TOWN’S MINIMUM CONTRIBUTION TO TOTAL PROJECT COST

TOWN is solely responsible for all funds it has expended toward the PROJECT prior to the EFFECTIVE DATE. In all circumstances, regardless of the TOTAL PROJECT COST, TOWN must contribute a minimum of 30% of the TOTAL PROJECT COST.

7. ELIGIBLE COSTS

Only the PROJECT costs TOWN incurs after the EFFECTIVE DATE will be eligible for reimbursement.

VTA will only reimburse TOWN for actual costs directly related to the SOW (“ELIGIBLE COSTS”). ELIGIBLE COSTS are costs that: (i) are directly related to the SOW and administration of the Construction Phase; and (ii) were incurred in compliance with all applicable PROGRAM requirements as set forth in Section 18 below.

The following is an illustrative, but not exhaustive, list of costs that are not eligible for reimbursement:

- (a) expenses for organizational functions, businesses services, and information technology;
- (b) Rent and utilities; and
- (c) food or beverages (e.g. as part of meetings, workshops, training, or events).

8. TOWN’S ROLE

TOWN will be the sponsor and implementing agency for the Construction Phase of the PROJECT. In its

role as sponsor and implementing agency under this AGREEMENT, TOWN must perform and/or be responsible for the following:

- i. Serving as the project manager (“PM”) for the PROJECT.
- ii. Performing all actions necessary to procure construction services for the Construction Phase including, but not limited to, advertising the work via a public solicitation, opening bids in response to the public solicitation, awarding a contract, approving contract documents, and administering the awarded construction contract in accordance with all applicable laws, regulations, and codes including, but not limited to, the California Public Contract Code and the California Labor Code.
- iii. Obtaining all necessary permits for performance of the SOW.
- ii. Serving as the construction management team for the Construction Phase of the PROJECT.
- iii. Conducting standard close-out activities for the PROJECT including, but not limited to, performing a final accounting review and reviewing all contractual requirements.

9. OTHER TOWN PROJECT MANAGEMENT DUTIES

TOWN must:

- i. Submit to VTA the most current version of VTA’s 2016 MEASURE B Complete Streets Checklist for Capital Projects (as supplied by VTA to TOWN) within five (5) business days of the EFFECTIVE DATE.
- ii. Submit a project management plan (“PMP”) to VTA within thirty (30) business days of the EFFECTIVE DATE. The PMP must be in writing and must include information regarding staffing plan, cost, schedule, contracting plan, and risk assessment.
- iii. Actively monitor actual PROJECT expenditures to ensure that the BIKE/PED CAPITAL PROGRAM funds are used to pay only for ELIGIBLE COSTS.
- iv. Provide VTA with written quarterly progress updates on the PROJECT including, but not limited to, updates on PROJECT expenditures, any changes in scope or schedule, and Project status.
- v. Upon request, provide VTA copies of PROJECT deliverables including, but not limited to, reports, designs, drawings, plans, specifications, schedules, and other materials related to the Construction Phase.
- vi. Submit the PROJECT’s final report (“FINAL REPORT”) to VTA within thirty (30) days of PROJECT’s opening to the public. This FINAL REPORT must be in writing and must include information regarding final PROJECT costs and post-construction photos along with any other information VTA may require for inclusion in the FINAL REPORT.

- vii. TOWN will make staff available to present on the PROJECT at VTA committee meetings as needed.

10. ADDITIONAL TOWN OBLIGATIONS

TOWN must:

- a. Submit first request for reimbursement of ELIGIBLE COSTS from VTA within one (1) year of the EFFECTIVE DATE.
- b. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement.
- c. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this AGREEMENT for five (5) years. TOWN 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.
- d. Submit invoices to VTA, no more frequently than monthly, for reimbursement of ELIGIBLE COSTS with documentation. TOWN must submit an invoice for reimbursement within one year of TOWN incurring the cost (unless otherwise approved by VTA in writing).

11. VTA'S PROJECT ROLE. VTA will perform and/or be responsible for the following PROJECT oversight tasks:

- a. Review the PROJECT's Complete Streets checklist to ensure Complete Streets compliance.
- b. Provide technical oversight of PROJECT, including reviews of PMP and PROJECT deliverables listed in Section 9.
- c. Provide oversight of delivery of the PROJECT to ensure PROJECT compliance with the GUIDELINES.

