

COOPERATION AND FUNDING AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE DIRIDON STATION AREA PLAN

This Cooperation and Funding Agreement ("Agreement") is made and entered into as of _____, 2009, by and between the City of San Jose, a municipal corporation of the State of California (SAN JOSE) and the Santa Clara Valley Transportation Authority, a special-purpose district under the State of California (VTA) to prepare a Station Area Plan for the future Diridon Station. Each of the above entities may be referred to in this Agreement individually as "PARTY", and collectively as the "PARTIES".

RECITALS

WHEREAS, SAN JOSE is a duly established chartered municipal corporation organized and existing under the laws of the State of California; and

WHEREAS, VTA is a special district created pursuant to the California Public Utilities Code Sections 100000 *et seq.*; and

WHEREAS, the PARTIES desire to prepare the "Diridon Station Area Plan," which is a plan for the Diridon Transit Center (Transit Center) located at 65 Cahill Street, San Jose, CA 95113 with the objective of providing a vision and framework, including a specific plan and environmental clearance, for higher intensity transit-oriented development in the area, capitalizing on the extraordinary level of public investment in transit (the "Project"); and

WHEREAS, the Metropolitan Transportation Commission (MTC) has programmed Seven Hundred and Fifty Thousand Dollars (\$750,000) in Surface Transportation Plan (STP) Exchange Funds allocated to SAN JOSE for the Project; and

WHEREAS, MTC has authorized SAN JOSE to administer the grant for this Project; and

WHEREAS, the PARTIES hereby pledge to provide additional funding for the Project as fully described in Section 2 of this Agreement;

NOW THEREFORE, in consideration of the mutual benefits and obligations herein, the PARTIES agree as follows:

SECTION 1: PROJECT DESCRIPTION

1.1 This Project involves developing a Station Area Plan around the Transit Center as depicted on Exhibit A attached hereto, and includes environmental clearance under the California Environmental Quality Act (CEQA) and related transit station area planning activities. The Transit Center is located along the Union Pacific/Caltrain/Amtrak/Altamont Commuter Express (ACE) right-of-way. The Transit Center, already a major transit hub, will emerge as one of the premier multimodal stations in the Bay Area as a station of the proposed BART Extension to Silicon Valley and the proposed Automated People Mover (APM) system from High Speed Rail (HSR) to San Francisco to the North and Los Angeles to the South.

1.2 SAN JOSE shall oversee the Project in accordance with this Agreement, and in accordance with the Funding Agreement between it and MTC, with a reference date of February 10, 2009, which is attached hereto as Exhibit B, and referred to herein as "San Jose-MTC Funding Agreement."

1.3 SAN JOSE shall retain a consultant to assist SAN JOSE staff in completing deliverables Set forth in Attachment A to the San Jose-MTC Funding Agreement.

SECTION 2: FUNDING

2.1 The total budget for this Project is Nine Hundred and Fifty Thousand Dollars (\$950,000). The overall funding is composed of Seven Hundred and Fifty Thousand Dollars (\$750,000) in MTC grant funds pursuant to the San Jose-MTC Funding Agreement, One Hundred Thousand Dollars (\$100,000) from VTA, and One Hundred Thousand Dollars (\$100,000) from SAN JOSE.

2.2 VTA shall deposit with SAN JOSE the amount specified above within thirty (30) calendar days of the execution of this Agreement. The total of all payments made by VTA to SAN JOSE under this Agreement shall not exceed One Hundred Thousand Dollars (\$100,000) unless agreed to by amendment in writing and executed by both PARTIES.

2.3 SAN JOSE shall actively monitor the actual versus the planned expenditures for the Project to assure that the PARTIES' contributions pursuant to this Agreement will be sufficient to pay for completion of the Project. If the actual cost of the Project work is projected to exceed the total funds available, SAN JOSE shall notify and meet with VTA to determine the appropriate course of action and shall not authorize any work for which funding is unavailable.

2.4 If any amount exceeding the aforementioned contributions by the PARTIES in Sections 2.1 and 2.2 is required to complete the Project, SAN JOSE shall notify VTA in writing that additional funds are required. SAN JOSE shall not perform any work beyond the amount of funds specified above until an amendment to this Agreement is executed, adding funds to complete the Project.

2.5 If the Project is unreasonably delayed by a PARTY to this Agreement, that PARTY shall be responsible for the expenses and fees incurred by the other PARTY as a result of the delay. Notwithstanding the foregoing, no PARTY shall be responsible for any expenses or fees incurred by the other PARTY, nor any liability whatsoever, arising from its refusal to contribute more than its share of the costs specified in this Agreement.

2.6 If either PARTY desires to withdraw from this Agreement, the withdrawing PARTY shall provide thirty (30) calendar days advance written notice to the other PARTY of its intent. In such a case, the non-withdrawing PARTY shall not be obligated to continue the Project, but the non-withdrawing PARTY shall be entitled to contribute, at its sole option, the funds determined to be necessary to complete the Project (as applied to that PARTY only). The withdrawing PARTY shall have the right to a partial refund of its contribution subject to all of the following conditions:

A. Twenty-Five Thousand Dollars (\$25,000) of the withdrawing PARTY's contribution shall be non-refundable.

B. Any amounts beyond the Twenty-Five Thousand Dollars (\$25,000) non-refundable portion under Section 2.6(A) above that have already been expended or irrevocably committed by SAN JOSE before the written notice of termination shall also be non-refundable.

