



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Albert Balagso

**SUBJECT:** SEE BELOW

**DATE:** 09-13-10

Approved

Date

9/23/10

**COUNCIL DISTRICT:** 4

**SUBJECT: GRANT APPLICATIONS TO SUPPORT DESIGN AND CONSTRUCTION OF THE COYOTE CREEK TRAIL (HIGHWAY 237 BIKEWAY TO TASMAN DRIVE) PROJECT**

**RECOMMENDATION**

A. Adopt a resolution that:

1. Authorizes the City Manager, or designee, to submit a grant application in an amount not to exceed \$1,055,000 to the Metropolitan Transportation Commission (MTC) under the Community Design and Transportation (CDT) Capital Grant program for the Coyote Creek Trail (Highway 237 Bikeway to Tasman Drive) Project (Project); and
2. Certifies that the City will have available, prior to commencement of any work on the Project included in the application, the required local match of \$350,000 and any additional sufficient funds required to complete the Project; and
3. Certifies that the City has or will have sufficient funds to operate and maintain the Project; and
4. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines for the Project; and
5. Delegates the authority to the City Manager, or designee, to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Project; and
6. Once constructed, keeps the Coyote Creek trail segment between Highway 237 Bikeway and Tasman Drive open 24 hours a day, seven days a week, for the life of the trail, except

during emergencies, maintenance, and unforeseeable circumstances, as required by the Valley Transportation Authority (VTA)/MTC for the receipt of the grant funds.

B. Adopt a resolution that:

1. Authorizes the City Manager, or designee, to submit a grant application in an amount not to exceed \$350,000 to the State of California Natural Resources Agency under the Environmental Enhancement and Mitigation Program (EEMP) grant funding for the Project to be used as the local match for the grant in Recommendation A above; and
2. Certifies that City agrees to comply with assurances in the EEMP application as set forth in this memorandum and the proposed resolution; and
3. Certifies that the City has or will have sufficient funds to operate and maintain the Project; and
4. Subject to the City receiving the CDT grant set forth in Recommendation A above, delegates the authority to the City Manager, or designee, to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Project.

C. Adopt a resolution that:

1. Subject to funding shortfall to complete the Project based on the combined grants set forth above, authorizes the City Manager, or designee, to submit a grant application in an amount up to \$300,000 to the Santa Clara County Open Space Authority (OSA) under the 20% Funding Program for the Project; and
2. Delegates the authority to the City Manager, or designee, to conduct all negotiations and execute and submit all documents, including, but not limited to, applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Project.

**OUTCOME**

City Council approval of the first two recommended actions will authorize the City Manager, or designee, to apply for grants under the Community Design for Transportation (CDT) program for \$1,055,000 and Environmental Enhancement and Mitigation Program (EEMP) for \$350,000 for a total amount of \$1,405,000, accept any grant funding award, and negotiate and execute grant agreements, or other necessary documents, with the Metropolitan Transportation Commission (MTC) and the California State Resources Agency, respectively, for the Project.

The second recommendation will permit the City Manager to negotiate a funding agreement for EEMP funds only if the CDT Grant in the amount of \$1,055,000 is approved by MTC.

City Council approval of the third recommended action will authorize the City Manager, or designee, to apply for up to \$300,000 grant to the OSA under the 20% Funding Program in the event additional funds are required to complete the Project, accept any grant funding award, and negotiate and execute grant agreements, or other necessary documents, for the Project. Pursuit of the OSA funds will only occur in the event that the combined funding from EEMP and CDT sources is insufficient to construct the Project. Staff will be able to better assess the funding requirements as design and environmental documents are more fully developed.

Award of these grants will permit the City to design and construct the 1.1 mile Coyote Creek trail reach between Highway 237 Bikeway and Tasman Drive. Staff will return to seek City Council authorization for the award of a construction contract and related budget appropriation actions if the grant applications are successful.