12. VTA'S OBLIGATIONS

VTA will pay TOWN's invoices within thirty (30) calendar days of receipt provided that the invoices are for ELIGIBLE COSTS, are fully documented, and otherwise comply with the requirements of this AGREEMENT.

13. INDEMNIFICATION

Neither VTA nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to TOWN's acts or omissions under or in connection with any work, authority, or jurisdiction associated with this AGREEMENT. Pursuant to California Government Code §895.4, TOWN must fully defend, indemnify, and hold harmless VTA from all suits or actions of every name, kind, and description arising from an injury (as defined by California Government Code §810.8) relating to TOWN's acts or omissions under or in connection with any work,

authority, or jurisdiction delegated to TOWN under this AGREEMENT. This provision will survive the termination or expiration of this AGREEMENT.

14. INSURANCE

At all times during this AGREEMENT, TOWN must comply with the insurance requirements and specifications of Attachment "C" to this AGREEMENT, which is incorporated by reference. TOWN may, in its discretion, elect to self-insure, but any such self-insurance must meet the requirements and specifications in Attachment "C".

15. ADDITIONAL INSURED AND INDEMNITY PROVISION

In any agreement executed between TOWN and a third party for purposes related in any way to the subject matter of this AGREEMENT ("THIRD PARTY CONTRACT"), TOWN must require that VTA be named as: (i) an additional insured on a primary and non-contributory basis with Separation of Insureds and Waiver of Subrogation on all policies of insurance required by TOWN in the THIRD PARTY CONTRACT, except when not applicable, and (ii) an indemnified party in any indemnity provision contained in the THIRD PARTY CONTRACT. THIRD PARTY CONTRACT must contain insurance requirements with coverages at least as broad as, and limits at least as great as, the requirements of Attachment A to this AGREEMENT.

16. PUBLIC WORKS

If TOWN awards a contract to a third party for the performance of a public work (as defined in California Labor Code Section 1720 through 1720.6) (a "PUBLIC WORKS CONTRACT") in connection with this AGREEMENT, TOWN must comply, and must require such third party to comply, with the requirements of California Labor Code Section 1720 et seq. If the PUBLIC WORKS CONTRACT is funded in whole or in part with federal funds, TOWN must also comply, and must require such third party to also comply, with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148).

17. COMPLIANCE WITH APPLICABLE LAW

In execution of the PROJECT and performance of its responsibilities set forth herein, TOWN must comply with all applicable requirements of local, state, and federal law.

18. COMPLIANCE WITH 2016 MEASURE B REQUIREMENTS

In its performance under this AGREEMENT, TOWN must comply, and must ensure PROJECT compliance, with all PROGRAM requirements including, but not limited to, the GUIDELINES and VTA's Complete Streets Reporting Requirement.

19. TERMINATION

Each of the PARTIES may at any time terminate this AGREEMENT by giving ten (10) business days' written notice of such termination to other PARTY. Notice must identify the EFFECTIVE

DATE of such termination and must be provided in accordance with the terms and conditions of this AGREEMENT.

In the event of such termination, TOWN must submit its final invoice to VTA within thirty (30) calendar days of the EFFECTIVE DATE of termination solely for ELIGIBLE COSTS that TOWN incurred prior to termination.

20. AUDIT AND RECORDS

- a. All PARTIES must maintain, and must require their contractors to maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data pertaining to services performed under this AGREEMENT, including the costs of contract administration. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges and must be sufficient to allow a proper audit of services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.
- b. For the duration of this AGREEMENT, and for a period of five (5) years after final payment, each PARTY must provide access to the other PARTY and its representatives during normal business hours to any books, accounts, records, data, and other relevant documents that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions and must furnish copies upon request.

21. NOTICES

All notices required or permitted under this AGREEMENT must be in writing, will be effective five (5) days after being sent by personal service or certified mail, or forty-eight (48) hours after being sent by electronic mail to the individuals at the addresses set forth below, or to such other address that may be specified in writing by the PARTIES.

