

**Management Audit of the
Measure B Transportation
Improvement Program**

Prepared for the
Board of Supervisors of the
County of Santa Clara

Prepared by the

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May 25, 2011

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May 25, 2011

Supervisor Ken Yeager, Chair
Supervisor Dave Cortese, Member
Board of Supervisors Finance and Government Operations Committee
70 West Hedding Street
San Jose, CA 95110

Dear Supervisors Yeager and Cortese:

Pursuant to the direction of the Board of Supervisors, we have completed a management audit of the Measure B Transportation Improvement Program (MBTIP). This audit was conducted under the authority of the Board of Supervisors power of inquiry, as provided in Article III, Section 302 (c) of the County Charter. The audit was performed in accordance with government auditing standards of the United States Government Accountability Office.

The Board of Supervisors selected the audit using a risk assessment tool and estimate of audit work hours developed by the Management Audit Division. The purpose of the audit was to examine the MBTIP's closeout activities and fund balance. Consequently, the audit scope consisted primarily of: 1) evaluating the timeliness of closing out the remaining highway, rail and ancillary projects, and 2) examining MBTIP revenues and expenditures to quantify the amount of unexpended funds being held by the County of Santa Clara and the Santa Clara Valley Transportation Authority (VTA). The audit commenced on January 24, 2011, a draft report was issued on May 6, 2011, and an exit conference was conducted on May 16, 2011.

Since nearly all transportation projects funded by the MBTIP are complete, this audit report contains only two sections pertaining to: 1) the County's available balance of Measure B funds, and 2) residual sales tax revenue paid to VTA including surplus funds. During the audit, staff were interviewed and financial, project and other records were reviewed and analyzed. A total of six recommendations were developed that, if implemented, would enable the County to use \$6.2 million of surplus Measure B funds on one-time general County purposes, require the County to properly appropriate residual sales tax revenue, and allow the County to recover between \$1.54 and \$4.07 million that has been overpaid to VTA. Although expected to diminish over time, residual sales tax distributions may continue until March 2016 or later, and the County could receive an additional \$1 million or more in residual sales tax that would be available for

Supervisor Ken Yeager
Supervisor Dave Cortese
May 25, 2011
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general County purposes or other transportation improvements, as determined by the Board of Supervisors. A brief synopsis of the audit and its key findings follows, and written responses from the County Executive and VTA begin on page 93.

We would like to thank the Office of the County Executive, the Santa Clara Valley Transportation Authority and the County Roads and Airports Department for their cooperation and assistance with the performance of this audit.

Respectfully Submitted,



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MANAGEMENT AUDIT OF THE MEASURE B TRANSPORTATION IMPROVEMENT PROGRAM (MBTIP)

AUDIT SYNOPSIS

This management audit examined the MBTIP's closeout activities and fund balance. Consequently, the audit scope consisted primarily of: 1) evaluating the timeliness of closing out the remaining highway, rail and ancillary projects, and 2) examining MBTIP revenues and expenditures to quantify the amount of unexpended funds being held by the County of Santa Clara and the Santa Clara Valley Transportation Authority (VTA).

Since nearly all transportation projects funded by the MBTIP are complete, this audit report contains only two substantive findings and six recommendations. Full implementation of these recommendations would enable the County to use \$6.2 million of surplus Measure B funds on one-time general County purposes, require the County to properly appropriate residual sales tax revenue, and allow the County to recover between \$1.54 and \$4.07 million that has been overpaid to VTA. Although expected to diminish over time, residual sales tax distributions may continue until March 2016 or later, and the County could receive an additional \$1 million or more in residual sales tax that would be available for general County purposes or other transportation improvements, as determined by the Board of Supervisors.

KEY FINDINGS

- Although the Measure B half-cent sales tax expired on March 30, 2006, the County's Measure B Fund had a cash balance of approximately \$10.7 million as of March 31, 2011. Approximately \$4.4 million of these funds remain committed to the County Roads and Airports Department (County Roads), and \$232,723 has been set aside for final administrative costs, leaving a surplus cash balance of approximately \$6.2 million.
- Since the intent of Measure A has been met, all Measure B funds that are neither committed to County Roads nor required for remaining administrative expenses may be used on general County purposes, as allowed by the State Constitution and determined by the Board of Supervisors.
- The County continues to receive residual sales tax distributions as a result of amended merchant tax returns or audits of merchants conducted by the State Board of Equalization (BOE). To date, the MBTIP has received approximately \$8.9 million in residual sales tax revenues, of which nearly \$8.8 million has been paid to VTA.
- The County and VTA entered into a *Master Agreement* in 1999 that set forth the terms and conditions of the implementation and termination of the MBTIP. These terms were altered by a 2004 *Fund Swap Implementation Letter of Agreement (ILA)* that called for the County to use residual sales tax revenues to reimburse VTA a total of \$7.23 million for highway landscaping projects. In addition, a final amendment to the *Master Agreement*, identified as *Amendment 20* and executed in 2007, called for the County to pay VTA the "fixed and final" sum of \$51.2 million, which included \$4.14 million of residual sales tax revenues, to closeout all MBTIP projects for which it was responsible.
- Because of ambiguity over the County's obligation and authority to continue making residual sales tax payments to VTA, the County overpaid VTA by at least \$1.54 million, and perhaps by as much as \$4.07 million. Moreover, County payments of residual sales tax revenues to VTA were not appropriated by the Board of Supervisors in a budget resolution and therefore did not comply with Government Code Section 29000 et seq.
- If the County continues to turn over residual sales tax distributions to VTA for five or more years, an additional \$1 million or more in revenue could be paid to VTA without contractual or legal authority.