C. SAN JOSE shall promptly notify MTC of the withdrawal by one PARTY from the Agreement and of the decision of the non-withdrawing PARTY whether to complete the Project. If MTC notifies SAN JOSE that it is discontinuing all or part of its further payments pursuant to the Funding Agreement between MTC and SAN JOSE, then the withdrawing PARTY's contribution shall be non-refundable to the extent necessary to make SAN JOSE whole for any costs or expenditures that would have been covered by MTC, but for such withdrawal. Notwithstanding any other provision in this Agreement, the withdrawing PARTY shall indemnify SAN JOSE for any such unavoidable loss caused by that PARTY's withdrawal. SAN JOSE shall not be entitled to apply this provision to any cost or expenditure that occurred after notification of the withdrawal if that cost or expenditure could reasonably have been avoided by prompt cessation of Project activities.

D. If the Project is terminated before completion for any other reason, SAN JOSE shall refund to VTA in proportion to their contributions any funds remaining unexpended after payment of all outstanding obligations. The PARTIES shall meet in such a case to determine any further course of action that may be required.

2.7 At Project completion, if actual costs are less than the planned expenditures, then savings shall be shared on a pro-rata basis among the PARTIES.

SECTION 3: IMPLEMENTATION SCHEDULE

3.1 SAN JOSE shall commence the planning activities funded by this Agreement on or after April 1, 2009 and shall complete them by June 30, 2011.

3.2 SAN JOSE shall retain environmental consultant(s) to assist in the completion of the environmental review process of the Project under CEQA.

3.3 SAN JOSE agrees to act as lead agency for the purposes of completing environmental review of the Project. SAN JOSE agrees to coordinate the preparation of the Draft Environmental Impact Report (DEIR) and the EIR with VTA.

3.4 Each PARTY designates the person named below as its representative for all purposes of this Project and this Agreement:

SAN JOSE: Director of Transportation, James Helmer or his/her designee

VTA: Chief SVRT Program Officer, Carolyn Gonot or his/her designee

3.5 SAN JOSE agrees to review and provide comments on the Administrative Draft EIR generated by the environmental consultant(s) within thirty (30) calendar days following receipt of such documents. After consideration of the comments prepared by SAN JOSE, the Designated Representatives shall jointly direct the environmental consultant(s) to make any revisions jointly agreed to by the Designated Representatives. Any final decisions regarding the scope, content, analysis, and conclusions contained in the EIR generated pursuant to this Agreement shall be agreed upon jointly by all of the Designated Representatives.

3.6 If the PARTIES are unable to make a final decision regarding the scope, content, analysis,

mitigation measures, and allocation of responsibility thereof, or conclusions contained in the EIR generated pursuant to this Agreement, the PARTIES agrees to comply with the Dispute Resolution process specified in Exhibit C attached hereto and incorporated herein by reference. The provisions of this Section shall not apply if the Agreement is terminated pursuant to Section 2 herein.

3.7 SAN JOSE and VTA each retains its respective sole and absolute discretion to review and certify as adequate any Final EIR prepared pursuant to this Agreement and to approve or disapprove the Project. Nothing contained in this Agreement shall be construed to diminish, modify, or otherwise affect SAN JOSE's or VTA's legal authority or to limit SAN JOSE's or VTA's sole and absolute discretion in any way. Nothing in this Agreement shall be construed to require any particular decision-making action related to final review and certification of the EIR or Project either before or after completion of the environmental review process under CEQA.

SECTION 4: COMPLIANCE WITH ALL LAWS

4.1 THE PARTIES shall comply with all applicable laws, statutes, ordinances, rules, regulations or requirements of the federal, state and local governments, and any agencies thereof, which relate to or in any manner affect the performance of this Agreement, including 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," FTA Circular 4220.ID, FTA Circular 5010.IC and the FTA Master Agreement [Form ITA MA (10), October 1, 2003].

4.2 SAN JOSE certifies that it shall comply with all the requirements of the California Environmental Quality Act (CEQA) and California Public Resources Code Section 21000 *et seq.* in connection with this Project.

4.3 All requirements imposed upon SAN JOSE as a MTC "grantee" or "recipient" contained in Attachment C, Terms and Conditions, to the San Jose-MTC Funding Agreement are hereby imposed upon VTA, where applicable.

SECTION 5: ACCOMPLISHMENT OF WORK

SAN JOSE shall accomplish the work in a timely manner and in conformance with Attachment B, Project Budget and Schedule, to the San Jose-MTC Funding Agreement, and in compliance with all other terms and conditions of this Agreement. SAN JOSE shall furnish VTA with copies of all contracts, and any amendments thereto, entered into between SAN JOSE and third parties for performance of the work associated with this Project within thirty (30) calendar days of the execution of each contract.

SECTION 6: SEPARATE ACCOUNTING

SAN JOSE shall establish and maintain for the Project either a separate set of accounts, or separate accounts within the framework of an established accounting system that can be identified with the work, in accordance with applicable Federal regulations and other requirements that MTC may impose. All checks, invoices, contracts, vouchers, orders, and other accounting documents related in whole, or in part, to the work shall be clearly identified, readily accessible and available to VTA upon its request, and, to the extent feasible, kept separate from documents not related to the work.

SECTION 7: INDEMNIFICATION/MUTUAL HOLD HARMLESS

7.1 Pursuant to Government Code Section 895.4, the PARTIES hereto shall indemnify and hold each other, their officers, employees and agents harmless from any damage or liability imposed

for injury (as defined by Government Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying PARTY, its officers, employees or agents; under or in connection with any work, authority or jurisdiction delegated to such PARTY under this Agreement. No PARTY, nor any officer, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent acts or omission or willful misconduct of the other PARTY hereto; its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other PARTY under this Agreement.