### **EXECUTIVE SUMMARY**

Staff is recommending the submission of up to three grant applications to support design and construction of the Coyote Creek Trail from Highway 237 Bikeway to Tasman Drive. Based on partially developed construction documents the Project is estimated to cost \$1,405,000 (subject to change).

Staff is recommending a tiered approach for securing grant funds. In the event the \$1,055,000 CDT grant is secured, the City would then accept a \$350,000 grant from the EEMP program, if awarded. If funding remains insufficient, then the third recommended Council action permits pursuit of up to \$300,000 in OSA funds.

The Project would provide 1.1 mile of paved trail linking the Highway 237 Bikeway to a nearby Light Rail Station along Tasman Drive. The Project is anticipated to support recreation and commuting.

### **BACKGROUND**

The Coyote Creek Trail system is one of the City's core trail systems which commences within County jurisdiction and travels through South San José. The entire trail system extends approximately 25 miles and terminates at the Highway 237 Bikeway in North San José.

The CDT Grant Program was created by Santa Clara County Valley Transportation Authority (VTA) primarily to support better integration of transportation and existing land uses. It is identified in the 25-year, long-range countywide transportation plan and the Valley Transportation Plan (VTP) 2035. This program awards grants to member agencies to assist them with planning, design, and construction of projects that embrace the concepts, principles,

practices, and actions outlined in VTA's Community Design and Transportation Manual of Best Practices for Integrating Transportation and Land Use. The VTA Board recommends projects for funding to the MTC Board.

The Environmental Enhancement and Mitigation Program (EEMP) was established by the State Legislature in 1989. It offers a total of \$10,000,000 each year for grants to local, state, and federal governmental agencies and to nonprofit organizations for projects to mitigate the environmental impacts caused by new or modified state transportation facilities. EEMP projects must be directly or indirectly related to the environmental impact of the modification of an existing transportation facility, or the environmental impact of the construction of a new transportation facility. The Resources Agency evaluates grant proposals and submits a list of proposals recommended for funding to the California Transportation Commission (CTC). The CTC annually awards reimbursement grants to fund proposals from the agency's list.

In April 2000, City Council approved the City's Greenprint. The Greenprint is a 20-year strategic plan for development of parks, community facilities, and programs. The Greenprint generally defines a 100-mile network as a primary Trail Program goal for the City. It identifies the Coyote Creek Trail as one of the systems that comprises the network.

On December 9, 2010 (Council Item 5.2), the City Council approved the 2009 Greenprint Update which continues to reference the Coyote Creek Trail.

In August 2005, President Bush signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This legislation included an earmark to support trail development in San José, including \$4,000,000 for the Coyote Creek Trail project.

## **ANALYSIS**

Development of the Coyote Creek Trail system is a high priority for the City Council. The Project was referenced in the Council's 2009 Legislative Priorities. It is identified as a core trail in the Citywide Trail Network defined by the 2009 Greenprint.

SAFETEA-LU funding has supported the development of the Coyote Creek Trail system. Over the past two years, staff has been preparing environmental documentation for future trail construction. The federally required National Environmental Protection Act (NEPA) studies permit the City to make use of federal funding sources like CDT for this particular trail.

Several other active trail projects have NEPA documentation in progress and could be candidates for these funding sources. They are not being proposed as part of this memo for several reasons:

Project	Existing Fund Source	Reason for not pursuing grant
Lower Guadalupe River Trail (Gold Street to 880)	SAFETEA-LU	Construction documents are nearly complete and sufficient funding appears available for full construction
Bay Trail – Reach 9B Pedestrian Bridge	SAFETEA-LU	Construction and environmental documents in progress; project is not ready for construction and the estimated cost far exceeds the maximum grant award through the CDT.
Almaden Expressway Pedestrian Bridge	DEMO (Demonstration) portion of SAFETEA-LU	Construction and environmental documents in progress; project is not ready for construction and the estimated cost far exceeds the maximum grant award through the CDT.