A copy of the full report is available at:

<http://www.sccgov.org/managementauditor>

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Executive Summary

This *Management Audit of the Measure B Transportation Improvement Program (MBTIP)* was authorized by the Board of Supervisors of the County of Santa Clara as part of the County's FY 2010-11 Management Audit Program, pursuant to the Board's power of inquiry specified in Article III, Section 302 (c) of the County of Santa Clara Charter. The Board of Supervisors selected the audit topic after considering the annual County-wide audit risk assessment conducted by the Management Audit Division in accordance with Section C1 of the Finance and Government Operations Committee Management Audit Policies and Procedures.

This management audit was conducted under the requirements of the Board of Supervisors Policy Number 3.35, as revised on July 22, 2010. That policy states that management audits are to be conducted under generally accepted government auditing standards issued by the United States Government Accountability Office.

Purpose and Scope

The purpose of the management audit was to examine the MBTIP's closeout activities and fund balance. Consequently, the audit scope consisted primarily of: 1) evaluating the timeliness of closing out the remaining highway, rail and ancillary projects, and 2) examining MBTIP revenues and expenditures to quantify the amount of unexpended funds being held by the County of Santa Clara and the Santa Clara Valley Transportation Authority (VTA).

Report Highlights

Since nearly all transportation projects funded by the MBTIP are complete, this audit report contains only two substantive findings and six recommendations. Full implementation of these recommendations would enable the County to use \$6.2 million of surplus Measure B funds on one-time general County purposes, require the County to properly appropriate residual sales tax revenue, and allow the County to recover between \$1.54 and \$4.07 million that has been overpaid to VTA. Although expected to diminish over time, residual sales taxes distributions may continue until March 2016 or later, and the County could receive an additional \$1 million or more in residual sales tax that would be available for general County purposes or other transportation improvements, as determined by the Board of Supervisors. A summary of the major findings and recommendations is provided below.

Available Balance of \$6.2 Million in the County's Measure B Fund

Although the Measure B half-cent sales tax expired on March 30, 2006, the County's Measure B Fund had a cash balance of approximately \$10.7 million as of March 31, 2011. Approximately \$4.4 million of these funds remain committed to the County Roads and Airports Department (County Roads), and up to \$232,723 is available for expenditure on final administrative costs, leaving a surplus cash balance of approximately \$6.2 million. Since the intent of Measure A has been met, all Measure B funds that are neither committed to County Roads nor required for remaining administrative expenses may be used on general County purposes, as allowed by the State Constitution and determined by the Board of Supervisors.

Additional \$1.54 Million Paid to VTA in Residual Sales Tax Revenue

The Measure B half-cent sales tax expired on March 30, 2006, but the County continues to receive residual sales tax distributions as a result of amended merchant tax returns or audits of merchants conducted by the State Board of Equalization (BOE). Because of ambiguity over the County's obligation and authority to continue making residual sales tax payments to VTA, the County overpaid VTA by at least \$1.54 million, and perhaps by as much as \$4.07 million, more than required by agreements between the two agencies. If the County continues to turn over residual sales tax distributions to VTA for five or more years, an additional \$1 million or more in revenue could be paid to VTA without contractual or legal authority.

Introduction

This *Management Audit of the Measure B Transportation Improvement Program (MBTIP)* was authorized by the Board of Supervisors of the County of Santa Clara as part of the County's FY 2010-11 Management Audit Program, pursuant to the Board's power of inquiry specified in Article III, Section 302 (c) of the County of Santa Clara Charter. The Board of Supervisors selected the audit topic after considering the annual County-wide audit risk assessment conducted by the Management Audit Division in accordance with Section C1 of the Finance and Government Operations Committee Management Audit Policies and Procedures.

Purpose and Scope

The purpose of the management audit was to examine the MBTIP's closeout activities and fund balance. Consequently, the audit scope consisted primarily of: 1) evaluating the timeliness of closing out the remaining highway, rail and ancillary projects, and 2) examining MBTIP revenues and expenditures to quantify the amount of unexpended funds being held by the County of Santa Clara and the Santa Clara Valley Transportation Authority (VTA).

This is the second management audit of the MBTIP. The first audit was issued on August 31, 2006 and focused on historical activities of Program managers, major financial transactions that occurred during the Program, and strategies for Program closeout. During the first audit, the local sales tax used to finance the MBTIP expired on March 30, 2006, and the County began receiving residual sales tax. Since nearly all transportation projects funded by the MBTIP are complete, this audit report contains only two substantive findings, as fully discussed in the body of the report and summarized below:

1. Although the Measure B half-cent sales tax expired on March 30, 2006, the County's Measure B Fund had a cash balance of approximately \$10.7 million as of March 31, 2011. Approximately \$4.4 million of these funds remain committed to the County Roads and Airports Department (County Roads), and up to \$232,723 may be spent on final administrative costs, leaving a surplus cash balance of approximately \$6.2 million. Since the intent of Measure A has been met, all Measure B funds that are neither committed to County Roads nor required for remaining administrative expenses may be used on general County purposes, as allowed by the State Constitution and determined by the Board of Supervisors.
2. The Measure B half-cent sales tax expired on March 30, 2006, but the County continues to receive residual sales tax distributions as a result of amended merchant tax returns or audits of merchants conducted by the State Board of Equalization (BOE). Because of ambiguity over the County's obligation and authority to continue making residual sales tax payments to VTA, the County overpaid VTA by at least \$1.54 million, and perhaps by as much as \$4.07 million, more than required by agreements between the two agencies. If the County continues to turn over residual sales tax distributions to VTA for five or more years, an additional \$1 million or more in revenue could be paid to VTA without contractual or legal authority.

Throughout the remainder of this Introduction, other aspects of the MBTIP are discussed to provide the reader with an understanding of the significant areas examined as part of this review. Included are assessments of management performance in each of these areas.