- 7.2 The failure of either VTA or SAN JOSE to insist upon the strict performance of any terms, covenants 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.

SECTION 8: NOTICES

Any notices required to be given hereunder, or which any PARTY may wish to give, shall be in writing and shall be personally delivered or sent by certified or registered mail, postage prepaid addressed as follows:

TO SAN JOSE: James Helmer, Director
Department of Transportation, City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

With a copy to:

Richard Doyle
City Attorney
200 East Santa Clara Street
San Jose, CA 95113-1905

TO VTA: Michael Burns, General Manager
Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA 95134-19

SECTION 9: ENTIRE AGREEMENT

9.1 This Agreement, including all exhibits, constitutes the entire Agreement 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. The PARTIES further intend that this Agreement shall constitute the complete and exclusive statement of its terms on the subject matters covered hereunder and that no extrinsic evidence whatsoever (including prior drafts hereof and changes thereto) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

9.2 Future amendments to this Agreement shall be processed by mutual agreement of the PARTIES. Mutual consent shall be reached through negotiations. Notice to amend this Agreement shall be provided thirty (30) calendar days prior, when possible, to the desired effective date of such amendment.

9.3 This Agreement shall be effective on the date specified on the first page hereof and shall remain in effect until June 30, 2011 or until early withdrawal of a PARTY or earlier termination. Either PARTY may withdraw from this Agreement subject to the terms of Section 2.6. The Agreement shall terminate upon the mutual, written consent of both PARTIES, or if the terminating PARTY does not desire to continue performance of the Agreement, upon the withdrawal of either PARTY pursuant to Section 2.6.

9.4 SAN JOSE's Director of Transportation or designee is authorized to extend the term of this Agreement to December 31, 2011, upon notice in writing to VTA.

SECTION 10: MISCELLANEOUS PROVISIONS

10.1 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. If the Parties fail to resolve the issues, alternative forms of dispute resolution, including mediation or binding arbitration, may be pursued by mutual agreement. In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must 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, Northern District of California, San Jose, California.

10.2 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.

10.3 If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be 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, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

IN WITNESS WHEREOF, SAN JOSE and VTA have executed and entered into this Agreement as of the Effective Date set forth hereinabove.

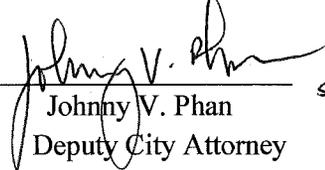
"SAN JOSE"
City of San Jose
A municipal corporation

By: _____
Lee Price, MMC
City Clerk

"VTA"
Santa Clara Valley Transportation
Authority
A public agency

By: _____
Michael T. Bums
General Manager

APPROVED AS TO FORM:

By:  _____ 5/18/09
Johnny V. Phan
Deputy City Attorney

APPROVED AS TO FORM:

By: _____
VTA Counsel

ATTACHMENTS:

- A - Station Area Plan: Planning Area Diagram
- B - San Jose-MTC Funding Agreement
- C - Dispute Resolution

