

**Memorandum of Understanding (MOU)**  
**San Mateo County Transportation Authority**  
**and**  
**San Mateo County**  
**for the Implementation of**  
**Highway 1 – Gray Whale Cove Improvement**

This memorandum of understanding (MOU) is entered into as of the \_\_ day of \_\_\_\_\_, 2017, by and between the San Mateo County Transportation Authority (TA) and San Mateo County (Sponsor), each of which is referred to herein individually as "Party" and jointly as "Parties."

**RECITALS**

**WHEREAS**, on November 2, 2004, the voters of San Mateo County approved the continuation of the collection and distribution by the TA of the Measure A half cent transaction and use tax for an additional 25 years to implement the 2004 Transportation Expenditure Plan, beginning January 1, 2009 (Measure A); and

**WHEREAS**, on May 24, 2012, the TA issued a call for projects for the Highway Program; and

**WHEREAS**, in response to the call for projects, Sponsor requested that the TA provide \$1.5 million in Measure A funds for the Preliminary Planning Study (PPS), Project Initiation Document/ Project Study Report (PID/PSR), environmental and design phases of the San Mateo County Highway 1 Congestion and Safety Improvement project (Project); and

**WHEREAS**, the Project meets the intent of the 2004 Transportation Expenditure Plan and the TA's Strategic Plan 2014-2019; and

**WHEREAS**, on October 4, 2012, TA adopted Resolution No. 2012-17 to (a) allocate \$250,000 for the PPS and \$250,000 for the PID/PSR, and (b) program up to \$1 million for the environmental and design phases of the Project, with allocation of those funds conditioned on the completion of the PPS, PID/PSR, and a defined scope of work and schedule and cost estimate for the environmental and design phases; and

**WHEREAS**, on February 20, 2014, the TA and Sponsor executed a Memorandum of Understanding to conduct the PPS and PID/PSR associated with the Project, and the TA authorized up to \$500,000 of Measure A funds for the PPS and PID/PSR work; and

**WHEREAS**, the PPS was completed in August 2015 and identified six locations to improve congestion and safety on Highway 1 (“improvement locations”), including the Gray Whale Cove improvement location; and

**WHEREAS**, the PPS, containing including the six improvement locations, was presented to the TA, San Mateo County Planning Commission, and Midcoast Community Council on several occasions; and

**WHEREAS**, the Gray Whale Cove location and preliminary design, which are the subject of the scope of work of this MOU, were selected by the Sponsor after securing the support from the Midcoast Community Council and the other Project stakeholders; and

**WHEREAS**, the Parties acknowledge that the implementation of any design or modifications to the State Highway System must be reviewed and approved by the State Department of Transportation (Caltrans) as owner operator of the system; and

**WHEREAS**, the Sponsor and TA, with Caltrans approval, have determined that the Sponsor can pursue the project initiation, environmental and design phases of the Project using a Caltrans Permit Engineering Evaluation Report (PEER) process, which is more streamlined than a PID/PSR, and is intended to reduce the steps in processing non-complex, small scale, local projects; and

**WHEREAS**, at the Sponsor's request, on April 6, 2017, the TA adopted Resolution No. 2017-07 to reprogram and reallocate \$250,000 of the remaining Measure A funding that was previously allocated for the PID/PSR, and reprogram and reallocate \$350,000 of the \$1 million in Measure A funding ("Measure A Funds") that was previously programmed for the environmental and design phases of the Project to fund and advance the Project through the PEER process (hereinafter "Scope of Work"); and

**WHEREAS**, TA Resolution No. 2017-07 also reprogrammed and allocated the remaining \$650,000 of the \$1 million in Measure A funding that were previously programmed for the environmental and design phases to the construction phase of the Project, with the allocation of construction funds to take effect upon Caltrans' approval of the PEER and the Sponsor securing the balance of funding needed to complete construction; and

**WHEREAS**, the Sponsor desires that the TA implement the Scope of Work as described in Section A-2, below.

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

**A. Project Scope and Description**

1. **Project Scope**. The Project will advance the Gray Whale Cove Improvement Alternative 1 identified in the Highway 1 Congestion and Safety Improvement PPS as a standalone project under the Caltrans PEER process. The proposed congestion and safety improvements at Gray Whale Cove include roadway widening to accommodate a new left-turn lane and an acceleration lane on Highway 1, construction of a new pedestrian

at-grade crossing near Gray Whale Cove State Beach, installation of highway lighting and necessary electrical connections, utility relocation, if required, and implementation of traffic calming measures.

