

**FUNDING AGREEMENT
BETWEEN CITY OF MILPITAS AND
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR 2010 MEASURE B VEHICLE REGISTRATION FEE LOCAL ROAD
IMPROVEMENT AND REPAIR PROGRAM**

THIS AGREEMENT is between CITY OF MILPITAS, a “Member Agency”, referred to herein as "RECIPIENT", and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as "VTA". Hereinafter, RECIPIENT and VTA may be individually referred to as "Party" or collectively referred to as "Parties.”

I. RECITALS

1. **Whereas**, on June 3, 2010, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2010 to authorize a \$10 increase in the Vehicle Registration Fee (VRF) for transportation-related projects and adopted the expenditure plan in Attachment A which allocates the revenue to transportation-related programs and projects that have a relationship or benefit to the persons who pay the fee; and
2. **Whereas**, on October 7, 2010, the VTA Board of Directors adopted administrative procedures for the VRF program, referred to hereinafter as PROGRAM; and
3. **Whereas**, these administrative procedures state that VTA will execute PROGRAM funding agreements with project sponsors; and
4. **Whereas**, on November 2, 2010, the voters of Santa Clara County enacted the \$10 vehicle registration fee on motor vehicles registered within Santa Clara County to pay for programs and projects bearing a relationship or benefit to the owners of motor vehicles paying the fee; and
5. **Whereas**, the PROGRAM includes a Local Road Improvement and Repair Program consisting of a direct return-to-source formula based on City population and County of Santa Clara road and expressway lane mileage; and
6. **Whereas**, VTA and RECIPIENT desire to specify herein the terms and conditions under which Local Road Improvement and Repair PROGRAM grants are to be conducted and financed.

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

II. VTA’S OBLIGATIONS

VTA agrees:

1. To pay RECIPIENT an initial distribution of Local Road Improvement and Repair Program funds collected by the California Department of Motor Vehicles (DMV) and

received by VTA from the date of initial fund collection to June 30, 2012, plus associated interest. The Fund Distribution Formula is based on the County of Santa Clara's percentage share of the total roadway lane mileage recorded in the county by the Metropolitan Transportation Commission (MTC), with the remaining funds to be distributed to RECIPIENT based on RECIPIENT's percentage share of the total county population (excluding unincorporated areas) as reported by the California Department of Finance. Funds will be distributed after July 1, 2012, following execution of the VRF Local Program Funding Agreement and receipt of RECIPIENT's initial Annual Report described in Section III-5.

2. To update roadway mileage and population shares annually with current information as of June 30 of current year.
3. To distribute subsequent funds, based on the formula described in Section II-1 above, for the Local Road Improvement and Repair Program funds on an annual basis consisting of funds received by VTA from the DMV between July 1 of the previous year and June 30 of the calendar year of disbursement, plus associated interest generated in VTA's accounts. The distribution will take place following the beginning of the next State fiscal year and the receipt of the previous year's annual report described in Section III-5 below.

III. RECIPIENT'S OBLIGATIONS

RECIPIENT agrees:

1. To develop eligible project(s) as set forth in Attachment A.
2. To credit VTA's funding contribution on all signage, electronic or printed materials distributed to the public that are related to PROGRAM projects.
3. To certify, and continue to certify on a yearly basis, a Good Faith Effort (GFE) to maintain a level of expenditures (including non-discretionary formula based state funds) on VRF eligible activities equivalent to the expenditures on these activities during the fiscal year 2010/11 (base year). The base year may be revised every five years, if needed, and VRF revenues will be excluded. The following funds are excluded from the GFE expenditure calculation: State and Federal Discretionary Grants (including but not limited to ARRA, CMAQ, HBRR, HSIP, SR2S, STP, and Proposition 1B etc.), associated local matching funds, and one-time local expenditure. GFE requirements are automatically waived in years where the State of California fails to make non-discretionary payments of streets and roads funding to Cities and Counties. VTA may also consider granting waivers based on extraordinary circumstances beyond the control of a city or town council, County Board of Supervisors, and/or city and County staff. The certification will be provided by RECIPIENT to VTA as set forth in Section III-5.
4. After receipt of funds from VTA, to track interest earned on unexpended PROGRAM funds and apply interest to PROGRAM eligible projects as specified in Attachment A.

5. To submit annual reports of RECIPIENT'S expenditures of PROGRAM funds and associated interest, in a form to be provided by VTA to RECIPIENT. Each report will cover twelve months consisting of the previous State fiscal year. Reports are due from RECIPIENT to VTA no later than October 15 of each year as a condition of receiving funds. As part of the annual report, RECIPIENT will certify that it continues to make a Good Faith Effort (GFE) to maintain a level of expenditures as stated in section III-3. An initial report, containing the notification of GFE base year amount and statement of GFE for FY2012/13, shall be submitted by RECIPIENT to VTA after the execution of this agreement.
6. To maintain PROGRAM financial records, books, documents, papers, accounting records and other evidence pertaining to costs for five years. RECIPIENT shall make such records available to VTA upon request for review and audit purposes. Financial audits will be performed at VTA's discretion. RECIPIENT will be contacted in writing in advance of any audit or other PROGRAM review.
7. To provide VTA with information regarding scope, award and delivery of projects at the time of award and completion.