EXHIBIT A

STATION AREA PLAN PLANNING AREA DIAGRAM

EXHIBIT A

STATION AREA PLAN PLANNING AREA DIAGRAM

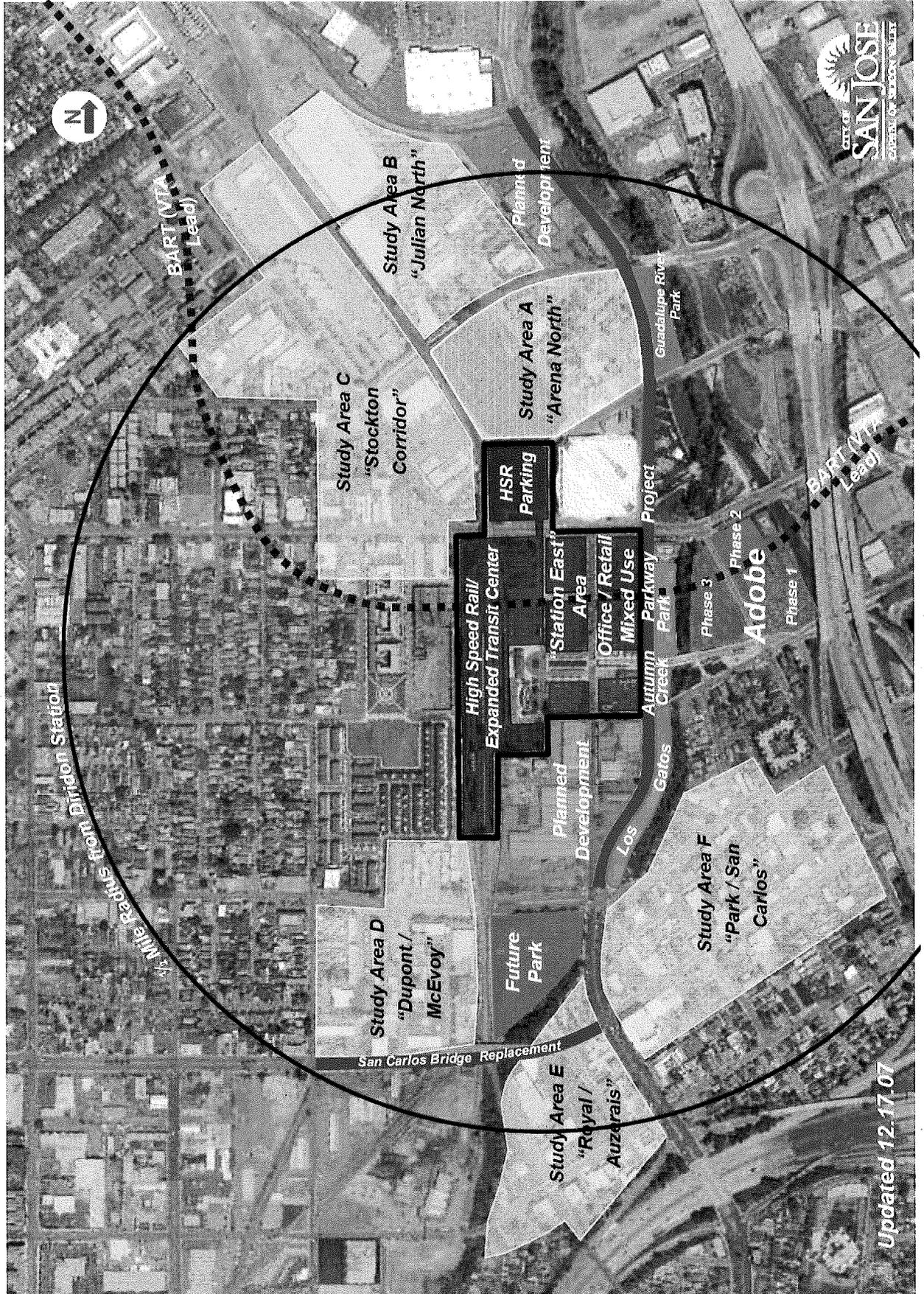


EXHIBIT B

SAN JOSE-MTC FUNDING AGREEMENT



METROPOLITAN
TRANSPORTATION
COMMISSION

Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
TEL 510.817.5700
TTY/TDD 510.817.5769
FAX 510.817.5848
E-MAIL info@mtc.ca.gov
WEB www.intc.ca.gov

February 10, 2009

Bill Dodd, Chair
Napa County and Cities

Scott Haggerty, Vice Chair
Alameda County

Tom Azumbrado
U.S. Department of Housing
and Urban Development

Tom Bates
Cities of Alameda County

Dean J. Chu
Cities of Santa Clara County

Dave Cortese
Association of Bay Area Governments

Dorene M. Giacomini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sue Lemport
Cities of San Mateo County

Jake Mackenzie
Sonoma County and Cities

Joni Rubin
San Francisco Mayor's Appointee

Bijan Saripati
State Business, Transportation
and Housing Agency

James P. Spering
Solano County and Cities

Adrienne J. Tissier
San Mateo County

Anny Worth
Cities of Contra Costa County

Ken Yeager
Santa Clara County

Vacant
City and County of San Francisco

Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Operations

Andrew B. Fremier
Deputy Executive Director,
Bay Area Toll Authority

Therese W. McMillan
Deputy Executive Director, Policy

Debra Figone
City Manager
City of San Jose
200 East Santa Clara Street
San Jose, CA 95112

RE: Funding Agreement

Dear Ms. Figone:

This letter is our Funding Agreement for the performance of station area planning assistance ("the Agreement").

It is agreed that City of San Jose (also referred to as "RECIPIENT") shall perform, or engage a consultant to perform, the project tasks specified in Attachment A, Scope of Work attached hereto and incorporated by this reference.

Doug Johnson (herein "MTC Contract Manager") shall be responsible for the overall administration of the Agreement, including approving deliverables and invoices. Day-to-day technical direction shall be provided by Justin Fried (herein "Project Manager") or a designated representative.

Payment to RECIPIENT shall be due in the amounts indicated in Attachment B, Project Budget and Schedule, upon acceptance by the MTC Contract Manager of the Project deliverables, described in detail in Attachment A.

Payment shall be made within thirty (30) days after receipt by MTC of an acceptable invoice, which shall be subject to the review and approval of MTC's Contract Manager.

RECIPIENT shall deliver or mail invoices to MTC, as follows:

Accounting Department
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 -- 8th Street
Oakland, CA 94607-4700

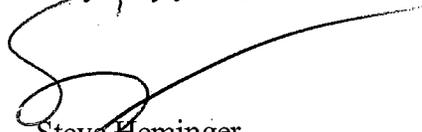
Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid under the Agreement exceed the sum of seven hundred fifty thousand dollars (\$750,000).

The Agreement is funded in whole, or in part, by Surface Transportation Program (STP) funds allocated to MTC by the Federal Highway Administration, funds from which have been awarded to RECIPIENT by MTC, and the provisions in Attachment C, Terms and Conditions, are hereby incorporated by reference. To the extent that they conflict with any of the above provisions, they supersede such provisions.

Performance will begin on February 1, 2009, and be completed by June 30, 2011, unless MTC terminates this Agreement earlier as provided in Article 3, Termination, of Attachment C.

If you agree, please sign both copies of this letter in the space provided below and return one to us. The other copy is for your files.

Very truly yours,



Steve Heminger
Executive Director

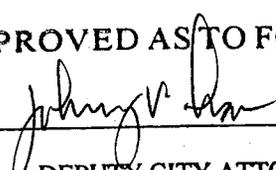
SH: DJ: DR

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Accepted and Agreed to this _____ day
of February, 2009.