Audit Methodology

This management audit was conducted in accordance with generally accepted government auditing standards issued by the United States Government Accountability Office (USGAO). Pursuant to these requirements, the following management audit procedures were followed:

- Audit Planning – The management audit was selected by the Board of Supervisors using a risk assessment tool and estimate of audit work hours developed by the Management Audit Division. After audit selection by the Board, a detailed management audit work plan was developed and provided to the County Executive’s Office for review and comment.
- Entrance Conference – On January 24, 2011, an entrance conference was held with staff of the County Executive’s Office, County Counsel’s Office and Controller-Treasurer Department to introduce the management auditors, describe the management audit program and scope of review, and respond to questions. A letter of introduction from the Board, a management audit work plan, and a request for background information were also provided.
- Pre-Audit Survey – A preliminary review of documentation and interviews with the County Executive’s Office were conducted to obtain an overview understanding of Program closeout.
- Fieldwork – Fieldwork was conducted to obtain additional information and data on Program closeout. Fieldwork activities included a further review of documentation and other materials provided by the County Executive’s Office, VTA and County Roads and available from other sources, and analyses of data that was manually and electronically collected during the audit.
- Draft Report – A draft report was prepared and provided to the County Executive’s Office on May 6, 2011. The draft report was also provided to County Counsel to review based on legal questions that surfaced during the course of the study, and VTA and County Roads were provided the report for review and comment.
- Exit Conference – For quality assurance purposes, an exit conference was held with staff of the County Executive’s Office, County Counsel’s Office and Controller-Treasurer Department to discuss the content of the draft report, ensure factual accuracy, and obtain management’s views on findings, conclusions and recommendations.
- Final Report – A final report was prepared and submitted to the Board of Supervisors. The County Executive’s Office, VTA and County Roads were provided opportunities to submit written responses, which are attached.

Overview of the Measure B Program

In November 1996, voters approved two measures on the County of Santa Clara ballot that led to the establishment of the MBTIP. The first, Measure A, was an advisory measure that identified a specific “package” of transportation improvements to be funded from new sales tax revenues, should such funds become available to the County (Appendix A). The Citizens Coalition for Traffic Relief developed the project package contained in Measure A with input from local officials and transportation professionals. When developing the package, the Coalition considered need, project readiness and geographic diversity, and worked to create a close to even split in planned expenditures between highway/road- and transit-oriented projects.

Measure B, the second measure approved by the voters, increased the County-wide local sales tax by one-half-cent for a period of nine years, beginning on April 1, 1997 (Appendix B). In addition to authorizing the sales tax, Measure B required that an independent Citizens Watchdog Committee be established to review expenditures and oversee annual audits on the use of the funds. The half-cent sales tax was authorized as a general tax available for “general County purposes,” giving the Board of Supervisors broad discretion on how the funds would be spent. However, consistent with the voters’ intent, at the outset of the MBTIP the Board decided that the revenues should be used to fund the transportation improvements specified in Measure A.¹

Legal Challenge

Nonetheless, shortly after voters approved Measure A and Measure B, some taxpayers filed a lawsuit challenging the legality of the two measures by arguing that the measures “were effectively one measure” and that they imposed a “special tax to fund the specific expenditures identified in Measure A.” The taxpayers argued that because the two measures were joined in this manner, “Measure B required . . . (and did not receive) the approval of two-thirds of the voters,” pursuant to the California Constitution, Article XIII A. After approximately two years, the California courts ruled that the sales tax was legal and could be collected by the County.²

Initially uncertain of how the courts would rule in the matter, the State Board of Equalization (BOE) began collecting the sales tax on April 1, 1997, and continued throughout the period of the litigation. The taxes collected by the BOE during this period were remitted to the County, and the County held the collected taxes in an interest bearing account until the litigation was settled in FY 1997-98. Since that time, the revenues have continued to be collected regularly and remitted to the County monthly, in accordance with State apportionment schedules for other local sales taxes.

Since the County had not established a program for administering the funds prior to the court ruling, the former administrator of the Traffic Authority was initially hired as a consultant to help develop a blueprint for delivering the traffic improvements outlined in Measure A and funded by Measure B. The Board of Supervisors adopted this *Blueprint for Delivery: Measure B*

¹ Measure B Program Policies adopted by the Board state, “**1. Adherence to Measure A/B Ballot Language:** The Measure B Transportation Improvement Program should closely adhere to the Measure A ballot measure list of projects, and is not intended to imply a new list of projects (refer to the Measure A/B Ballot Language, Resolution adopted by the Board on May 11, 1999, to restrict use of Measure B funds and the *Base Case Plan*).”

² *Coleman v. County of Santa Clara*, 64 Cal.App.4th 662, 75 Cal.Rptr.2d 516 (1998)

Transportation Improvement Program on September 1, 1998. With the further aid of consultants, the County developed “Base Case” revenue projections, and the Board approved a plan for accomplishing the Program objectives. Despite the delays caused by the litigation, the Board directed that the Measure B package of programs be completed within the original nine-year window of the tax. Accordingly, the timetable for completing the transportation improvement program was reduced from nine to seven years due to the litigation delays. Despite this compressed timetable, Santa Clara County completed the majority of these projects on schedule and within budget.

Organizational Structure

As mentioned above, in September 1998, the County adopted the *Blueprint for Delivery: Measure B Transportation Improvement Program*, which identified a framework for delivering the transportation improvement program outlined in the advisory measure. This framework specified that the Board of Supervisors would retain program level responsibilities and authority, but that VTA, County Roads and local cities would be responsible for project delivery. The success of this partnership necessitated a clear understanding of the Program’s “Base Case” and formalized agreements defining relationships between the various Program participants.

Under the plan, VTA was selected as the primary “implementing agency” in its dual role as a Countywide Transportation Authority (CTA) and Congestion Management Agency (CMA). This meant that VTA assumed significant responsibility regarding the management of Measure B funds allocated to the County and cities (e.g., Pavement Management Program funds), the construction of major highway and interchange improvements (which could have alternatively been performed by Caltrans), and the construction of transit improvements. During this management audit, we found that the selection of a primary agency to implement MBTIP projects was a significant reason for the Program’s success.

