

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Albert Balagso

SUBJECT: SEE BELOW

DATE: 07-29-10

Approved

Date

7/29/10

COUNCIL DISTRICT: 6

SNI AREA: Edenvale/Great Oaks

SUBJECT: GRANT APPLICATION FOR THE DEVELOPMENT OF CONSTRUCTION DOCUMENTS FOR LOS GATOS CREEK REACH 5B/C (SAN CARLOS STREET TO MONTGOMERY AVENUE) TRAIL PROJECT

RECOMMENDATION

Adopt a resolution authorizing the City Manager, or designee, to:

1. Submit a grant application in the amount not to exceed \$1,250,000 to the Santa Clara Valley Transportation Authority ("VTA") under the VTA Bicycle Expenditure Program ("BEP") for the development of construction documents for the Los Gatos Creek 5B/C (San Carlos St. to Montgomery Ave.) Trail project ("Project") with an additional local match requirement of \$320,000; and
2. Accept any grant funds awarded to the City and negotiate and execute all necessary documents related to any grant funding from the Metropolitan Transportation Corporation ("MTC") to the City for the Project; and
3. Keep the Los Gatos Creek 5B/C trail segment between San Carlos Street and Montgomery Avenue open 24 hours a day, seven days a week once the trail segment is constructed, for the life of the trail, except during emergencies, maintenance, and unforeseeable circumstances, as required by VTA/MTC as part of the grant requirement.

OUTCOME

City Council approval of the recommended actions will authorize the City Manager, or designee, to apply for BEP grant funding, accept any grant funding, and negotiate and execute a grant agreement (and other necessary documents) with the MTC for the Project. If funded, the Project would result in completion of 95% construction documents including the preparation of all required studies and

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documentation to secure National Environmental Protection Act (NEPA) clearance. In addition, City Council approval of the recommended actions will keep the trail segment open 24 hours a day, seven days a week, in compliance with the requirement for receipt of BEP grant funding once the trail segment is constructed in the future. Grant guidelines also require the City to provide a local match of at least 20% or \$320,000 of the total Project cost of \$1,600,000. If the City is awarded grant funds in the full amount requested, and upon appropriation of funds to advance and match the grant funds through the annual budget process or through a separate Council memorandum, the City would have sufficient funds to proceed with the Project. Construction of the Project would occur only after an additional source of funding for construction is identified.

EXECUTIVE SUMMARY

Approximately \$4.4 million is being made available by MTC to VTA for projects in the Santa Clara Countywide Bicycle Plan. VTA is seeking grant applications in order to program these funds.

Staff is recommending the submission of an application for grant funds in the amount not to exceed \$1.25 million for the Los Gatos Creek Reach 5B/C (San Carlos St. to Montgomery Ave.) trail project to complete 95% construction documents. This project has been carefully selected based on the grant guidelines and provides the City of San José an excellent opportunity to secure grant funding to complete the trail segment. If awarded, grant funds together with a City contribution of \$350,000 will result in the completion of 95% construction documents, including the preparation of all required studies and documentation to secure National Environmental Protection Act (NEPA) clearance.

BACKGROUND

In October 2000, the VTA Board of Directors adopted the Santa Clara Countywide Bicycle Plan and the companion Bicycle Expenditure Plan. The BEP provides the funding mechanism for Bicycle Plan implementation. The BEP is a consolidation of State and Federal funds available to the region over time and are suitable for development of pedestrian and bicycle projects.

VTA is currently working to program funds for eligible BEP projects. VTA is expected to receive federal Congestion Management and Air Quality (CMAQ) funds for projects included in the BEP. These funds are available through MTC's Regional Bicycle Program (RBP). VTA is administering the grant while the grant agreement will be signed with the MTC.

The current level of funding available to the region is \$4,452,480 and will be available in FY2010-2011 and FY2011-2012.

The BEP list of projects is developed approximately every three years in conjunction with the VTA's Valley Transportation Plan (most currently; VTP 2035). The listed projects are a result of a

review of local agency proposals and are ranked by VTA staff. Scoring occurs in compliance with the VTA Board-adopted BEP Evaluation Criteria using a selection committee.

