Memorandum of Understanding (MOU)

Between

San Mateo County Transportation Authority

And

City/County Association of Governments of San Mateo County

for the Preliminary Planning Study Associated with

US101/SR92 Interchange Area Improvements

This memorandum of understanding (MOU) is entered into as of the 16 day of April, 2015, by and between the San Mateo County Transportation Authority (TA) and the City/County Association of Governments of San Mateo County (Sponsor), each of which is referred to herein individually as "Party" and jointly as "Parties."

RECITALS

Whereas, on June 7, 1988, the voters of San Mateo County approved a ballot measure to allow the collection and distribution by the San Mateo County Transportation Authority (TA) of a half-cent transactions and use tax in San Mateo County for 20 years with the tax revenues to be used for highway and transit improvements pursuant to the Transportation Expenditure Plan presented to the voters ("Original Measure A"); and

Whereas, the Sponsor requested that the TA consider funding up to $500,000 in Measure A funds from the TA for the Preliminary Planning Study associated with US101/SR92 Interchange Area Improvements as further described in Section A.1, below; and

Whereas, on October 4, 2012 through Resolution 2012-17, the TA Board of Directors programmed and allocated up to $500,000 for the preliminary planning study for the Project; and

Whereas, the Sponsor desires that the TA implement the Scope of Work as described in Section A.2, below; and

Whereas, the Parties desire and agree that the TA may use one or more third party contractors to perform the work.

Now, THEREFORE, the Parties to this MOU agree as follows:

A. Project Scope and Description

1. Project. This Project is the preliminary planning study associated with US101/SR92 Interchange Area Improvements and for purposes of this MOU such work shall be referred to as the "Project". The Project seeks to develop and analyze short and long term alternatives in the area of the US101/SR92 Interchange that when implemented will result in improved operation and safety within the subject area.

2. Scope of Work. The Scope of Work is to complete a preliminary planning study associated with the Project. The study will be prepared for the benefit of the Sponsor, Implementing Agency and other key stakeholders to determine if a preferred alternative or alternatives should be carried forward through a more robust evaluation (e.g., a Caltrans Project Initiation Document, a Caltrans Project Approval and appropriate Environmental Document) during a future phase of work. The preliminary planning study will assess the current and projected congestion and safety issues through the collection and analysis of traffic and accident data. It will develop potential project costs and evaluate potential project effectiveness, including identifying potential right of way impacts and environmental impacts of the various congestion mitigation strategies and potential safety improvements.

3. Limited to Scope of Work. This MOU is intended to cover only the Scope of Work. Further roles and responsibilities for subsequent phases of work on, or other tasks related to, the Project will be determined by negotiations between the Parties.

B. Funding and Payment

1. Funding Commitment. The TA will provide up to $500,000 of Measure A funds for the Scope of Work.

2. Cost Savings. Any cost savings of the Measure A funds allocated for the Scope of Work will revert to the Measure A Highway Program for the TA to reallocate to any eligible project through its usual fund programming and allocation activities.

3. Insufficient Funding. In the event that additional funding is needed to complete the Scope of Work, the TA will identify the additional amount needed and review those estimates with the Sponsor. The Parties will work together to identify potential sources of funding, as well as obtain the necessary funds to complete the Scope of Work. If additional funding is needed due to a change in the Scope of Work requested by the Sponsor, the TA will identify the additional amount needed and review those estimates with the Sponsor. It is the responsibility of the Sponsor to identify the potential sources of funding, as well as obtain the necessary funds to complete the changed Scope of Work. The TA may consider requests for additional funding, but is under no obligation to grant such requests.

C. Term

1. Term of Agreement. This MOU is effective upon execution, and will terminate upon the earliest of: (a) six months after written acceptance/endorsement of the Sponsor of the completion of the Scope of Work, (b) termination by Sponsor or the TA pursuant to Section C.3, C.4 or C.5 of this MOU, or (c) October 31, 2016.

2. Time of Performance. This Project Scope of Work must be completed no later than April 30, 2016.

3. Termination by Sponsor. The Sponsor may at any time terminate the Scope of Work, with or without cause, by giving ten (10) days' written notice to the TA. The Sponsor will reimburse the TA for all funds properly expended pursuant to the terms of this MOU within 90 days of the TA's submission to Sponsor of a detailed statement of the payments and costs associated with such expenditures by the TA. Notwithstanding the foregoing, if the Sponsor terminates the Scope of Work for the TA's default, Sponsor will have no obligation to make any payments or reimbursements to the TA.