Because it is a County general tax, the Board of Supervisors has complete appropriation authority over the use of the 1996 Measure B sales tax. However, the Board chose to establish a separate joint meeting process with the VTA Board of Directors to oversee Program implementation. Joint meetings were held once each year in June to review the annual *Revenue and Expenditure Plan* that was developed by Measure B Program staff. Interim modifications to project scope, schedule or cost were also brought to the two boards at their regular meetings during the year. A *Master Agreement*, which was separately agreed to by the two boards, governs the relationship between the County and VTA (Appendix C).

The MBTIP was a division of the County Executive’s Office. The Program Administrator reported directly to the Deputy County Executive for Intergovernmental Relations and led a team consisting of a Senior Fiscal Officer, an Accountant II/III and an Administrative Coordinator. These individuals were responsible for developing program-wide policies for the County Executive; monitoring compliance with the *Master Agreement* between the County and VTA; developing the annual *Revenue and Expenditure Plan*; accounting for all project and program costs; and, ensuring the closeout of MBTIP projects administered by VTA and County Roads. Program staff also supported the Citizens Watchdog Committee with its mandated audit and reporting responsibilities, as defined by Measure B.

Throughout the MBTIP, the Program Administrator relied on the services of a team of engineering consultants who provided Program Management Oversight services, including the technical review of MBTIP projects throughout the design and implementation phases. These individuals monitored the reasonableness of design decisions, project timetables and costs, and worked with the Program Administrator to determine the most cost effective alternatives for project implementation.

The MBTIP also relied on the County Counsel for legal services, the Finance Agency for accounting, debt service, investment and payroll services, and the Public Information Office for marketing support and press releases. Lastly, the MBTIP retained the services of an independent financial auditor who served the Citizens Watchdog Committee by preparing an annual financial audit and an audit of VTA's compliance with the *Master Agreement*.

Revenues and Expenditures

The size of the MBTIP has grown from a base case budget of approximately \$1.46 billion to a current forecast of more than \$1.60 billion, excluding bond proceeds and fund swaps. While this growth has been made possible because of various contributions of local, State and federal funds, the primary source of funding continues to be the half-cent sales and use tax approved by the voters in 1996. Regular sales tax collected between April 1, 1997 and March 30, 2006 resulted in total revenue of \$1.34 billion, while residual sales tax collected since the tax expired has exceeded expectations and generated an additional \$8.56 million in revenue. Other sources of funding include interest income on surplus cash balances and transportation improvement funds from other governmental agencies.

As specified in Measure A, the vast majority of Measure B funding has been expended on project delivery. Approximately 57.0 percent of Measure B funds have been programmed for rail transportation and 31.7 percent for highway construction, with an additional 11.3 percent of the funds being appropriated to support various ancillary programs and program-wide expenses.

Administrative Costs

Program Administration and Program Management Oversight are generally categorized as program-wide expenses. Advisory Measure A stipulates that, "Only 0.5 percent of the funds can be used for staff salaries and administration, reserving 99.5 percent of the funds for project delivery." According to the Office of the County Executive, as of March 28, 2011, administrative costs totaled \$6,490,526 and sales tax receipts received since the Program's inception totaled \$1,344,649,843, which included quarterly distributions of residual sales tax collected through the second quarter of FY 2010-11.³ Consequently, administrative costs were approximately 0.483 percent of total sales tax revenue. This amount is below the 0.5 percent threshold established by Measure A.

³ Per Board policy, costs associated with the PMO consultants are excluded from the calculation for determining compliance with the administrative cost limitation, since these consultants perform technical review functions supporting the implementation of individual projects.

Project Definitions

Rail and Highway Programs

As discussed previously, initial planning for transportation improvement projects included in Measure A began in December 1998, with the development of the *Base Case Plan*. As part of this process, meetings were held with the project stakeholders, including the County, VTA, Caltrans, cities and other interested parties, to determine the appropriate scope of each project. During the meetings, the proposed scope of the projects, design constraints and potential implementation obstacles were discussed. Because some project designs had not been extensively developed, the scope meetings identified a range of potential improvements that would be analyzed during the preliminary engineering phase. The product of these efforts was the *Base Case Plan*, which was adopted by the County Board of Supervisors in June 1999.

All of the Measure A projects were included in the *Base Case Plan* along with a preliminary scope statement, initial schedule and estimated cost to develop and construct the project. Over the years, each of these elements (e.g., scope, schedule and cost) were refined in amendments to the *Master Agreement* and updated at semi-annual intervals through the *Revenue and Expenditure Plan* and *Semi-Annual Report* processes.

As stated previously, VTA was selected as the implementing agency for the Rail and Highway Programs, and the terms and conditions of implementation were included in the *Master Agreement* between VTA and the County. This agreement has been amended 20 times over the years to refine the baseline scope, schedule and cost of rail and highway projects, and to amend some of the requirements included in the original *Master Agreement*.

Rail Program

Measure B sales tax revenue helped to fund six rail projects. Additional funding was secured from local, State and federal sources in order to accomplish the project objectives. As previously discussed, when the economy was in a downturn, leveraging external funding and securing external contributions played an important role in moving projects forward. Each of the rail projects is described below.

Tasman East Light Rail – Extended the Tasman East line 4.8 miles from North First Street along Tasman Drive, Great Mall Parkway and Capitol Avenue to Hostetter Road in northeast San Jose. The project includes three park-and-ride facilities and an elevated segment near the Great Mall. The project cost a total of \$272.6 million, including \$72.1 million from Measure B, and opened for revenue service in June 2004.

Capitol Light Rail – Extended the Capitol line 3.3 miles along Capitol Avenue from Hostetter Station to the Capitol Avenue/Capitol Expressway intersection. The project includes four new stations and one future station. The project cost a total of \$156.3 million, including \$111.6 million from Measure B, and opened for revenue service in June 2004.