Debra Figone, City Manger, City of San Jose

APPROVED AS TO FORM

 5/15/09

DEPUTY CITY ATTORNEY

ATTACHMENT A

SCOPE OF WORK

RECIPIENT shall with professional consulting assistance, develop the Diridon Station Area Plan. The Diridon Station Area Plan will focus on evaluating existing and proposed land uses; analyzing market, regulatory and infrastructure conditions; analyzing the expansion of the existing Diridon Station; and developing land use regulations, implementation strategies and design guidelines to encourage appropriate transit oriented development within the station area planning. The primary objectives to be accomplished are:

- Establishment of a land use plan and policy framework that will guide future development and redevelopment within the area towards land uses that will support transit ridership.
- Improvement of motorized, non-motorized and transit connectivity between the station site and existing adjacent commercial and residential areas.
- Development and implementation of urban design standards that promote walkable and livable environments within the station area.
- Enhance the existing residential neighborhood and add high density residential development
- Provide a variety of commercial and mixed used development opportunities, ranging from large scale corporate or institutional sites to incremental infill development zones
- Create a high, activity, lively pedestrian environment with excellent connectivity to downtown destinations and transit
- Expansion of Diridon Station to create a well integrated center of architectural and functional significance
- Preparation of a comprehensive environmental document to facilitate subsequent environmental reviews of changes to existing policy/ regulatory documents, capital improvement projects and private development proposals.
- Educate and inform the public about the area plan process and Transit Oriented Design (TOD) concepts.

Public Outreach

RECIPIENT shall conduct public outreach and convene workshops at key milestones for the community to constructively participate in the selection of preferred concepts and plans. An

essential element of success of the proposed plan will be the RECIPIENT'S ability to engage the community to accomplish the following:

- Develop a shared vision for the area that includes defining opportunities for TOD to support and directly benefit the neighborhood;
- Educate residents and employers on the concepts of TOD, specific planning and the environmental review process, and provide examples of successful mixed-use TOD. These forums may involve representatives from transit agencies or other communities that have firsthand experience with successful TODs;
- Assess acceptable development alternatives/scenarios to be evaluated in the EIR; and
- Synthesize concepts until consensus is reached and proceed with further review and approval of the preferred development strategy.

Work Tasks and Deliverables

Task 1: Site Analysis – Existing Conditions

The RECIPIENT and consultant team shall assess and synthesize existing physical and regulatory conditions affecting the project study area. Information to be considered in the assessment include: existing physical conditions; existing land uses; environmental constraints; available traffic data; regulatory and policy documents such as the City's General Plan, Design Guidelines, Zoning Code, Street Design Standards, Redevelopment Plans, and Bicycle and Pedestrian Master Plan; Transit Agency and Congestion Management Agency policies and planning programs; objectives identified in previous planning and design studies; economic and redevelopment objectives; airport constraints; development projects being planned or are pending approval/construction; and planned public improvement projects.

The RECIPIENT and consultant team shall prepare a map of the proposed project area depicting the existing conditions. The map will show streets, buildings, parking areas, bike paths and trails, and public facilities. RECIPIENT and consultant team shall assemble the existing conditions data and related mapping into an Existing Conditions Report.

As part of the existing conditions discussion and to kick off the process, the RECIPIENT shall conduct Community Workshop #1

Deliverable #1a: Existing Conditions Map

Deliverable #1b: Existing Conditions Report

Deliverable #1c: Workshop #1 Summary

Task 2: Draft Plans and Alternatives

The RECIPIENT's consultant shall evaluate existing data to create an accurate assessment of current land use types and densities and analyze a range of feasible alternatives for new jobs, retail and housing and accompanying densities, including a higher density scenario that would provide additional housing units in the range of the adopted MTC threshold for commuter rail stations.

RECIPIENT and consultant shall prepare a draft Diridon Station Expansion Plan. The plan should take all available information and existing approved plans and expand on them to develop a Diridon Station Expansion Plan. The plan will include the following elements:

- Station expansion program and transit integration (BART, Caltrain, Amtrak, ACE, Light Rail, Bus Rapid Transit, Bus, High Speed Rail)
- Connectivity between existing and planned transit services
- Access and circulation within the station
- Access and circulation to the station area
- Enhancement and integration of the historic facility
- Transit parking needs and locations
- Station architectural concepts
- Implementation and financing strategies for the expansion of the station

As part of this task, RECIPIENT and consultant team shall prepare a Station Access and Connectivity Plan that will address pedestrian, transit, auto, and bicycle access to the station and circulation through the station planning area. This plan will also address projected motorized traffic impacts and estimates the number of transit riders from within the station area accessing the transit station by non-motorized modes. The plan will include the following elements:

- Create a high-activity, lively pedestrian environment with excellent connectivity to downtown destinations and transit; and
- Station Access and Connectivity Plan including Gateway Streetscape Plans
- Accessibility Plan
- Pedestrian-Friendly Design Standards

RECIPIENT and consultant team shall present the alternative land use and circulation scenarios and findings at Community Workshop #2. Community Workshop #2 will provide a forum for the RECIPIENT and consultant team to discuss the alternatives and illustrate how issues and considerations raised during Community Workshop #1 are, or could be, addressed in the scenario. Utilizing interactive planning techniques, such as design charrettes, RECIPIENT and consultant team shall lead meeting attendees in an exercise to identify community priorities and preferences. This may result in a clear preference for one of the alternatives, or it may result in a hybrid concept that combines some elements of two or more of the alternatives. Related to this, RECIPIENT and consultant team will prepare and present a Draft Station Access and Connectivity Plan that corresponds to proposed land use scenarios and station area expansion plan.

Deliverable #2a: Draft Land Use Alternatives Analysis Report

Deliverable #2b: Draft Station Expansion Plan

Deliverable #2c: Draft Station Access and Connectivity Plan

Deliverable #2d: Workshop #2 Meeting Summary

Task 3: Final Land Use – Preferred Alternatives Analysis

The RECIPIENT's consultant shall finalize a preferred land use alternative and station expansion plan and complete appropriate maps and reports.