4. Termination by the TA. The TA may at any time terminate the Scope of Work, with or without cause, by giving ten (10) days' written notice of such termination to the Sponsor. If the TA terminates the Scope of Work for Sponsor default, Sponsor will reimburse the TA for all funds properly expended by the TA in connection with the performance of this MOU. If the TA terminates the MOU for convenience, the TA will pay to Sponsor all costs and expenses incurred by Sponsor as a result of such termination.

5. Termination by the Parties. If it is mutually agreed by the Parties that it would be in their mutual best interests to terminate or suspend work on the Project, no Party may seek, or be entitled to receive, further reimbursement for any costs or expenses incurred in connection with the Scope of Work or termination of this MOU.

6. Expiration of TA Financial Obligations. Any and all financial obligations of the TA pursuant to this MOU will expire upon the expenditure of the TA's maximum contribution to the Scope of Work as established in Section B. 1, above, or upon termination of this MOU under Section C. 1, above.

D. TA Responsibilities

1. The TA will implement, perform and complete the Scope of Work, either through its own forces or the use of one or more third-party contractors.

2. The TA will make available to the Project up to $500,000 of Measure A funds for the Scope of Work.

3. For purposes of delivering the Scope of Work, the TA agrees to:

    a. Manage the Scope of Work, including developing and carrying out the Scope of Work on schedule and within budget;

b. Provide technical oversight for performance of the Scope of Work;

c. Lead coordination with Caltrans and other permitting agencies as necessary for the Scope of Work;

d. Obtain the necessary permits and approvals required for the Scope of Work;

e. Procure and administer the consultant/contractor services to complete the Scope of Work;

f. Organize and facilitate regular meetings of a Project Development Team (PDT) comprised of various Caltrans functional units, the Sponsor and representatives from involved local and regional entities to provide input and guidance on the Scope of Work;

g. Keep Sponsor apprised of developments, such as award of contracts or potential changes that may affect the scope, schedule, or budget of the Project or Scope of Work; and

h. Consult with Sponsor where necessary/appropriate.

4. The TA will prepare and provide to Sponsor status reports including anticipated and expended costs and Scope of Work delivery milestones and schedule forecasts.

5. The TA will review, process, and audit (at its discretion) invoices and other documentation of expenditures for work performed under this MOU. The TA will also track the accumulation and expenditure of Measure A funds allocated for the Scope of Work, and process other documentation of expenditures in compliance with TA accounting and budgeting requirements.

E. Sponsor Responsibilities

1. The Sponsor will be responsible for championing the effort of obtaining political and public support of the Project within its jurisdiction.

2. The Sponsor will be the public face of the Project for purposes of leading outreach efforts to local stakeholders and community members, including coordination of public meetings and solicitation of public comment.

3. The Sponsor will provide input and oversight based on local policies and desires regarding the outcome of and deliverables of the Project.

4. The Sponsor will actively participate in the PDT meetings related to the Scope of Work.

5. The Sponsor may, at its discretion, review any professional services agreements, change orders and any other agreements that the TA has entered into for the performance of Scope of Work; however, the TA retains ultimate authority over contracting and related decisions.

6. The Sponsor may, at its discretion, review the work products and deliverables produced by the TA and/or its contractors/consultants for the Scope of Work, including reports, designs, drawings, plans, specifications, schedules and other materials; however, the TA retains ultimate authority to accept or reject contractor/consultant work.

7. The Sponsor will approve or endorse, in writing, the final deliverables or work products produced by the TA and/or its contractors/consultants for the Scope of Work.

8. The Sponsor will review progress reports prepared and provided by the TA.

9. The Sponsor may, at its discretion, review and audit invoices and other documentation of the expenditure of Measure A funds allocated for the Scope of Work; however, the TA retains ultimate authority for expenditure of Measure A funds on the Project.

F. Indemnification

1. Each of the Parties will indemnify, hold harmless and defend the other Party and its directors/councilmembers, officers, employees and agents (collectively, "Indemnitees") against all liability, claims, suits, actions, costs or expenses arising from loss of or damage to property, and injuries to or death of any person (including but not limited to the property or employees of each Party) when arising out of or resulting from any act or omission by the indemnifying Party, its agents, employees, contractors or subcontractors in connection with any aspect of the Project, including Project design, construction and/or maintenance.

2. Each of the Parties will also fully release, indemnify, hold harmless and defend the other Party and Indemnitees from and against any and all claims or suits that may be brought by any of the Indemnifying Party's contractors or subcontractors performing work in connection with or related to the Project.