Los Gatos Creek Trail is included in the VTA's BEP list. The City Council approved the Los Gatos Creek Trail Reach 5 Master Plan in May 2008. The plan defined the final reach of the popular trail system as it links mid-town to downtown's Guadalupe River Park. The trail is to be developed within a highly urbanized and constrained site. The master plan acknowledged the complexity of the project by defining sub-reaches to be developed over time.

- Reach 5a (Auzerais Avenue to San Carlos Street) includes a paved trail and riparian landscaping. It was built as part of the KB Homes' Del Monte development and is currently open to the public.
- Reach 5b/c (San Carlos Street to Montgomery Street) includes an under-crossing beneath an active railway and the San Carlos Street bridge structure and a paved trail along the northwestern bank of the creek. The land along this segment is owned by the Santa Clara Valley Water District and will require negotiations of a Joint Trail Agreement with the district. Its design and environmental documents is the subject of this funding request.
- Reach 5d (Montgomery Street to Santa Clara Street-Guadalupe River Park) includes a paved trail and landscaping upon lands currently occupied by private development. Potential and planned projects such as the ballpark, Autumn Street widening, and BART development create an opportunity for trail development but currently present uncertainty and makes a grant application difficult to pursue at this time.

A map of the Los Gatos Creek Trail Reach 5 is attached as Attachment 1.

ANALYSIS

The BEP program is a competitive grant program. Staff recommends a single and compelling proposal as the best means of securing funds. The Los Gatos Creek Trail has been master planned and incremental development from Auzerais Avenue to San Carlos Street has already been completed. The trail system's linkage between Willow Glen/Mid-Town and Downtown aligns well with the VTP's transportation focus.

VTA will be programming CMAQ funds for BEP projects. CMAQ funds are federal transportation funds. Among other criteria, MTC directs the use of CMAQ funds in accordance with federal guidelines. The MTC's guidelines require the Project to be open to the public 24 hours a day and be part of the Regional Bicycle Network.

In addition, MTC requires that bicycle projects:

- Create connections to the regional transit system.
- Provide access to and through the major central business districts of the region or sub region.
- Establish connections to regionally significant activity centers, including selected commercial districts, universities and community colleges, hospitals, regional parks, and recreational venues.

If funding is secured through this grant application, funds would be used to accomplish:

1. Development of 95% construction documents for:
 - trail under-crossings beneath railway trestle and San Carlos Street bridge,
 - ramping system leading to the under-crossings, and
 - development of new paved trail leading to Montgomery Avenue.
2. Preparation of all required studies and documentation to secure NEPA Clearance.

As part of the grant application process, the City is required to adopt a resolution (see attachment B) in substantially the same form as the sample resolution provided by the MTC and to make certain commitments, assurances, and certifications described in this memorandum and in the sample resolution.

Additionally, staff wishes to bring to the Council's attention the following grant requirements:

Requirement	Addressed in the following manner:
The City will complete the Project as described in the grant application.	It is the intent of the City to complete the Project.
City must execute the grant agreement within 60 days of award.	Staff will coordinate to execute the agreement within the stipulated time.
Project needs to have a completed E-76 (agreement) request submitted to Caltrans by April 1, 2012 and the E-76 approved by June 30, 2012.	Staff estimates that E-76 should be completed by April 1, 2012.
City is responsible for any increase in project cost.	City will address funding shortfall, if any, through local funding and other grant sources. Staff will notify the City Council if additional funding beyond the allocated budget will be required due to unforeseen circumstances.
City will advance its own funds to complete the project.	This is consistent with most grant programs. Funds to advance the cost of the project will be appropriated through the annual budget process or through a separate City Council memorandum.
Where applicable, the City will comply with all applicable laws and regulations affecting development projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and disabled access laws.	The Project design will be consistent with all known government regulations.
The Project must be open to the public 24 hours a day, seven days a week for the useful life of the Project, except during emergencies, maintenance, or unforeseeable circumstances.	<ul style="list-style-type: none"> ▪ See discussion below.