The RECIPIENT, through its consultant, shall conduct a parking demand analysis for the station area. The study will include:

- Anticipated residential parking demand;
- Anticipated employment/commercial parking demand;
- Potential for shared parking in station area;
- Potential for priced parking in station area;
- Recommended TOD parking ratios for residential and commercial projects; and
- Feasibility of establishing parking maximum ratios and abolishing minimum parking ratios.

RECIPIENT and consultant team shall present the Final land use and circulation scenarios, parking demand analysis and related findings at Community Workshop #3 for review and input. Community Workshop #3 will provide a forum for the RECIPIENT and consultant team to discuss the alternatives and illustrate how issues and considerations raised during Community Workshop #2 are, or could be, addressed in the scenario.

Deliverable #3a: Final Land Use Alternatives Analysis Report

Deliverable #3b: Final Station Expansion Plan

Deliverable #3c: Final Station Access and Connectivity Plan

Deliverable #3d: Parking Demand Analysis and Potential TOD Parking Policies

Deliverable #3e: Workshop #3 Meeting Summary

Task 4: Technical Analysis

Market Demand Analysis – The RECIPIENT’s consultant shall prepare a preliminary report on the market demand for TOD in the station area. The demand analysis will examine both residential and employment demand, and will include the financial feasibility of affordable housing in particular.

Infrastructure Analysis – RECIPIENT and consultant team shall prepare an infrastructure needs analysis based upon data and information developed through Tasks 1, 2 and 3. The purpose of the analysis will be to determine at a preliminary engineering (planning) level the infrastructure necessary to support the land uses and improvements identified in Tasks 2 and 3. The study could analyze the following infrastructure needs and related engineering issues as needed:

- Storm drainage
- Sanitary sewer
- Water systems, including fire flows
- Street improvements, including lights, alley and frontage improvements
- Public facilities, including station platform and parking facilities
- Parks and Open Space
- Electricity service, including an estimate to underground
- Natural gas service
- Telecommunications – broadband and wireless infrastructure

The infrastructure needs analysis will include level of magnitude cost estimates, phasing recommendations for improvements broken down by system, geography or phased capacity improvements and recommended funding strategies.

Deliverable #4a: Infrastructure Needs Analysis Technical Report

Deliverable #4b: Market Demand Analysis

Task 5: Draft Station Area Plan

RECIPIENT and consultant team shall develop a draft Station Area Plan for public review. The Station Area Plan will serve as the RECIPIENT'S comprehensive land use and implementation plan for guiding development within the station planning area. The Station Area Plan will include the following elements:

- Planning Process - A description of the plan process and the role the public played in creating the plan.
- Policy Framework: Goals, objectives and policies for creating and sustaining a transit supportive environment.
- Land Use Section - Description of anticipated increase in new housing units, affordable housing, jobs and mix of other uses within the station planning area.
- Station Access and Circulation - Address pedestrian, transit, auto, and bicycle access to the station and circulation through the station planning area. Addresses projected motorized traffic impacts and estimates the number of transit riders from within the station area accessing the transit station by non-motorized modes. Identifies parking management strategies.
- Urban Design Standards - Incorporates public and private design policies and standards that will promote walkability and livability of the station area. Establishes TOD parking ratios.
- Infrastructure – Identifies infrastructure improvements that will be needed to support implementation of the plan.
- Implementation – Identifies regulatory/policy changes needed to implement the Area Plan (including General Plan, Zoning Code and Design Guidelines), improvement phasing and funding strategies necessary to implement the plan.

RECIPIENT and consultant team shall conduct a community meeting following preparation of the draft Station Area Plan to receive comments and input from the public.

Deliverable #5: Draft Station Area Plan

Task 6: Final Station Area Plan

RECIPIENT and consultant team shall develop a Final Station Area Plan for public review. The Station Area Plan will serve as the RECIPIENT'S comprehensive land use and implementation plan for guiding development within the station planning area. RECIPIENT and consultant team will conduct community meetings and participate in the Public Hearing process for City Council consideration of the Plan document.

Deliverable #6: Final Station Area Plan

Task 7: Environmental Analysis and CEQA Review

RECIPIENT and consultant team shall prepare an Environmental Impact Report (EIR) in compliance with the provisions of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) and will prepare responses to comments received during the public review period, any associated Mitigation Reporting Plan, and Findings of Fact and Statement of Overriding Considerations as applicable. The EIR shall address, at a minimum, the following areas:

- Land Use Consistency and Compatibility - The EIR will evaluate the proposed project's consistency with adopted City plans and policies.
- Transportation and Circulation – A traffic study analyzing traffic and circulation issues, impacts on existing and proposed bikeways, transit systems (bus and commuter rail) and pedestrians, and impact on pedestrian safety.
- Air Quality - The EIR will address the project's impact on air pollutants and their precursors as well as localized carbon monoxide impacts utilizing the appropriate air quality modeling tools. The analysis will address both operational including vehicular emissions (long-term) and construction level (short-term) impacts.
- Noise/Vibration - The EIR will evaluate the potential impacts on ambient noise levels from any construction related noise, as well as potential impacts on ambient noise from the proposed project (buildout of proposed land uses and operation of commuter rail service).
- Discussion of Alternatives – The EIR shall describe a range of reasonable alternatives for the project. The EIR will evaluate the comparative merits of the alternatives, including the “No Project” alternative.