Vasona Light Rail – Extended the Vasona line 5.3 miles from Downtown San Jose to Winchester along the Union Pacific Vasona corridor. Connections in Downtown San Jose link

the San Jose Diridon Caltrain Station and the Guadalupe Light Rail corridor service. The project cost a total of \$313.0 million, including \$163.0 million from Measure B, and opened for revenue service in October 2005.

Low Floor Light Rail Vehicles – Purchased 30 low floor light rail vehicles that allow level boarding from 14” high platforms at light rail stations were purchased to serve the Tasman West, Tasman East and Capitol lines. These vehicles provide enhanced accessibility and improved service by minimizing loading times for all riders and providing additional space for bicycles at a cost of \$93.8 million, including \$90.0 million from Measure B.

Caltrain Service Improvements – Added trains and improved facilities between Gilroy and Palo Alto in order to increase the service level in the Caltrain system within Santa Clara County. The improvements cost a total of \$70.7 million, including \$43.7 million from Measure B. The Board of Supervisors restored funding for the underpass projects at the Palo Alto and California Avenue Caltrain stations in January 2007, and all projects are complete.

Fremont/South Bay Commuter Rail – Initially, involved establishing an interim commuter rail service between Fremont and San Jose; however, the project scope was changed to purchase the right-of-way from the Union Pacific Railroad with 2000 Measure A funding. Measure B paid for professional services expended prior to the scope change at a cost of \$3.2 million. These services were required to complete the right-of-way purchase.

Highway Program

Eleven highway projects were also funded from a combination of Measure B sales tax revenue and funding from local, State and federal sources. These projects consisted of highway widenings, interchange improvements, high occupancy vehicle lanes and various other improvements, as discussed below.

Route 880 Widening – Widened Route 880 between Route 101/North First Street and Montague Expressway from a four to a six-lane freeway. Widening occurred within the existing 40-foot median and included a 12-foot lane in each direction with a center barrier. A new eight-lane Coyote Creek/Brokaw Road Interchange Bridge was also required, and a southbound auxiliary lane from Route 101 to North First Street and ramp improvements at the southbound Brokaw Road exit ramp were also included. The project cost a total of \$75.9 million, including \$61.2 million from Measure B, and construction was completed in April 2004.

Route 101 Widening – Widened Route 101 from four to six lanes plus two high occupancy vehicle lanes in the existing median between Cochrane Road and Metcalf Road, providing an additional two lanes in each direction and a 10-foot shoulder. The project cost a total of approximately \$54.4 million, including \$50.4 million from Measure B. Construction was completed in July 2004.

Route 85/101 Interchange (South) – Included high occupancy vehicle direct connectors from northbound Route 101 to northbound Route 85 and southbound Route 85 to southbound Route 101, as well as the southbound Route 101 to northbound Route 85 branch connector. The project also included the widening of Route 101 to eight lanes between Bernal Road and Metcalf Road.

The project cost a total of approximately \$67.8 million, including \$42.4 million from Measure B. Construction was completed in January 2005.

Route 85/87 Interchange – Completed the existing interchange by adding two connector ramps, including southbound Route 85 to northbound Route 87 and southbound Route 87 to northbound Route 85. The project also provided a high occupancy vehicle lane in each direction of Route 87 in the median between Route 85 and Branham Lane. The project cost a total of approximately \$43.1 million, including \$39.6 million from Measure B, and construction was completed in October 2003.

Route 85/101 Interchange (North) – Improved mainline weaving operations and increased Route 85 and Route 101 interchange capacity while maintaining the existing local interchange access at Old Middlefield Way, North Shoreline Boulevard, and Moffett Boulevard. The project replaced the Route 85/Route 101 connector, modified interchange ramps at Moffett Boulevard, North Shoreline Boulevard and Old Middlefield Way; constructed additional lanes; and, constructed high occupancy vehicle direct-connector ramps between northbound Route 85 to northbound Route 101 and southbound Route 101 to southbound Route 85. The project cost a total of approximately \$128.5 million, including \$126.4 million from Measure B, and construction was completed in May 2006.

Route 237/880 Interchange – Consisted of three phases, including: 1) constructing direct high occupancy vehicle connectors for southbound Route 880 to westbound Route 237 and eastbound Route 237 to northbound Route 880; 2) constructing a southbound braided exit ramp from Route 880 to Tasman Drive interchange; and, 3) constructing a direct connector ramp from northbound Route 880 to westbound Route 237 with a braided ramp for the northbound Tasman Drive entrance. The project cost a total of approximately \$50.7 million, including \$27.1 million from Measure B. Construction was completed in April 2005. The third phase was never intended to be a Measure B project, and will be completed at a future date when other funding becomes available to VTA.

Route 17 Improvements – Accomplished the following improvements: 1) modified San Tomas Expressway between Winchester Boulevard and White Oaks Road; 2) constructed an auxiliary lane on northbound Route 17 between Route 85 and Camden Avenue; 3) constructed an auxiliary lane on northbound Route 17 between Camden Avenue and Hamilton Avenue; 4) improved the merge of I-280 with southbound Route 17; and, 5) improved the Hamilton Avenue off-ramp. The project cost a total of approximately \$26.8 million, all of which was funded from Measure B, and construction was completed in November 2006.

Route 87 HOV Lanes (South) – Constructed a high occupancy vehicle (HOV) lane in each direction in the existing median between Branham Lane and Route 280. The project also included construction of HOV on-ramp bypasses and enhanced landscaping as well as repair pavement, median barrier, sound wall, and drainage systems. A collector-distribution system and an auxiliary lane will also be constructed in the southbound direction between Route 280 and Almaden Expressway. The project cost a total of approximately \$14.6 million,⁴ including \$12.5

⁴ Total project cost, including amounts funded by GARVEE Bonds, amounted to \$75.1 million.

million from Measure B, for development costs. The cost of construction was paid for with State and federal funding, and construction was completed in May 2007.