24 Hour Requirement

VTA developed a Countywide Bike Plan in 2008. During that process, City staff became aware of the agency's desire for 24/7 operation of all trail facilities. Staff participated in discussions and provided written comments to VTA about the likely challenges faced by local agencies if a change in operational hours was required. Many San José trails are within sensitive riparian environments where lighting is not permitted and can be far from urban street lighting. Many trails are not easily monitored because of their weaving alignments and heavy tree cover. City staff reported to the VTA that careful study would be required to evaluate risks associated with travel through dark spaces and potential costs of adding mitigating infrastructure and staffing that arise. City staffs' written comments are included in the Bike Plan, but the document includes a goal for establishment of guidelines for 24 hour trail access.

Staff believed that the Bike Plan's goals were to be implemented over time and that other agencies would offer insights on how to adequately address the issue. As part of this grant application, the VTA is stating that use of CMAQ funds requires that the City commit to 24/7 operations of the trail for the useful life of the trail, except during emergencies, maintenance, and unforeseeable circumstances. Although this grant is only for construction documents, VTA/MTC has indicated that even if future design and construction work were to be funded through alternate funding sources, the 24/7 operations requirement still applies. Staff is working with MTC to address the 24 hour issue.

Pursuit of CMAQ funds presents a financial risk for the Council to consider. If the recommendations in this memorandum are approved by Council and grant funding is awarded to the City, City will be required to enter into a written agreement with MTC without full knowledge of the future operational costs or liabilities associated with use of the trail for 24 hours. City trails are typically closed one hour after sunset to limit the public access to the trails at night where there are usually limited lighting. If the City is able to secure the grant, the proposed grant agreement will require the City to leave the trail segment open 24 hours and the City will not be able to install any signs along this segment that states the trail is closed one hour after sunset.

Although the Director of Parks, Recreation & Neighborhood Services has authority under Chapter 13.44 of the San José Municipal Code to adopt rules and regulations governing the public use of parks and trails, Staff is seeking City Council approval to keep the trail segment open 24/7, once it is constructed, since this is a shift from the City's standard rule of closing all parks and trails one hour after sunset and could raise various concerns due to noise and limited lighting along this trail segment. Specifically, the City is precluded from installing lights along the trail segment because it is mostly along the riparian corridor.

Staff has done some preliminary analysis of the potential concerns with 24 hour operation of this segment of the trail and believes implementing the following mitigating factors should alleviate some of the concerns:

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- The trail segment would be designed such that the pavement shoulders would be striped to define the edge of bank where no lighting sources are nearby.
- Trail segment would have under-crossing illumination (lighting), if approved by applicable regulatory agencies.
- Staff would implement higher levels of tree pruning to maximize ambient light, if approved by applicable regulatory agencies.
- Certain part of trail segment is somewhat visible from three streets (San Carlos St., Montgomery Ave., and Park Ave.).
- Certain part of the trail segment is adjacent to a proposed ball park, Diridon Station, HP Pavilion, proposed high speed rail and planned BART extension which are expected to provide some ambient lighting.
- Staff would evaluate adding any appropriate signs along the segment of the trail to enhance safety.

PRNS staff worked with the Police Department to assess the possibility of additional police monitoring on the proposed trail segment during the late evening hours. It has been determined that with the recent budget cuts and possibility of losing sworn police officers in the budget process, additional monitoring by the police officers is not feasible.

Staff has discussed the possibility of forming a Technical Advisory Committee (TAC) during fiscal year 2010-11 to study the issue and provide the Council with a more precise understanding of liabilities and associated costs for mitigation. Representatives from various City departments would participate to define additional mitigation and staff would make appropriate recommendations to Council at a later date.