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

TOWN:
Parks and Public Works Director
TOWN of Los Gatos
41 Miles Avenue
Los Gatos, CA, 95030
Email: nburnham@losgatosca.gov

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

22. GENERAL TERMS AND CONDITIONS

- a. **Headings.** The subject headings of the articles and paragraphs in this AGREEMENT are included for convenience only and will not affect the construction or interpretation of any of its provisions.
- b. **Construction and Interpretation of AGREEMENT.** This AGREEMENT, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the PARTIES. Accordingly, each PARTY expressly acknowledges and agrees that (i) this AGREEMENT will not be deemed to have been authored, prepared, or drafted by any particular PARTY and (ii) the rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this AGREEMENT or in the resolution of disputes.
- c. **Amendment.** No alteration or variation of the terms of this AGREEMENT will be valid unless made in writing and signed by both PARTIES, and no oral understanding or agreement not incorporated herein will be binding on either of the PARTIES.
- d. **Entire AGREEMENT.** This AGREEMENT contains the entire understanding between VTA and TOWN relating to the subject matter hereof. This AGREEMENT supersedes any and all other agreements that may have existed between the PARTIES, whether oral or written, relating to the subject matter hereof. This AGREEMENT is binding upon each PARTY and its successors and assigns for the duration of the AGREEMENT.
- e. **Representation of Authority.** Each PARTY represents and warrants that the person whose signature appears on this AGREEMENT for such PARTY has been duly authorized and has the full authority to execute 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 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, may be pursued by mutual agreement. It is the intent of the PARTIES to avoid litigation as a method of dispute resolution to the greatest extent possible.
- 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 TOWN will negotiate an equitable adjustment in the provisions of 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 and any claim that might arise between TOWN 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. TOWN agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
- k. **Ownership of Work.** All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents: (i) assembled for; (ii) prepared by or for; (iii) in the process of being assembled or prepared by or for; or (iv) furnished to VTA or TOWN under this AGREEMENT are the joint property of all PARTIES. Each PARTY is entitled to copies and access to these materials during the progress of the PROJECT and upon completion of the PROJECT or termination of this AGREEMENT. All PARTIES may retain a copy of all material produced under this AGREEMENT for use in their general activities.
- l. **Attribution to VTA.** TOWN must include attribution to VTA that indicates part of the work was funded by Program Funds. This provision applies to any project or publication that was funded in part or in whole by Program Funds. Acceptable forms of attribution include 2016 MEASURE B's branding on PROJECT-related documents, construction signs, public information materials, and any other applicable documents. VTA will provide Program branding to TOWN.
- m. **Non-discrimination.** The PARTIES and any contractors performing services on behalf of the PARTIES ("CONTRACTORS") will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy or childbirth (including related conditions), medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the PARTIES and CONTRACTORS must not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. The PARTIES and CONTRACTORS must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.
- n. **Relationship of the PARTIES.** It is understood that this is an AGREEMENT by and between independent parties and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent contractor.
- o. **Execution in Counterparts / Electronic Signature.** This AGREEMENT may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered will be deemed to be an original and all of which taken together will constitute one and the same instrument.

Unless otherwise prohibited by law, VTA policy, or TOWN policy, the PARTIES agree that both an electronic copy of a signed contract and an electronically signed contract have the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by each of the PARTIES.

Signatures of PARTIES on the following page.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the last date set forth below.

***Santa Clara Valley
Transportation Authority***

Town of Los Gatos

Carolyn M. Gonot
General Manager/CEO

Laurel Prevetti
Town Manager

Date

Date

Approved as to Form:

Approved as to Form:

Shannon Smyth-Mendoza
Deputy General Counsel

Gabrielle Whelan
Town Attorney

Date

Date

Recommended by:

Nicolle Burnham
Director of Parks and Public Works

Attest:

Wendy Wood
Town Clerk

ATTACHMENT A

Maps provided by the Town will be inserted in the final PDF here.

ATTACHMENT B

2016 Measure B Bicycle & Pedestrian Program Guidelines

[Revised and approved by VTA Board of Directors: August 4, 2022]

To fund bicycle and pedestrian projects of countywide significance identified by the cities, County and VTA. The program will give priority to those projects that connect to schools, transit and employment centers; fill gaps in the existing bike and pedestrian network; safely cross barriers to mobility; and make walking or biking a safer and more convenient means of transportation for all county residents and visitors. Bicycle and pedestrian educational programs such as Safe Routes to Schools, will be eligible for funding.