2. Scope of Work. The Scope of Work is the completion of engineering analysis, environmental study and final design of the Gray Whale Cove Improvement – Alternative 1 as described in PPS, utilizing the PEER process for encroachment permit application and Project approval in accordance to Caltrans Project Development Procedures Manual (PDPM).
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 \$600,000 of Measure A Funds for the TA's services (provided by a combination of TA staff, consultants, and Caltrans) to advance the Project through the PEER process.
2. Cost Savings. Any cost savings of the Measure A Funds allocated for the Scope of Work will be made available for the subsequent construction phase if the conditions set forth in Resolution No. 2017-07 and described above are met. If the Project is unable to meet the conditions of funding allocation set forth in Resolution No. 2017-07, the remaining unused Measure A funds will revert to the Original or New 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 amounts needed and review those estimates with the Sponsor. The Parties will work together to identify potential sources of funding, as well as to obtain the necessary funds to complete the Scope of Work. If additional funding is needed due to a change in the Scope of Work, as requested by the Sponsor, the TA will identify the additional amounts 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 to 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) 6 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 or C-4 or C-5, or (c) March 31, 2019.

2. Time of Performance. This Project Scope of Work must be completed no later than September 30, 2018.
3. Termination by Sponsor. The Sponsor may at any time terminate the MOU, with or without cause, by giving ten (10) days' written notice to the TA. Sponsor will reimburse the TA for all funds expended in connection with the Scope of Work, and for all costs incurred by the TA in connection with the termination, within ninety (90) days of the TA's submission to Sponsor of a detailed statement of such payments and costs.
4. Termination by the TA. The TA may at any time terminate the MOU, with or without cause, by giving ten (10) days' written notice of such termination. If the TA terminates the Scope of Work for Sponsor's default under this MOU, Sponsor will reimburse the TA for all funds expended by the TA in connection with performance of this MOU. If the TA terminates the MOU for convenience, the TA will reimburse Sponsor for 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, neither Party may seek nor be entitled to receive further reimbursement for any costs or expenses incurred in connection with the Scope of Work nor 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 Project 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 \$600,000 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) as appropriate, 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 monthly 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 Scope of Work, and process other documentation of expenditures in compliance with TA accounting and budgeting requirements.
  6. The TA's implementation of the design for Caltrans' review and approval does not abrogate, relieve, limit or modify the Sponsor's duties and obligations regarding the Scope of Work, including, without limitation, its indemnification obligations under Section F, below.

#### E. Sponsor Responsibilities

1. The Sponsor will be responsible for championing the effort of obtaining political and public support for the Project.
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 be the CEQA lead agency and will be responsible for obtaining environmental clearance for the Project.
4. The Sponsor will provide input and oversight based on local policies and desires regarding the outcome of and deliverables of the Project.
5. The Sponsor will actively participate in the PDT meetings related to the Scope of Work.

6. 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.
7. 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 authority to accept or reject contractor/consultant work.
8. The Sponsor will endorse, in writing, the final deliverables or work products produced by the TA and/or its contractors/consultants for the Scope of Work.
9. The Sponsor will review progress reports prepared and provided by the TA.
10. 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.
11. The Sponsor is solely responsible for all costs, including staff time, needed to fulfill its responsibilities set forth in this Section E.

#### F. Indemnification

1. Each of the Parties will indemnify, hold harmless and defend the other Party and its directors/councilmembers/supervisors, officers, employees and agents (collectively, "Indemnitees") against all liability, claims, suits, actions, costs or expenses related to performance of the Scope of Work or the Project, including but not limited to those 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 the Scope of Work..
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 will survive termination or expiration of this 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 will be implied from any omission by either Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to one action does not imply consent to any future action.
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 a 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. Reasonable attorneys' fees includes fees determined using reasonable market rates for attorneys even if the attorneys involved are a Party's salaried staff attorneys.

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. 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.
11. Severability. If any portion of this Agreement, or the application thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining portions of this Agreement, or the application thereof, will remain in full force and effect.
12. Counterparts. This MOU may be executed in counterparts.
13. 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.
14. 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 other. 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:              San Mateo County  
                                 400 County Center  
                                 Redwood City, CA 94063  
                                 Attn: John Maltbie, County Manager



IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

**SAN MATEO COUNTY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Legal Counsel for San Mateo County

**SAN MATEO COUNTY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Authority Secretary

Approved as to Form:

\_\_\_\_\_  
Legal Counsel for the TA