In addition, the Project will be built on land owned by the Santa Clara Valley Water District (SCVWD). Staff has discussed the 24/7 operational issue with SCVWD staff. SCVWD has raised certain safety issues with operation of the trail at night due to limited lighting along many parts of the trail segment. The parties agreed that SCVWD will be part of the TAC and the parties will address the issue through a Specific Joint Project Agreement that will be prepared at a later date in accordance with the Joint Collaborative Action Plan Agreement approved by the parties in 2003. The Joint Collaborative Action Plan Agreement sets forth the framework for the City and SCVWD to jointly develop trail projects in the City. However, the agreement is silent on rules and regulations of trails and leaves those issues to be addressed in specific agreements for each project that are negotiated and executed under the authority delegated to the City Manager as part of the approval of the Joint Collaborative Action Plan in 2003.

It should be noted that SCVWD reserves the right under the Joint Collaborative Action Plan to request the City to remove part or the entire trail segment in order for them to construct flood control improvements. In such a case, City would be required to construct an alternate trail alignment to meet the grant requirement of VTA/MTC.

At this time, staff understands that the 24/7 requirement is placed upon grant sources derived from CMAQ funds and that the requirement does not impact projects already underway and supported by

other federal funding sources (i.e. SAFETEA-LU funds for Lower Guadalupe River, Coyote Creek, Guadalupe Creek and Bay trails).

EVALUATION AND FOLLOW UP

Grant funds, if awarded, will be provided to the City on a reimbursement basis. If the City is awarded the grant for the Project, staff will seek the required appropriation actions through the annual budget process or a separate City Council memorandum to provide "fronting" funds as well as City funds to complete the Project, currently estimated to be \$1.6 million (assuming a grant award of \$1.25 million and a City match of \$350,000).

POLICY ALTERNATIVES

Alternative #1: Do Nothing

Pros: Does not require staff time in the preparation of an application package.

Cons: Inconsistent with City Council's approach of seeking grant funds to develop projects when feasible.

Reason for not recommending: The project is well suited for this funding source and the City would lose an opportunity to seek and receive local grant funding that will help build this Project.

PUBLIC OUTREACH/INTEREST

Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The proposed Council action meets criterion 1. This memorandum will be posted on the City Council's Agenda website prior to the August 10, 2010 City Council meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the Planning, Building and Code Enforcement Department, Risk Management and the Public Works Department.

FISCAL/POLICY ALIGNMENT

This Project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

Based on the most recent cost estimates, a total of \$1,600,000 is anticipated to be required to complete 95% design documents for the Project. This grant application is seeking approximately 78% or \$1,250,000 in funding for the Project. The grant program requires at least 20% local match (\$320,000). In order to make the application more competitive, staff will likely recommend that a non-federal local match of \$350,000 or (approximately 22%) be allocated from the Park Trust Fund collected within the three mile nexus of the Project.

The awards are expected to be ratified by the MTC in August 2010. Upon award of the grant, these funds would be recommended to be appropriated as part of the annual budget process or through a future City Council memorandum.

Since grant awards are disbursed on a reimbursement basis, funds would need to be "fronted" from a City source. Therefore, a recommendation will be brought forward as part of a future annual budget process, or through a future City Council memorandum to appropriate up to \$1,600,000 from eligible sources likely within the Park Trust Fund to "front" grant funds in the amount of \$1.25 million as well as to provide the additional \$350,000 needed to complete the Project.

After construction of the Project, the operations and maintenance costs are expected to be \$4,820 per year for maintenance and \$880 per year for the Park Rangers. This funding was included in the 2011-2015 General Fund Forecast, released on February 26, 2010. But given the 24/7 operation of the trail segment, the operations and maintenance costs may be higher. Staff will request additional assets for the budget year the trail segment will become operational and will include additional operations and maintenance needs specified by the TAC.

BUDGET REFERENCE

Not Applicable

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CEQA

Mitigated Negative Declaration, File No. PP06-112.