Total Funding

3.97% of Program Tax Revenues

Program Type

Formula-based program

Distribution of Funds

- Funds will be allocated on a two-year cycle, in conjunction with the VTA Biennial Budget process.
- Funds are allocated on an annual basis, based on the application of the ballot-established ratio to the estimated Program Tax Revenue. The allocations are calculated in two steps:
 - Multiplying the ballot-established ratio by the projected Program Tax Revenues for that fiscal year.
 - Reconciling prior allocations, which were based on estimated Program Tax Revenues, with actual Program Tax Revenues (referred to as a “true-up process”). This true-up process will occur in the first fiscal year of each biennial budget cycle.
- The program will consist of three sub-categories: Education & Encouragement Programs, Planning Studies, and Capital Projects.
- A minimum of 80% of available program category funds will be allocated to Capital Projects.
- A maximum of 15% of available program category funds will be set aside for Education & Encouragement. The funds will be allocated as follows:
 - 25% for countywide (including targeting unincorporated areas) education & encouragement programs
 - Remaining funds allocated by city population formula with a \$10,000 annual minimum allocation per city
- A maximum of 5% of available program category funds will be allocated to Planning Studies.
- If the Planning Studies or Capital Projects competitive grant cycle is not fully awarded, the balance of funds from that cycle will roll into its next call for projects cycle.

Implementation

- Only projects currently listed on Attachment A of 2016 Measure B are eligible.
- **Education & Encouragement (Formula Distribution)**
 - VTA and individual agencies will enter into a Master Agreement for Education & Encouragement funds.
 - The 2016 Measure B Program Office will notify agency of allocation for two-year cycle.
 - Funds will be distributed on a reimbursable basis.
 - Agency will submit annual education & encouragement work program and annual progress report.
 - Education & Encouragement funds may be banked for a maximum of three years with explanation of banking purposes upon approval by the 2016 Measure B Program Office.
 - The 2016 Measure B Program Office will conduct an assessment regarding the effectiveness of the program.
- **Capital Projects & Planning Studies (Competitive Grants)**
 - Only a public agency can serve as a project sponsor. Other entities must partner with a public agency to apply for a grant.
 - The grant program contains two categories:
 - Capital projects
 - Activities leading to/including:
 - Environmental Clearance
 - Design
 - Right of Way
 - Construction
 - Construction grant requests must include cost estimates supported by 30% to 35% design.
 - Planning studies
 - Includes planning studies to support capital project development for those projects currently listed on Attachment A of 2016 Measure B. It does not include general/master planning efforts.
 - The minimum grant award is \$50,000.
 - The maximum grant award per sponsoring agency can be no more than 50% of the total available funds per call for projects per cycle, unless the cycle is undersubscribed.
 - The 2016 Measure B Program Office developed project criteria in conjunction with the VTA Technical Advisory Committee (TAC) Capital Improvement Program Working

Group and incorporated input from the TAC and Bicycle & Pedestrian Advisory Committee (BPAC).

- Scoring committees for the grant programs will be comprised of three BPAC members, three Member Agency staff, and one VTA staff person. If enough BPAC or Member Agency staff are not available as described above, Board-adopted scoring committee policy will be followed.

Criteria

- Capital Projects and Planning Studies will be scored on criteria that supports the language in 2016 Measure B, including but not limited to:
 - Countywide significance
 - Connection to/serves schools, transit, or employment centers
 - Fills gaps in bicycle/pedestrian network
 - Provides safer crossings of barriers
 - Makes walking or biking safer
 - Makes walking or biking more convenient
 - Other criteria to consider:
 - Safety benefits
 - Increase in bicycle and pedestrian usage
 - Community support
 - Project readiness
 - Projects serve Equity Priority Communities or vulnerable populations with specific needs
 - Non-2016 Measure B contribution

Requirements

- Competitive grant projects require a minimum 10% non-2016 Measure B contribution.
- Reporting requirements will be detailed in agreements executed with VTA for project funding.
- VTA Complete Streets reporting requirements are required for Planning Studies and Capital Projects.
- All projects must comply with 2016 Measure B program oversight requirements.
- All collateral material must comply with 2016 Measure B branding requirements.

ATTACHMENT C
Insurance Requirements

TOWN OF LOS GATOS'S ("TOWN") ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT TOWN CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS AGREEMENT.

INSURANCE

Without limiting TOWN's indemnification and defense of claims obligations to VTA, TOWN must procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise under or in connection with any work, authority, or jurisdiction associated with the AGREEMENT. The cost of such insurance must be borne by TOWN. TOWN must furnish complete copies of all insurance policies within three (3) business days of any request for such by VTA.