CDT Grant

The program favors projects that address transportation connectivity, are construction ready, and need additional money to be completed. Coyote Creek Trail is a strong candidate for a CDT grant for the following reasons:

- It addresses a gap in the trail system.
- It links a bikeway to a light rail station.
- Construction documents and NEPA documentation are currently being prepared.
- Grant funding supports an active project with a likely funding shortfall.

The CDT program requires the City to meet the following grant requirements (See Attachment A for list of grant requirements):

CDT Grant Requirements	Addressed in the following manner
Requires strict adherence to MTC’s regional deadlines and provisions of the regional project funding delivery policy.	If funded, the Project will be managed by a team of Department of Public Works (DPW) professionals that develop trail projects in a timely manner on a regular basis. PRNS will process invoicing on a quarterly basis.
Requires VTA involvement for all design meetings and public ceremonies.	Staff will invite VTA for all design development meetings and public ceremonies associated with the Project.
Complete a field review by Caltrans within six month after grant award.	Staff will request a field review within the six months.
Construct the Projects with in two years after receipt of E-76 (Authorization Agreement).	DPW Engineer estimates that Project will be completed within two years once E-76 is received.
Comply with California Environmental Quality Act (CEQA) and NEPA and other	The Project design is consistent with all known government regulations and will be

CDT Grant Requirements	Addressed in the following manner
federal transportation guidelines, state and local laws including California Transportation Commission (CTC) Guidelines.	coordinated with Caltrans' Office of Local Assistance.
The Project must be maintained for the expected life cycle for the type of project. If it is not maintained in such a manner, reimbursement of all or a portion of the enhancement funds may be required.	Funding for the annual operating and maintenance costs necessary to maintain and patrol this trail would be addressed through the annual budget process. The operating and maintenance costs for this trail was included in the 2011-2015 General Fund Forecast, which was released on February 26, 2010, as the General Fund Forecast includes funding for 3.3 miles of new (unidentified) trails each year.
MTC requires that the Project 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.	See discussion under "24 Hour Requirement" below.

EEMP

This grant program provides grants of up to \$350,000. This level of funding is relatively small for trail projects. As noted previously, if the City was awarded an EEMP grant, the City would choose to execute the funding agreement only if the majority of Project funding were to be made available through the CDT grant.

Grant funding through EEMP supports three categories of projects including Roadside Recreation with trail development as an acceptable project type.

Mandatory requirements for this grant are as follows: (1) completed environmental clearance, (2) project completion by April, 2013, and (3) a letter from lead agency responsible for construction of the "related transportation facility" (RTF). In this instance, the RTF is the planned widening of Highway 880 from Highway 237 to Highway 101 to provide High Occupancy Vehicles (HOV) lanes. The Coyote Creek Trail is parallel to this route and is recognized by the granting agency as a suitable alternative transportation route.

Pursuant to the EEMP grant guidelines, the City must make the following written assurances as part of the grant application:

<b>EEMP Grant Assurances</b>	<b>Means to Address</b>
Project must mitigate the environmental damage caused by the RTF.	Staff has confirmed with the granting agency that the trail project provides alternative transportation related to the Highway 880 project and would be a suitable candidate project.

EEMP Grant Assurances	Means to Address
Project mitigation must be in addition to mitigation required by CEQA of highway project. Project cannot supplant mitigation required by CEQA.	The Project is not a defined mitigation, and provides an alternative transportation route above and beyond the Highway 880 HOV project's scope of work.
Project must be completed prior to April 30, 2013.	DPW staff has confirmed that the Project can be completed by the deadline.
If the property is not managed and maintained for the purposes stated in the Agreement, the State shall be reimbursed an amount at least equal to the amount of the grant award or, for real property, the pro rata fair market value of the property, including improvements, at the time of sale, whichever is higher.	The Coyote Creek Trail is defined as a trail facility under the oversight of PRNS and developed through a joint trail agreement with the Santa Clara Valley Water District, and easements from the VTA and State of California. Those agreements indicate that the owner agencies may terminate operation of a trail at its discretion, but this appears unlikely since the land is functionally a levee as part of required flood protection along the creek. If any of these public entities terminate the existing agreement or easement, City may have to return the grant funds.
Comply with provisions of the California Environmental Quality Act and the California Relocation Assistance Act and any other state, and/or local laws, rules and/or regulations.	The City secured CEQA clearance for the Project. The other requirements are consistent with City policies and practices.