/s/

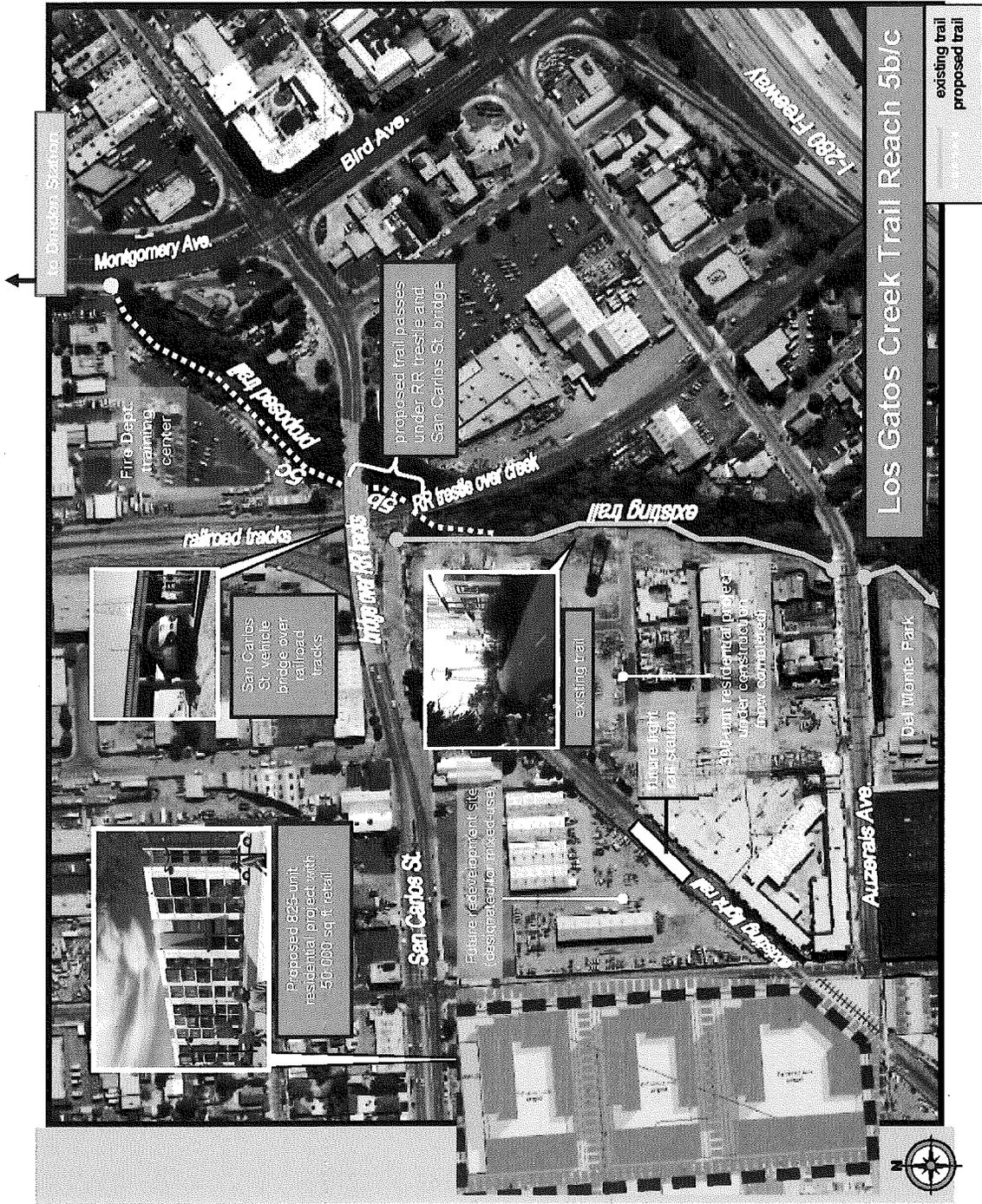
ALBERT BALAGSO
Director of Parks, Recreation and
Neighborhood Services

For questions please contact Rajesh Adoni, Senior Analyst, at 408-793-4184.