It could also include the following elements:

- Biological Resources - The EIR will analyze the project's short-term (construction) as well as long-term impacts on biological resources including any special status species.
- Hydrology/Drainage/Water Quality/Sanitary Sewer System – The EIR will analyze and address the project's construction and operational impacts to hydrology, drainage, the sewer system, and water quality in the area.
- Public Services – The EIR will evaluate the potential impacts to public services such as schools, solid waste, police, fire and utilities.

- Cultural/Historical Resources – The EIR will evaluate potential impacts to cultural and historical resources in the proposed plan area. Mitigation measures will be identified to reduce potential impacts.
- Discussion of Growth Inducing and Cumulative Impacts – The EIR shall address cumulative impacts of the project. The EIR shall discuss cumulative impacts when the project’s incremental effect is considered cumulatively considerable.
- Discussion of Alternatives – The EIR shall describe a range of reasonable alternatives for the project. The EIR will evaluate the comparative merits of the alternatives, including the “No Project” alternative.

Deliverable #7: Draft Environmental Impact Report

Task 8: Policy Implementation of the Station Area Plan (Related General Plan and Zoning Ordinance Amendments)

If City Council adopts the final Station Area Plan, RECIPIENT and consultant team shall prepare General Plan and Zoning Ordinance amendments as necessary to provide a policy framework for the implementation of the Plan, that along with the the approval of a Final Environmental Impact Report (FEIR), position the RECIPIENT to market the redevelopment of the station area. As needed the Zoning Ordinance amendments will incorporate concepts of form-based zoning, including detailed prescriptions of physical form related to standards for building envelopes, architecture and streets, in a well illustrated, clear plan.

Deliverable #8a: General Plan Amendments

Deliverable #8b: Zoning Ordinance Amendments

Deliverable #8c: Final EIR

ATTACHMENT B
PROJECT BUDGET AND SCHEDULE

The following table provides the project budget by deliverable, including the local match to be provided by the RECIPIENT:

Task	Deliverable (Deliverable #)	MTC Contribution	RECIPIENT Match	Total Cost	Completion Date
1	Existing Conditions Map (#1a) Existing Conditions Report (#1b) Workshop #1 Summary (#1c)	\$80,000	\$16,000	\$96,000	September 2009
2	Draft Land Use Alternatives Analysis Report (#2a) Draft Station Expansion Plan (#2b) Draft Station Access and Connectivity Plan (#2c) Workshop #2 Meeting Summary (#2d)	\$160,000	\$32,000	\$192,000	February 2010
3	Final Land Use Alternatives Analysis Report (#3a) Final Station Expansion Plan (#3b) Final Station Access and Connectivity Plan (#3c) Parking Demand Analysis and Potential TOD Parking Policies (#3d) Workshop #3 Meeting Summary (#3e)	\$150,000	\$30,000	\$180,000	June 2010
4	Infrastructure Needs Analysis Technical Report (#4a) Market Demand Analysis (#4b)	\$40,000	\$8,000	\$48,000	July 2010
5	Draft Station Area Plan (#5)	\$120,000	\$24,000	\$144,000	December 2010
6	Final Station Area Plan (#6)	\$40,000	\$8,000	\$48,000	April 2011
7	Draft Environmental Impact Report (#7)	\$80,000	\$16,000	\$96,000	April 2011
8	General Plan Amendments (#8a) Zoning Ordinance Amendments (#8b) Final EIR (#8c)	\$80,000	\$66,000	\$146,000	June 2011
	TOTAL	\$750,000.00	\$200,000.00	\$950,000.00	

ATTACHMENT C

TERMS AND CONDITIONS

1. FUNDING

Funding from DOT shall be contingent upon approval by the Federal Highway Administration (FHWA) of MTC's Overall Work Program ("OWP"). Should DOT amend the OWP after the effective date of this Agreement to reduce the amount of available STP funds, MTC will reduce RECIPIENT's share of STP funds proportionately and shall, after consultation with the RECIPIENT, amend the Scope of Work as necessary to reflect the reduced level of funding.

2. AMENDMENTS

Any changes in the activities to be performed under this Agreement shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the MTC Executive Director or a designated representative and RECIPIENT. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.

3. TERMINATION

MTC may terminate this Agreement without cause upon ten (10) days prior written notice. If MTC terminates this Agreement without cause, RECIPIENT will be entitled to payment for costs incurred for incomplete deliverables, up to the maximum amount payable for each deliverable. If RECIPIENT fails to perform as specified in this Agreement, MTC may terminate this Agreement for cause by written notice and RECIPIENT will be entitled only to costs incurred for work product acceptable to MTC, not to exceed the maximum amount payable under this Agreement for such work product.

4. RETENTION OF RECORDS

RECIPIENT agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of three (3) years following final payment to RECIPIENT or four (4) years following the fiscal year of the last expenditure under this Agreement, whichever is longer, in accordance with generally accepted accounting principles. Copies of RECIPIENT audits, if any, performed during the course of Project development and at Project completion shall be forwarded to MTC no later than one hundred eighty (180) days after fiscal year end close.

5. AUDITS

RECIPIENT agrees to grant MTC, or any agency that provides MTC with funds for the Project, including but not limited to, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, and their authorized representatives access to RECIPIENT's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of this Agreement. All documents shall be available for inspection during normal business hours at any time while the Project is underway and for the retention period specified in Article 4.

RECIPIENT further agrees to include in all its third-party contracts hereunder a provision to the effect that the contractor agrees that MTC, the U.S. Department of Transportation, FHWA,

the Comptroller General of the United States, the State, or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, during normal business hours, for the term specified above. The term "contract" as used in this clause excludes agreements not exceeding \$25,000.