IV. GENERAL TERMS AND CONDITIONS

Both Parties agree:

1. 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 RECIPIENT under or in connection with any work, authority or jurisdiction delegated to VTA or RECIPIENT under this Funding Agreement. Both Parties agree that pursuant to Government Code 895.4, RECIPIENT shall fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind and description brought on for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by RECIPIENT under or in connection with any work, authority or jurisdiction delegated to RECIPIENT under this Funding Agreement. This provision shall survive the termination of this Agreement.
2. Neither RECIPIENT 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 RECIPIENT or VTA under this Funding Agreement. Both Parties agree that pursuant to Government Code 895.4, VTA shall fully defend, indemnify, and save harmless RECIPIENT 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 Funding Agreement. This provision shall survive the termination of this Agreement.

3. No alteration or variation of the terms of this Funding 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.
4. PROGRAM costs incurred on or after July 1, 2011 are eligible expenditures.
5. This Funding Agreement contains the entire understanding between the VTA and RECIPIENT for the PROGRAM. It supersedes any and all other agreements, which may have existed between the parties. This Funding Agreement shall not be modified except by written agreement signed by each party. This Funding Agreement shall be binding upon each party, their legal representatives, and successors for the duration of the VRF.
6. The term of this Funding Agreement shall commence when fully executed and continue until terminated due to the repeal of Sections 65089.20 to the Government Code and Section 9250.4 of the Vehicle Code, as those sections may be amended, which authorizes the imposition of the VRF.
7. 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.

VTA:

Manager, Programming and Grants
Santa Clara Valley Transportation Authority
3331 North 1st Street
San Jose, CA 95134

RECIPIENT:

City of Milpitas
Department of Public Works
City of Milpitas
455 E. Calaveras Boulevard, CA 95305

8. Within 30 days from the Effective Date of this Agreement, RECIPIENT shall notify VTA of RECIPIENT's PROGRAM Liaison and of the Liaison's address, telephone number and email address. The PROGRAM Liaison shall be the liaison to VTA pertaining to implementation of this Agreement and shall be the contact for information about the PROGRAM and PROGRAM projects. RECIPIENT shall notify VTA of the change of PROGRAM Liaison or of the Liaison's contact information in writing no later than 30 days from the date of any change.

9. 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.
10. **No Waiver.** 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 their right to require strict performance of all of the terms, covenants, and conditions thereafter.
11. **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.
12. **Governing Law.** This Agreement shall be construed and its performance enforced under California law.
13. **Venue.** 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.

CITY OF MILPITAS

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

Kathleen Phalen, Acting City Engineer Date

Michael T. Burns, General Manager Date

Approved as to Form and Legality:

Approved as to Form:

Michael J. Ogaz, City Attorney Date

Evelynn Tran, Senior Assistant Counsel Date

Attachment A

“The Local Transportation Investment Fund” Senate Bill 83 Expenditure Plan

Revised (6.7.10)

1. **80% - Local Road Improvement and Repair Program** (Direct return-to-source based on City population and County of Santa Clara road and expressway lane mileage)
 - Revenue Estimate – \$11.2 million (FY 2011)
 - Eligible Project Categories: (includes all expenses for administration, planning, design, construction, procurement and operation of a Complete Streets System)
 - Pavement Rehabilitation/Reconstruction
 - Traffic Control Signals, Traveler Information & Safety Devices
 - Curb & Gutter Rehabilitation/Reconstruction
 - Roadway-Related Facilities to Improve Safety
 - Automobile-Related Environmental Mitigation including Roadway Sweeping & Litter Control

2. **15% - Countywide Program**
 - Revenue Estimate – \$2.1 million (FY 2011)
 - Eligible Project Categories: (includes all expenses for administration, planning, design, construction, procurement and operation of a Complete Street System)
 - Intelligent Transportation System Technologies (transportation-related technologies including traffic control signals, safety and traveler information systems)
 - Countywide Environmental Mitigation related to pollution caused by autos and trucks
 - Matching funds for Federal/State/Regional transportation grants applied to any roadway transportation project included in the adopted Valley Transportation Plan

3. **Up to 5% - Program Administration**
 - Revenue Estimate – \$0.7 million (FY 2011); (unused funds to be disbursed through Countywide Program)
 - Eligible Expense Categories:
 - Expense directly related to administration, oversight, programming, reporting, surveys, initial election ballot and auditing/accounting of the program.
 - Annual public report of expenditures