A. MINIMUM SCOPE OF INSURANCE

Coverage must be at least as broad as:

1. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.
2. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance.
4. Contractor's Pollution Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.
5. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's services under this AGREEMENT. This coverage must be continuously maintained for a minimum of two (2) years following completion of this AGREEMENT. This coverage may be written on a claims-made basis; if so, see special provisions in Section B.

B. MINIMUM LIMITS OF INSURANCE

a. TOWN must maintain limits no less than:

1. General Liability: \$5,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event may the underlying General Liability policy limit be less than \$2,000,000, unless Umbrella/Excess or Umbrella policies feature inception and expiration dates concurrent with the underlying general liability policy, "Follow Form" coverage, and a "Drop Down" provision. The Certificate of Insurance must specifically state that the Excess or Umbrella insurance has scheduled the General Liability as underlying insurance.
2. Automobile Liability (including umbrella/excess liability): \$2,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Automobile Liability with excess or Umbrella, but in no event may the underlying Auto Liability policy limit be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying auto liability policy, "Follow Form" coverage, and a "Drop Down" provision. The Certificate of Insurance must specifically state that the Excess or Umbrella insurance has scheduled the General Liability as underlying insurance.
3. Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 per accident.
4. Contractor's Pollution Liability: \$3,000,000 per occurrence. This requirement may be satisfied by a combination of Pollution Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying pollution policy, "Follow Form" coverage, and a "Drop Down" provision. The Certificate of Insurance must specifically state that the Excess or Umbrella insurance has scheduled the Pollution Liability as underlying insurance.
5. Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim. This requirement may be satisfied by a combination of Professional Liability insurance with Excess or Umbrella policies, but in no event may the Professional Liability primary policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying policy, "Follow Form" coverage, and a "Drop Down" provision. The Certificate of Insurance must specifically state that the Excess or Umbrella insurance has scheduled the Professional Liability as underlying insurance.

- b. Notwithstanding any language in this AGREEMENT to the contrary, if TOWN carries insurance limits exceeding the minima stated in Section B(a)(1)-(3) immediately above, such greater limits will apply to this AGREEMENT.

C. SELF-INSURED RETENTION

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or deductible in excess of \$250,000 must be declared to and approved by VTA. If TOWN is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$250,000, TOWN must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess TOWN's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require TOWN to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by TOWN. TOWN may request execution of a nondisclosure agreement prior to submission of financial reports.

D. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTO LIABILITY)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must comply with the following:

1. The policy retroactive date must be no later than the date of this AGREEMENT.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, TOWN must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least two (2) years.
3. No prior acts exclusion may be added to the policy during the AGREEMENT period.
4. The policy must allow for reporting of circumstances or incidents that might give rise to future claims.

E. OTHER INSURANCE PROVISIONS

The policies must contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. VTA, its directors, officers, officials, employees, and volunteers must be named as additional insureds as respects: liability arising under or in connection with any work, authority, or jurisdiction associated with the AGREEMENT. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- c. Coverage must state that TOWN's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.

2. All Coverages

- a. TOWN must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising under or in connection with any work, authority, or jurisdiction associated with the AGREEMENT.
- b. TOWN's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to TOWN's insurance. TOWN's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this AGREEMENT are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office,

or the American Association of Insurance Services, during the duration of this AGREEMENT, VTA reserves the rights to require TOWN to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

F. ACCEPTABILITY OF INSURERS

Insurance must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

G. CERTIFICATES OF INSURANCE

TOWN must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. TOWN must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to 2016measureb@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required herein, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
Los Gatos, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA property leased must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the AGREEMENT documents.

It is a condition precedent to granting of this AGREEMENT that all insurance certificates and endorsements be received and approved by VTA before AGREEMENT execution. No occupancy may be taken until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If TOWN receives notice that any of the insurance policies required by this Attachment may be cancelled or coverage reduced for any reason whatsoever, TOWN must immediately provide written notice to VTA that such insurance policy required by this Attachment is canceled or coverage is reduced.

H. MAINTENANCE OF INSURANCE

If TOWN fails to maintain insurance as required herein, VTA, at its option, may suspend the

AGREEMENT until a new policy of insurance is in effect.