Route 87 HOV Lanes (North) – Widened Route 87 from four to six lanes, including a high occupancy vehicle lane in each direction. The project also consisted of installing ramp meters at the entrance ramps and widening the northbound Route 280 to northbound Route 87 connector ramp. The project cost a total of approximately \$12.5 million for development costs, including \$11.3 million from Measure B.⁵ The cost of construction was paid for with federal funding, and construction was completed in August 2007.⁶

Route 152 Safety Improvements – Provided safety and operational improvements on Route 152 between Route 101 and Route 156. The project cost a total of approximately \$23.9 million, including \$18.5 million from Measure B, and construction was completed in March 2007.

Route 85 Noise Mitigation – Reduced freeway noise along a segment of Route 85 between Route 87 and Route 280 by applying a micro-grinding technique. The project cost a total of nearly \$7.5 million, all of which was funded from Measure B, and construction was completed in February 2006.

Ancillary Programs

In addition to rail and highway projects, Measure A specified several general transportation improvements. These consisted of maintaining streets and filling potholes, traffic signal synchronization, and bicycle facility improvements. Since programs already existed that could address these areas, Measure B sales tax revenue was used to augment work already underway. The County of Santa Clara also decided to use a portion of Measure B funds to improve the level of service at intersections on the County’s expressways and to enter into agreements with VTA for swapping funds. The MBTIP thus incorporated a total of five ancillary programs, which will be discussed in more detail below.

Pavement Management Program – Improved pavement conditions of local streets and filled potholes in all 15 cities and on County roads and expressways using \$90 million from Measure B. Early in the Program, the County adopted an agreement with VTA that required the Authority to administer and disburse Measure B funds for a Pavement Management Program. Of the \$90 million in funding, \$27 million was allocated to County Roads based on an approved allocation plan.

Level of Service Program – Identified and funded intersection improvements on the County’s expressway system to enhance traffic flows and reduce driving delays. County Roads based the selection of intersections and specific improvements on congestion levels and feasibility of improvement concepts. Measure B funding of approximately \$15.4 million has been used to finance \$35.5 million in improvements by providing a local match for federal funds, and leveraging contributions from local jurisdictions and developers, which together funded the remaining \$20.1 million in project cost.

⁵ Total project cost, including amounts funded by GARVEE Bonds, amounted to \$46.8 million.

⁶ VTA now estimates that the project will be completed by April 2007.

Signal Synchronization Program – Reduced traffic delays on the County’s expressway system due to inefficient signal timing using approximately \$25.1 million from Measure B. Unlike the Level of Service Program, signal synchronization improvements were nearly system wide, with the addition of Traffic Operation Systems (TOS) infrastructure on seven of eight expressways, and upgrades to the central Traffic Operations Center (TOC). The eighth expressway, Capitol, was omitted from the program due to limited program funding and construction conflicts with light rail transit.

Bicycle Program – Provided funding and oversight for a portion of improvements based on a 30-year Countywide Bicycle Plan, which includes a Bicycle Expenditure Program (BEP) that will receive funding from a variety of sources subject to local jurisdiction match requirements. The BEP includes \$169 million in the cost of improvements and identifies approximately \$99 million in sources of funds to be used for the projects. Measure B contributed \$12.2 million for improvements to bicycle lanes on roadways, bicycle and pedestrian bridges, and the construction of grade separated bike paths. Of the \$12.2 million allocated to the BEP, approximately \$11.9 million has been programmed, and 17 of the 20 projects have been completed. VTA will program the remaining \$297,000 of Measure B funds to projects in the BEP.

Acknowledgements

We would like to thank the Office of the County Executive, the Santa Clara Valley Transportation Authority and the County Roads and Airports Department for their cooperation and assistance during this audit. Staff were cooperative, courteous, and generous with their time. They provided the majority of data contained in the report, and we appreciate their willingness to respond to our requests.

Section 1. County's Available Balance of Measure B Funds

Background

- The Measure B Transportation Improvement Program (MBTIP) is funded by a voter-approved half-cent sales tax. Measure A, a companion advisory measure to the 1996 ballot initiative, outlined a specific package of County transportation improvements that have been funded by Measure B sales tax revenues. Nearly all highway, rail and ancillary projects identified in Measure A and funded by Measure B have been completed and closed out, and all projects have been fully funded. The agreed upon cost of all remaining unfinished projects has been paid to VTA or committed to the County Roads and Airports Department (County Roads).

Problem

- Although the Measure B half-cent sales tax expired on March 30, 2006, the County's Measure B Fund had a cash balance of approximately \$10.7 million as of March 31, 2011. Approximately \$4.4 million of these funds remain committed to County Roads, and up to \$232,723 may be spent on final administrative costs, leaving a surplus cash balance of approximately \$6.2 million. There may be an expectation among some taxpayers that these surplus funds should be dedicated to additional transportation projects, even though Measure B is a general tax and Article 13C Section 1 of the State Constitution allows the Board of Supervisors to expend general tax proceeds on any legal County purpose, including public safety, health and human services. Consequently, the Board must determine the highest priority use of surplus Measure B funds.

Recommendations and Savings/Benefits

- Since the intent of Measure A has been met, the remaining \$6.2 million of surplus Measure B funds, which are neither committed to County Roads nor required for remaining administrative expenses, should be transferred to the General Fund for use on one-time general County purposes, as allowed by the State Constitution and determined by the Board of Supervisors. The implementation of this recommendation would enable the County to fund high priority public safety, health and human services in FY 2011-12.