Attachment A: Map of Trail

Attachment B: Sample Resolution

Attachment A.2 Aerial view



Attachment B: Resolution of Local Support

STP/CMAQ Funding **Resolution No.**

Authorizing the filing of an application for federal Surface Transportation Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) funding and committing the necessary non-federal match and stating the assurance to complete the project

WHEREAS, CITY OF SAN JOSE (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for \$1,250,000 in funding from the federal Surface Transportation Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) program for the Los Gatos Creek Reach 5b/c Trail (herein referred to as PROJECT) for the MTC Resolution, No. 3925, New Federal Surface Transportation Act (FY 2009-10, FY 2010-11 and FY 2011-12) Cycle 1 STP/CMAQ Program: Project Selection Criteria, Policy, Procedures and Programming (herein referred to as PROGRAM); and

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA) (Public Law 109-59, August 10, 2005) authorized the Surface Transportation Program (23 U.S.C. § 133) and the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149) through September 30, 2009; and

WHEREAS, SAFETEA has been extended through December 31, 2010 pursuant to Public Law 111-147, March 18, 2010 and may be subsequently extended pending enactment of successor legislation for continued funding; and

WHEREAS, pursuant to SAFETEA, and the regulations promulgated there under, eligible project sponsors wishing to receive federal Surface Transportation Program and/or Congestion Mitigation and Air Quality Improvement Program (STP/CMAQ) funds for a project shall submit an application first with the appropriate Metropolitan Planning Organization (MPO), for review and inclusion in the MPO's Transportation Improvement Program (TIP); and

WHEREAS, the Metropolitan Transportation Commission (MTC) is the MPO for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of STP/CMAQ funds; and

WHEREAS, CITY OF SAN JOSE is an eligible project sponsor for STP/CMAQ funds; and

WHEREAS, as part of the application for STP/CMAQ funding, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- 1) the commitment of necessary local matching funds of at least 20%; and
- 2) that the sponsor understands that the STP/CMAQ funding is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional STP/CMAQ funds; and

- 3) that the project will comply with the procedures specified in Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- 4) the assurance of the sponsor to complete the project as described in the application, and if approved, as included in MTC's TIP; and
- 5) that the project will comply with all the project-specific requirements as set forth in the PROGRAM.; and
- 6) that the project (transit only) will comply with MTC Resolution No. 3866, which sets forth the requirements of MTC's Transit Coordination Implementation Plan to more efficiently deliver transit projects in the region.

NOW, THEREFORE, BE IT RESOLVED that the SAN JOSE CITY COUNCIL is authorized to execute and file an application for funding for the PROJECT under the Surface Transportation Program (STP) and Congestion Mitigation and Air Quality Improvement Program (CMAQ) of SAFETEA, any extensions of SAFETEA or any successor legislation for continued funding; and be it further

RESOLVED that the SAN JOSE CITY COUNCIL by adopting this resolution does hereby state that:

1. CITY OF SAN JOSE will provide \$350,000 in non-federal matching funds; and
2. CITY OF SAN JOSE understands that the STP/CMAQ funding for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional STP/CMAQ funding; and
3. CITY OF SAN JOSE understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, as revised); and
4. PROJECT will be implemented as described in the complete application and in this resolution and, if approved, for the amount programmed in the MTC federal TIP; and
5. APPLICANT (for a transit project only) agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and
6. CITY OF SAN JOSE and the PROJECT will comply with the requirements as set forth in the program; and therefore be it further

RESOLVED that APPLICANT is an eligible sponsor of STP/CMAQ funded projects;

and be it further

RESOLVED that APPLICANT is authorized to submit an application for STP/CMAQ funds for the PROJECT; and be it further

RESOLVED that there is no legal impediment to CITY OF SAN JOSE making applications for the funds; and be it further

RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of CITY OF SAN JOSE to deliver such PROJECT; and be it further

RESOLVED that SAN JOSE CITY COUNCIL authorizes its City Manager or designee to execute and file an application with MTC for STP/CMAQ funding for the PROJECT as referenced in this resolution and negotiate and execute any documents to accept grant funding for the PROJECT; and be it further

RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and be it further

RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution and to include the PROJECT, if approved, in MTC's TIP.

Approved and adopted the ____ day of _____, 20 ____

I, the undersigned, hereby certify that the foregoing Resolution Number _____ was duly adopted by the SAN JOSE CITY COUNCIL following a roll call vote:

Ayes:

Noes:

Absent:

(Clerk or Board Secretary)