Santa Clara Open Space Authority funds

The purpose of the Open Space Authority (OSA) is to preserve key portions of the natural environment in order to balance continuing urban growth. OSA has supported the funding of trail projects as a means of offering access to open space within the urban boundaries of San José.

Use of OSA funds for projects is defined as part of the Grant Funding Prioritization Guidelines. Because OSA funds can support a wide range of projects, the guidelines identify objective criteria that strategically target projects in need of minor funding support (less than 50% of budget). The Project aligns well with the following criteria:

OSA Grant Project Criteria	Objective
Contiguous Open Space	The Project offers access within a riparian corridor and permits views of distant foothills. The site offers open space linked to a planned 25-mile trail system within an urban area of the City.
Accessibility	The Project is accessible from Highway 237 Bikeway (paved trail) and Tasman Drive (sidewalks, bike lanes, and access to light rail). The paved trail will meet ADA requirements for universal access.

<b>OSA Grant Project Criteria</b>	<b>Objective</b>
Unique/Significant Characteristics	The Project is part of a planned 25-mile trail system that links the Bay to South County. The project is directly adjacent to Silicon Valley employment and already sees usage from employees and area residents.

As previously mentioned, staff will pursue OSA only in the event that the combined funding from CDT and EEMP sources is insufficient to construct the Project. Staff will be able to better assess the funding requirements as design and environmental documents are more fully developed.

Funding Plan

Construction of 1.1 miles of trail along Coyote Creek is estimated to cost \$1,405,000. This estimate is based on partially developed construction documents and is subject to change based on finalization of the plans and any requirements that may be requested as part of securing NEPA documentation.

The Project fits CDT, EEMP and OSA Program guidelines. This Council Memorandum is structured to address a number of scenarios pertaining to the receipt of some or all of the grants being pursued:

<b>Scenario</b>	<b>No. 1</b>	<b>No. 2</b>	<b>No. 3</b>
<b>Grant Awards</b>	CDT and EEMP funds awarded	CDT funds not awarded, but EEMP funds awarded	CDT funds awarded, but EEMP funds not awarded
<b>Strategy</b>	Execute both grants, potentially seek OSA funds if construction estimate is higher than currently projected	Decline grant due to insufficient Project funding, even with potential OSA funds available	Execute grant agreement if sufficient alternative source can be secured, potentially OSA and local funds
<b>Outcome</b>	Trail is constructed	Trail is not constructed	Trail may be constructed

Since all three grant funds will be provided on a reimbursement basis, the City will need to advance funds for the Project. As part of a future council memorandum, staff would likely recommend the use of eligible funds in the Park Trust Fund and/or Council District 4 Construction and Conveyance Fund to advance funds for the Project.

As part of the grant application process for CDT and EEMP funds, the City is required to adopt a resolution (see Attachments B and C) in substantially the same form as the sample resolutions provided and to make certain commitments, assurances, and certifications described in this memorandum and the attached sample resolutions.

### 24 Hour Requirement

Staff brought the issue of 24 hour requirement (Trail must be available for access 24 hours a day, seven days a week) to City Council on August 10, 2010 (Item 5.1). The CDT Program consists of CMAQ (Congestion Mitigation and Air Quality Improvement) funds. 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. Staff is working with MTC to address the 24 hour issue. The Project will be built on land owned by the VTA and the State of California.