Background

The Measure B Transportation Improvement Program (MBTIP) is funded by a half-cent sales tax. Voters approved the sales tax when they passed Measure B in November 1996 (Appendix B). At the same time, voters passed a companion advisory measure, Measure A, which stated their intent that any new sales tax be spent on a specific package of County transportation improvements, involving the County's rail lines, transit service, highways, roads and expressways (Appendix A). As discussed in the Introduction, in September 1998, the County adopted the *Blueprint for Delivery: Measure B Transportation Improvement Program*, which identified a framework for delivering the transportation improvements outlined in the advisory measure. This framework specified that the Board of Supervisors would retain program level responsibilities and authority, but that the Santa Clara Valley Transportation Authority (VTA),

the County Roads and Airports Department (County Roads) and local cities would be responsible for project delivery.

Initial planning for transportation improvement projects included in Measure A began in December 1998, with the development of the *Base Case Plan*. As part of this process, meetings were held with the project stakeholders, including the County, VTA, Caltrans, cities and other interested parties, to determine the appropriate scope of each project. During the meetings, the proposed scope of the projects, design constraints and potential implementation obstacles were discussed. Because some project designs had not been extensively developed, the scope meetings identified a range of potential improvements that would be analyzed during the preliminary engineering phase. The product of these efforts was the *Base Case Plan*, which was adopted by the County Board of Supervisors in June 1999. All of the Measure A projects were included in the *Base Case Plan* along with a preliminary scope statement, initial schedule and estimated cost to develop and construct the project. Over the years, each of these elements (e.g., scope, schedule and cost) were refined in amendments to the *Master Agreement* and updated at semi-annual intervals through the *Revenue and Expenditure Plan* and *Semi-Annual Report* processes.

Project Closeout

Measure B sales tax revenue helped to fund six rail projects and 11 highway projects specified in Measure A and included in the many planning documents, and nearly all MBTIP projects have been completed and closed out. The rail projects extended the light rail system, provided low floor vehicles for light rail lines, and improved Caltrain commuter rail service, while the highway projects consisted of highway widenings, interchange improvements, high occupancy vehicle lanes and various other improvements. The following one rail project and three highway projects remain open and have been fully funded:

- **Vasona Light Rail** – The only task that remains is resolving a right-of-way issue with the City of San Jose. Staff with VTA reported that progress has been slow and could not forecast when the issue would be resolved.
- **Route 17** – The project's three-year plant establishment period ended in October 2010, and a final invoice for the project is expected in May 2011.
- **Route 85/101 North** – Closeout of the project's highway planting contract is currently underway, and the right-of-way transfers, which involve the City of Mountain View, will be the last remaining activity. According to VTA, these issues take longer to resolve than anticipated.
- **Route 152** – Project closeout depends on VTA receiving an agreement between Caltrans and the Santa Clara Valley Water District on deed language for a right-of-way transfer. While the issue has languished for years, SCVWD has shown some interest in finally getting it resolved.

Measure A also specified several general transportation improvements. These consisted of maintaining streets and filling potholes, traffic signal synchronization and bicycle facility

improvements. Since programs already existed that could address these areas, Measure B sales tax revenue was used to augment work already underway. The County of Santa Clara also decided to use a portion of Measure B funds to improve the level of service at intersections on the County's expressways and to enter into agreements with VTA for swapping funds. Among the general transportation improvements, the following projects remain open and have been fully funded:

- **Signal Synchronization Program** – All signal synchronization projects have been completed, except for minor clean-up items that remain on project number C3308 (Traffic Ops System and Traffic Camera Feeds). The contract expires for this project in June 2011, but County Roads is contemplating extending the project for another year.
- **Level of Service Program** – In November 2010, the Board of Supervisors approved an appropriation modification that committed an additional \$1.96 million from the County Measure B Fund to County Roads to fund the Almaden Expressway and Oregon-Page Mill Expressway projects. This appropriation was made for the purpose of restoring a previous reduction in funding that had occurred in 2003 due to the economic downturn. County Roads expects to award construction contracts for these projects in 2011 and complete construction by the end of 2012.
- **Bicycle Program** – Seventeen of 20 projects have been completed. The majority of completed projects have achieved financial closeout, and the remainder are expected to be closed in 2011. VTA will be programming the remaining \$297,000 of Measure B funds to projects in the Bicycle Expenditure Program.

In order to obtain the necessary environmental permits for these and other projects, the MBTIP also appropriated funds to a Biological Mitigation Program to preserve, create and enhance wetlands, riparian and shaded riverine aquatic habitat, provide long-term management of a number of special-status plant and animal species, and prepare a Habitat Conservation Plan (HCP) for the southern portion of the County. VTA has about \$1.6 million left to spend on biological mitigation, including the HCP.

Measure B Fund Balance

Although the Measure B half-cent sales tax expired on March 30, 2006, the County's Measure B Fund had a cash balance of \$10,693,347 as of March 31, 2011. This does not include the quarterly distribution of \$159,262 that the State Board of Equalization (BOE) paid on March 25, 2011 and that the County posted to its financial system on April 4, 2011. The County continues to receive residual sales tax distributions as a result of amended merchant tax returns or audits of merchants conducted by the BOE. These funds are separate from VTA's Measure B funds, which are discussed in Section 2. VTA received a final payment to complete and closeout all remaining authorized MBTIP projects for which it was responsible, including the rail, highway and other projects mentioned above.

The portion of the County's Measure B Fund balance that remains committed to County Roads or administrative expenses is described below.

Signal Synchronization Program

With the exception of some minor clean-up, all signal synchronization projects have been completed, and only \$95,327 of Measure B funds remain committed to the Signal Synchronization Program.¹ If County Roads extends the contract associated with project number C3308 (Traffic Ops System and Traffic Camera Feeds) or otherwise expends the funds on system requirements, the entire remaining balance will be spent.