6. LICENSE TO WORK PRODUCTS

RECIPIENT hereby grants to MTC an irrevocable, non-exclusive, royalty-free license to use without restriction and share with any person or entity all drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture, and any other documents, materials, data, and products ("Work Products") developed, prepared, or assembled by RECIPIENT or RECIPIENT's consultant(s) or its subconsultants pursuant to this Agreement. MTC may exercise their licenses to Work Products through sublicenses to a third party, without the approval of RECIPIENT or RECIPIENT's consultant(s) or subconsultants. FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which RECIPIENT or RECIPIENT's consultant(s) or subconsultants purchase ownership under this Agreement.

7. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332 for FTA-funded projects, RECIPIENT agrees that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

8. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC's procurement and professional services activities.

RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. RECIPIENT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by RECIPIENT to carry out these requirements is a material breach of contract, which may result in the termination of this agreement or such other remedy as MTC deems appropriate.

9. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

RECIPIENT agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (47 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21).

10. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

RECIPIENT agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. § 5310(f); and their implementing regulations.

11. STATE ENERGY CONSERVATION PLAN

RECIPIENT shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321).

12. DEBARMENT

RECIPIENT certifies that neither it, nor any of its participants, principals or subcontractors is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 49 CFR Part 29, by any Federal agency or department.

13. CLEAN AIR AND WATER POLLUTION ACTS

RECIPIENT agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

14. LOBBYING

RECIPIENT agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.

15. INDEMNIFICATION

RECIPIENT shall indemnify and hold harmless MTC, Caltrans, their Commissioners, Directors, officers, agents and employees from any and all claims, demands, suits, loss, damages, injury and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of RECIPIENT, its officers, directors, employees, agents and contractors, or any of them, under or in connection with this Agreement; and RECIPIENT agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, Caltrans, their Commissioners, Directors, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

16. MEETINGS

RECIPIENT agrees to invite the MTC Contract Manager and the Project Manager to participate in all meetings held in connection with this project, including public meetings and project team meetings.

17. COMPLIANCE WITH LAWS

RECIPIENT shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state, or local government, and any agency thereof, including, but not limited to MTC, the U.S. DOT, FHWA, and Caltrans, which relate to or in any manner affect the

performance of this Agreement. Those laws, statutes, ordinances, rules, regulations, and procedural requirements that are imposed on MTC as a recipient of federal or state funds are hereby in turn imposed on RECIPIENT (including, but not limited to, 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"), and are herein incorporated by this reference and made a part hereof.

18. IDENTIFICATION OF DOCUMENTS

RECIPIENT will ensure that all documents related to the project including meeting notices and reports state that the project is funded through the Metropolitan Transportation Commission's Station Area Planning Program.

In addition, RECIPIENT will ensure that all reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:

"The preparation of this report has been financed in part by grants from the U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation."

In addition, RECIPIENT certifies that the RECIPIENT and its contractors shall comply with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code Section 21,000 *et seq.* and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 *et seq.*) and the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4-1 *et seq.* and the applicable regulations thereunder.

19. SUBCONTRACTS

RECIPIENT must include provisions of this Agreement, as applicable, modified only to show the particular contractual relationship, in any third-party contracts funded by this Agreement.

EXHIBIT C**DISPUTE RESOLUTION**

The PARTIES agree to utilize the procedures set forth herein in the event that a dispute arises between the PARTIES in connection with the administration, interpretation or other aspect of this Agreement. Any PARTY may initiate this procedure.

1. First Level. Each PARTY shall designate an individual to be the initial person or persons to discuss any apparent dispute or disagreement between the PARTIES and initiate this procedure (respectively, the "First Level Person"). Each such designated First Level Person shall contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the Agreement. For SAN JOSE, the First Level person shall be Manuel Pineda; for VTA, the first level person shall be Leyla Hedayat.

a. Urgent Matters. For any matter designated by the initiating PARTY as "urgent," the other PARTY shall make its first response within five (5) working days or within such other time period as the First Level Persons may agree.

b. Non-Urgent Matters. Unless a matter is designated "urgent" by the initiating PARTY, the other PARTY shall respond within ten (10) working days, or within such other period as the First Level Persons may agree.

2. Second Level. Each PARTY shall designate an individual to whom matters not resolved at the First Level shall be referred (respectively, the "Second Level Person"). These designated Second Level Persons shall constitute the final internal level for the PARTIES for resolution of disputes. Each such designated Second Level Person may contact his or her counterpart at the same level at any time to raise any apparently unresolved disagreement. For SAN JOSE, the Second Level person shall be Jim Helmer; for VTA, the Second Level Person shall be Carolyn Gonot.

a. Response. The initiating Second Level Person will state in writing the complete nature of the dispute and request a response from his or her counterpart. That response will be made within ten (10) working days unless otherwise agreed to between the Second Level Persons.

b. Alternative Dispute Resolution. If the dispute is not resolved at the Second Level, the PARTIES may agree to a method of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall be limited to the matters raised and responded to in writing by the Second Level Persons.

3. Designated Representatives. Either PARTY may change its representatives designated hereunder upon provision of written notice to the other PARTY in a manner that comports with the Agreement.

4. Agreement Terminable. Should the PARTIES fail to resolve disputes satisfactorily at the completion of the procedure outlined herein, either PARTY may withdraw from the Agreement upon thirty (30) calendar days written notice to the other PARTY. Such withdrawal shall be subject to the provisions of Section 2.6 of the Agreement.