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, the 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 is usually limited lighting. If the City is able to secure the CDT grant, the 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:

- 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.
- The trail segment would have under-crossing illumination (lighting) if approved by applicable regulatory agencies.
- The trail segment is largely visible on the non-creek side.
- Staff would implement higher levels of tree pruning to maximize ambient light, if approved by applicable regulatory agencies.
- 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 additional monitoring by the police officers is not feasible.

Staff will form a Technical Advisory Committee (TAC) during fiscal year 2010-2011 to study the issue and provide the City 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 City Council at a later date. The TAC will also continue to discuss the possibility of removing the 24 hour requirement with the MTC.

### **EVALUATION AND FOLLOW UP**

If the City is awarded the grants for the Project, staff will seek the required appropriation actions including appropriation of fronting funds by the City Council, as well as the authorization for the award of a construction contract at a later date.

### **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 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)**

Although this item does not meet any of the above criteria, this memorandum will be posted on the City Council's Agenda website prior to the October 05, 2010 City Council meeting.

### **COORDINATION**

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

The Project is referenced in the Council-adopted Greenprint Update (December 8, 2009, item 5.2). Delivery of the Project supports Goal 10 of the Council-adopted Green Vision (October 30, 2007, item 9.1) to provide a 100-mile Trail Network by 2022.

### **COST SUMMARY/IMPLICATIONS**

Based on the most recent cost estimates, a total of \$1,405,000 is anticipated to be required to complete the Project. The CDT Grant award currently provides approximately 75% (\$1,055,000) funding for the Project. The CDT grant requires a 20% local match. The EEMP grant would serve as local match (approximately 25%) to fund the Project. Both of these awards are expected to be announced in June 2011. Upon award and City's acceptance of the grants, these funds would be recommended to be appropriated as part of a future budget process or through a future City Council memorandum.

In the event the EEMP grant is not awarded, and as long as the Project cost remains the same, staff will seek OSA funds for \$300,000 and recommend \$50,000 to be appropriated as a local match from funds available within the nexus from the Park Trust Fund.

Partial funding for the operation and maintenance of the Coyote Creek Trail that is already open to the public is currently in place. Pavement of the new trail system and improvements of the under-crossing would result in an additional \$13,255 in annual maintenance costs and \$2,222 in annual patrol cost. This level of funding is consistent with other paved trail systems. This funding was included in the 2011-2015 General Fund Forecast, which was released on February 26, 2010, as the General Fund Forecast includes funding for 3.3 miles of new (unidentified) trails each year.

### **BUDGET REFERENCE**

Not Applicable

HONORABLE MAYOR AND CITY COUNCIL

09-13-10

**Subject: Grant Applications for Coyote Creek Trail (Highway 237 Bikeway to Tasman Drive) Project**

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**CEQA**

Categorically Exempt, File No. PP10-144

/s/

ALBERT BALAGSO  
Director of Parks, Recreation and  
Neighborhood Services

For questions please contact Matt Cano, Acting Deputy Director, at 408-535-3580.

Attachment A: VTA Requirements

Attachment B: CDT Program Sample Resolution

Attachment C: EEM Program Sample Resolution

Attachment A: VTA Requirements

VTA is required to review and approve the final project designs for CDT Capital Grant projects to ensure that projects are consistent with the conceptual designs that were submitted as part of a sponsor's application to VTA.