3. The indemnifying Party's obligation to defend includes the payment of all reasonable attorneys' fees and all other costs and expenses of suit, and if any judgment is rendered, or settlement entered, against any Indemnitee, the indemnifying Party must, at its expense, satisfy and discharge the same. Indemnitees may require the indemnifying Party to obtain counsel satisfactory to the Indemnitees.

4. This indemnification shall survive termination or expiration of the MOU.

G. Miscellaneous

1. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for; in the process of being assembled or prepared by or for; or furnished to the TA or the Sponsor under this MOU are the joint property of the TA and the Sponsor. Each Party is entitled to copies and access to these materials during the progress of the Project and upon completion of the Scope of Work or termination of this MOU. Both Parties may retain a copy of all material produced under this MOU for use in their general activities.

2. Attribution to the TA. Sponsor must include attribution that indicates work was funded by Measure A funds from the TA. This provision applies to any project, or publication, that was funded in part or in whole by Measure A funds. Acceptable forms of attribution include TA branding on Project-related documents, construction signs, public information materials, and any other applicable documents.

3. No Waiver. No waiver of any default or breach of any covenant of this MOU by either Party to this MOU can be implied from any omission by the other Party to take action on account of such default if such default persists or is repeated. No express waiver will affect any default not specified in the waiver, and the waiver will be operative only for the time or extent stated. The Consent or approval of any act by either Party will not be deemed to waive or render unnecessary consent or approval to any subsequent, similar acts.

4. Assignment. No Party can assign, transfer or otherwise substitute its interest or obligations under this MOU without the written consent of the other Party.

5. Governing Law. This MOU is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

6. Modifications. This MOU may only be modified in writing executed by both Parties.

7. Disputes. If a question arises regarding interpretation of this MOU or its performance, or the alleged failure of a Party to perform, the Party raising the question or making the allegation must give written notice thereof to the other Party. The Parties will promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation or binding arbitration, may be pursued by mutual agreement. It is the intent of the Parties to the extent possible that litigation be avoided as a method of dispute resolution.

8. Attorneys' Fees. In the event legal proceedings are instituted to enforce any provision of this MOU, the prevailing Party in said proceedings will be entitled to its costs, including reasonable attorneys' fees, in addition to such other remedies to which it may be entitled.

9. Relationship of the Parties. It is understood that this is an MOU by and between independent contractors and is not intended to and does not create the relationship of

agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractor.

10. Accessibility of Services to Persons with Disabilities. The Project must be implemented in compliance with, and in a manner that does not subject any of the Parties to liability under, the Americans with Disabilities Act, the California Disabled Persons Act, or any other state or federal laws protecting the rights of persons with disabilities.

11. Warranty of Authority to Execute MOU. Each Party to this MOU represents and warrants that each person whose signature appears hereon is duly authorized and has the full authority to execute this MOU on behalf of the entity that is a Party to this MOU.

12. Severability. If any term, covenant, condition or provision of this MOU, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this MOU, or the application thereof to any other person or circumstance, will remain in full force and effect and will in no way be affected, impaired or invalidated thereby.

13. Counterparts. This MOU may be executed in counterparts, each of which may be deemed an original, but all of which together are a single agreement.

14. Entire MOU. This MOU constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the Parties on the same subject.

15. Notices. All notices affecting any of the clauses of this MOU must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the others. Notices will be deemed received upon delivery if personally served, one (1) day after mailing if delivered via overnight courier, or two (2) days after mailing if mailed as provided above.

To TA: San Mateo County Transportation Authority
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306
Attn: Jim Hartnett
Executive Director

To Sponsor: City/County Association of Governments of San Mateo County
555 County Center, 4th Floor
Redwood City, CA 94063
Attn: Sandy Wong, Executive Director

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names to this Memorandum of Understanding for the Implementation of US101/SR92 Interchange Improvements Project effective as of the day and year first indicated above.

CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY

By: _____
Name: MARY ANN NIHART
Its: C/CAG CHAIR

Approved as to Form:

_____ Kathryn E. Neale, Chief Deputy county counsel
C/CAG Attorney

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

By: _____
Name: JIM HARTNETT
Its: EXECUTIVE DIRECTOR

Attest:

_____
Authority Secretary / MARTHA MARTINEZ

Approved as to Form:
By: _____
Name: Shayna M. van Hoften
Legal Counsel for the TA