

**AMENDMENT No. 2 TO
AGREEMENT
BETWEEN THE CITY OF SAN JOSE AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE US 101/DE LA CRUZ BOULEVARD-TRIMBLE ROAD INTERCHANGE
PROJECT**

This AMENDMENT TO AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE US 101/DE LA CRUZ BOULEVARD-TRIMBLE ROAD INTERCHANGE PROJECT (“**Second Amendment**”) is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (“**CITY**”), and SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency organized as a special district under California law (“**VTA**”) as of the date of final signature by either of the Parties (“**Effective Date**”).

I. RECITALS

- A. WHEREAS, on December 19, 2017, Parties entered into an agreement (“**AGREEMENT**”) setting forth their respective obligations in regard to the modifications to the US 101/De La Cruz Boulevard-Trimble Road Interchange Project (“**PROJECT**”).
- B. WHEREAS, on June 19, 2020, the AGREEMENT was extended from July 1, 2020 to December 31, 2020 in accordance with Section II, paragraph 6, TERM OF AGREEMENT.
- C. WHEREAS, on January 12, 2021, an amendment was executed (First Amendment) to extend the term of the AGREEMENT to July 31, 2021.
- D. WHEREAS, the PROJECT has completed the design phase and will be starting the construction phase.
- E. WHEREAS, the Parties recognize the need for the continuation of construction for the PROJECT and the need to extend the termination date of AGREEMENT to complete the construction phase of the PROJECT.

NOW, THEREFORE, the Parties agree to amend the AGREEMENT as follows:

II. AGREEMENT

- 1. SECTION II, PARAGRAPH 1, “Conduct of the Project”, is hereby amended and restated to read as follows:

“VTA is responsible for conducting and completing the PROJECT. For the Plans, Specifications, and Estimates (“PS&E”), right-of-way, and construction phases of the PROJECT, VTA shall perform and/or be responsible for tasks, including but not limited

to:

- i. Serving as project manager for the entire PROJECT;
- ii. Performing final design, right-of-way, activities necessary to complete the PROJECT;
- iii. Coordinating with the State of California and other relevant stakeholders for their review and approval of the PROJECT;
- iv. Completing activities necessary for the final design documents for the PROJECT;
- v. Obtaining Caltrans Right-of-Way Certification for the PROJECT;
- vi. Completing construction contract bid documents for the PROJECT.
- vii. Advertise, open bids, award, approve, and administer the 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;
- viii. Provide a resident engineer and construction staff which includes structure representative, office engineer, civil and bridge inspectors, office administrator, and laboratory testers, that are independent of VTA's construction contractor;
- ix. Coordinate with CITY and Caltrans on contract change orders ("CCOs") for the PROJECT;
- x. Conduct close-out activities for the PROJECT.

Costs and expenses to perform these tasks will be considered allowable costs and expenses pursuant to this AGREEMENT.

- a. Consultants. VTA may retain design consultants to perform its required tasks for the PROJECT. 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.
- b. Other Project Management Duties. VTA shall include CITY staff as active participants within VTA's project management process, and VTA shall hold periodic meetings as agreed upon by the PROJECT team to assess the progress of the PROJECT and address PROJECT issues as they arise. VTA shall also prepare quarterly written reports on PROJECT activity and progress for CITY if requested by the City.
- c. Project Cost Updates: VTA shall actively monitor actual PROJECT expenditures to ensure that CITY's Contribution (as defined below in Section 2. CITY'S Financial Contribution for PROJECT) is used to pay for allowable PROJECT expenditures. When the full amount of CITY's Contribution has been expended, VTA shall immediately notify CITY of such fact. The Parties will then choose one of the following courses of action:
 - i. The Parties will revise the PROJECT scope in accordance with the available funds, which revision can be accomplished only by written amendment to this AGREEMENT signed by the Parties and approved by the CITY's City Council;
or
 - ii. The Parties will seek additional funding to complete the scope of the PROJECT

- by revising the CITY's Contribution, which revision can be accomplished only by written amendment to this AGREEMENT signed by the Parties; or
- iii. VTA will formulate and implement a new strategy to continue the PROJECT to the satisfaction of the CITY's Director of Transportation, which new strategy will be accomplished only by written amendment to this AGREEMENT signed by the Parties; or
 - iv. The Parties may terminate this AGREEMENT in accordance with Section 7 below.

If PROJECT expenditures are projected to not exceed CITY's Contribution, VTA, upon completion of the PROJECT, shall reimburse CITY for any unused amount of CITY's Contribution, or VTA and CITY may formulate and implement a strategy to expand the scope of VTA services for the PROJECT, to the satisfaction of VTA and CITY'S Director of Transportation, such that the remaining amount of CITY's Contribution may be expended on the expanded scope. Any such expansion of the scope of services must be in writing and approved by both Parties.

2. SECTION II, PARAGRAPH 6, "Term of AGREEMENT", is hereby amended and restated to read as follows:

"This AGREEMENT will become effective upon full execution of the AGREEMENT and will remain in effect through December 31, 2025. If requested by VTA in writing, the CITY's Director of Transportation or his/her designee is authorized to extend the term of the AGREEMENT for up to six (6) months after the termination date, upon written notice to VTA and without formal amendment of this AGREEMENT."

3. Any exhibits or attachments referenced in, and/or attached to this Second Amendment are incorporated into the AGREEMENT by this reference.
4. Unless specifically defined herein, the capitalized terms used in this Second Amendment have the meanings as defined in the AGREEMENT.
5. Except as herein modified, all other provisions of the AGREEMENT, including any exhibits and subsequent amendments thereto, remain in full force and effect. All references to the AGREEMENT in this Second Amendment refer to the AGREEMENT as amended unless otherwise specifically set forth or otherwise indicated by context.
6. In the event of any conflict between the provisions of this Second Amendment and the provisions of the AGREEMENT, the provisions of this Second Amendment will prevail. Whether or not specifically amended by this Second Amendment, all of the terms and provisions of the AGREEMENT are hereby amended to the extent necessary to give effect to the purpose and intent of this Second Amendment.
7. If any provision of the AGREEMENT, as amended by this Second Amendment, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

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

“CITY”
City of San Jose
a municipal corporation

“VTA”
Santa Clara Valley Transportation Authority
a public agency

By: *Sarah Zarate*
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Evelynn Tran
General Counsel and Interim General
Manager/CEO

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:










By:  **Approved as to Form:**
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CSJ 101_Trimble Funding Agreement Amendment 2_CSJ_2021_06_14_Final For SimliGOV

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