1. Project Sponsor will provide VTA with an adopted council resolution within 3 months after CDT Program approval. \_\_\_\_\_
2. Project Sponsor will invite VTA to all design development meetings. \_\_\_\_\_
3. Project Sponsor will obtain CEQA and NEPA clearance for the project. \_\_\_\_\_
4. Project Sponsor will complete a field review through Caltrans Local Assistance within 6 months of VTA grant approval. \_\_\_\_\_
5. Project Sponsor will provide VTA with photographs of the existing conditions of the project. \_\_\_\_\_
6. Project Sponsor will meet with VTA to review project design at 35%, 65%, and 100% and allow VTA to comment on the plans. \_\_\_\_\_
7. Project Sponsor will send a final Plans, Specifications & Engineering (PS & E) package to VTA for design review approval and Caltrans Local Assistance for final approval. \_\_\_\_\_
8. Project Sponsor will obligate all federal funds by February 1, of the year of programming. To obligate funds, Project Sponsor must receive an E-76 for construction. \_\_\_\_\_
9. Project Sponsor will advertise the project and award a construction contract immediately after receipt of E-76 for construction. \_\_\_\_\_
10. Project Sponsor will construct the project within 2 years after receipt of E-76 for construction. \_\_\_\_\_
11. Project Sponsor will invite VTA to participate in any public ceremonies held in connection with the project. \_\_\_\_\_
12. Project Sponsor will acknowledge VTA's funding contribution on all on-site project signage and on all printed materials distributed to the public that are related to the project. \_\_\_\_\_

\_\_\_\_\_  
City Manager Signature

\_\_\_\_\_  
Date

Attachment B: CDT Program Sample Resolution

**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 José is submitting an application to the Metropolitan Transportation Commission (MTC) for \$1,055,000 in funding from the federal Surface Transportation Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) program for the Coyote Creek Trail (Highway 237 Bikeway to Tasman Drive) (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) continued 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 pursuant to Public Law 11-118 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 José 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.

**NOW, THEREFORE, BE IT RESOLVED** that the City of San José 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 José will provide (\$350,000) in non-federal matching funds; and
2. City of San José 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 City of San José from other funds, and that City of San José does not expect any cost increases to be funded with additional STP/CMAQ funding; and
3. City of San José 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. City of San José and the PROJECT will comply with the requirements as set forth in the program; and therefore be it further

**RESOLVED** that City of San José is an eligible sponsor of STP/CMAQ funded projects; and be it further

**RESOLVED** that City of San José 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 José 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 José to deliver such PROJECT; and be it further

**RESOLVED** that SAN JOSE CITY COUNCIL authorizes 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 to negotiate and execute any documents to accept the grant; 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.

Attachment C: EEM Program Sample Resolution

Resolution No: \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF SAN JOSE APPROVING THE APPLICATION FOR GRANT FUNDS FROM THE ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROGRAM UNDER THE SECTION 164.56 OF THE STREETS AND HIGHWAYS CODE FOR THE PROJECT: COYOTE CREEK TRAIL (HIGHWAY 237 BIKEWAY TO TASMAN DRIVE)

WHEREAS, the Legislature of the State of California has enacted AB 471 (Chapter 106 of the Statutes of 1989), which is intended to provide \$10,000,000 annually for a period of 10 years for grant funds to local, state and federal agencies and nonprofit entities for projects to enhance and mitigate the environmental impacts of modified or new public transportation facilities; and

WHEREAS, the Natural Resources Agency has established the procedures and criteria for reviewing grant proposals and is required to submit to the California Transportation Commission a list of recommended projects from which the grant recipients will be selected; and

WHEREAS, said procedures and criteria established by the Natural Resources Agency require a resolution certifying the approval of application by the SAN JOSE CITY COUNCIL before submission of said application to the State; and

WHEREAS, the application contains assurances that the City of San José must comply with; and

WHEREAS, the City of San José, if selected, will enter into an agreement with the State of California to carry out the environmental enhancement and mitigation project unless the City of San José withdraws its grant application.

NOW, THEREFORE, BE IT RESOLVED that the SAN JOSE CITY COUNCIL hereby:

1. Approves the filing of an application for \$350,000 under the Environmental Enhancement and Mitigation Program for grant assistance.
2. Certifies that said City of San José will make adequate provisions for operation and maintenance of the project.
3. Appoints the City Manager, or designee, as agent of the City of San José, to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the aforementioned project.

Approved and Adopted the 5th day of October, 2010.

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)