Level of Service Program

The Almaden Expressway project is underway, with an August 9, 2011 target date to award a construction contract, and an expected construction completion date of August 2012. All remaining Measure B funds committed to this project (\$4,076,817) are expected to be spent, along with the other half of project funding, which came from other sources. County Roads expects to seek bids for the Oregon-Page Mill Expressway project in August 2011, construction is expected to start in October 2011, and the project has an expected completion date of October 2012. A total of \$177,766 of Measure B funds remain committed to the Oregon-Page Mill Expressway project.² Additionally, \$87,218 of Measure B funds are not committed to a particular project but allocated to Program contingency. Taking into account all funds, the remaining balance of funds committed to the Level of Service Program is \$4,341,801.

Administrative Costs

Measure A included a specific provision that only 0.5 percent of Measure B funds could be used for staff salaries and administration, reserving 99.5 percent of the funds for project delivery. As of March 28, 2011, the County expended a total of \$6,490,526 on administrative costs, or 0.483 percent of the amount allowed. A balance of about \$232,723 remains for administrative costs before the 0.5 percent ceiling will be reached, though this balance will increase slightly as additional residual sales tax is received quarterly for the next five or more years.³ The County Executive's Office expects to spend the entire balance remaining between its administrative expenses and the financial audits that are required for Fiscal Years 2006-07 through 2010-11.

Available Funds

After taking into account remaining financial commitments, it is estimated that the Measure B surplus cash balance amounts to approximately \$6.2 million, as shown in Table 1.1 on the next page. Furthermore, the surplus will grow as additional residual tax distributions are received and interest accrues on those revenues.

¹ This includes \$1,709 that has been spent but not yet invoiced.

² This includes \$51,775 that has been spent but not yet invoiced.

³ As of March 2011, a total of \$1,344,649,843 in sales tax had been collected and paid.

Table 1.1
County of Santa Clara Measure B Fund
Commitments and Surplus

<u>Description</u>	<u>Amount</u>
<i>Remaining Measure B Funds:</i>	
Cash Balance as of March 31, 2011	\$10,693,347
FY 2010-11 2nd Quarter Distribution ¹	159,262
Total Funds	\$10,852,609
<i>Remaining Measure B Allocation:</i>	
Signal Synchronization Program	\$95,327
Level of Service Program	4,341,801
Administrative Costs ²	232,723
Total Allocation	\$4,669,851
Estimated Surplus Funds	\$6,182,758

Notes:

1. Paid on March 25, 2011 and posted on April 4, 2011.
2. Capped at 0.5 percent of cumulative sales tax revenues.

Use of Surplus Funds

Ballot Initiatives

The only restrictions placed on Measure B sales tax revenues were: (1) the tax was required to expire in nine years (i.e., March 30, 2006); and (2) an independent Citizens Watchdog Committee composed of private citizens was required to be established to review all expenditures, provide public hearings and reports, conduct annual independent audits, and publish results of the audits and annual reports. According to County Counsel, the County's surplus cash balance in the Measure B Fund may be used for general County purposes, but any expenditure of these funds would be subject to the oversight of the Citizen's Watchdog Committee. This opinion is consistent with the definition of a general tax in Article 13C Section 1 of the State Constitution, which states a "general tax means any tax imposed for general governmental purposes." However, there may be an expectation among taxpayers that surplus Measure B funds should continue to be expended on transportation projects similar to those in Measure A.

Since Measure A was specifically an advisory measure, it does not bind the Board of Supervisors in any way as to how the general tax revenue raised under Measure B must be spent, particularly the surplus portion in excess of all specified and ancillary projects. MBTIP policies adopted by the Board state, "The Measure B Transportation Improvement Program should closely adhere to the Measure A ballot measure list of projects, and is not intended to imply a new list of

projects.”⁴ The Board agreed to use Measure B sales tax revenue to fund the package of projects outlined in Measure A, but those projects are nearly all complete and are fully funded.

Completion Agreement

In June 2007, after the sales tax expired, the County and VTA entered into a “Completion Agreement”, otherwise known as *Amendment 20* to the *Master Agreement* (Appendix D), which required, in relevant part:

1. The County to make a fixed and final payment to VTA of \$51.2 million to complete all the MBTIP projects;
2. VTA to apply additional savings and/or residual sales tax revenues to a set priority list, including advancing \$1.5 million to County Roads for expressway projects.

Because some closeout challenges remain on a few MBTIP projects, staff have not recommended advancing any of the priorities enumerated in *Amendment 20*. County Roads staff indicated they would like to receive the \$1.5 million from VTA as soon as possible, so that they can apply these funds to a Level of Service project in the City of Santa Clara, which will be matched with developer impact fees, and leverage another \$1.2 million in VTA’s Local Program Reserve. According to County Roads, they are working against a five-year sunset date for use of the fees. Section 2 further discusses VTA’s available balance of Measure B funds and applying these funds to the priority list.

Although the agreement specified how the VTA should dispose of surplus funds, it is silent regarding the County’s use of surplus funds, and the text of Measure B does not restrict the County’s use of these funds.

General Fund Deficit

The General Fund has had a significant cash flow problem in FY 2010-11 and is facing a significant deficit in FY 2011-12. The County Executive has recommended reducing the County’s FY 2011-12 budget by approximately \$220 million, with further reductions expected in the coming months in response to cuts by the State and federal government. The reductions that the State has already enacted will likely require the County to reduce its FY 2011-12 budget by an additional \$35 to \$40 million.

In contrast, based on the County’s FY 2009-10 financial statements, County Roads had \$45.2 million in unrestricted cash as of June 30, 2010. While a portion of these funds was reserved for encumbrances or other expenses, approximately \$5.1 million was unreserved but designed for future expenditures, and \$33.2 million was unreserved and available for appropriation. This cash reserve exists as an emergency fund in the event of revenue shortfalls or natural disasters. Staff with the Department reported spending more than \$20 million of cash reserves in just a three-year period to repair storm damage on highways, and recognize the potential for more frequent,

⁴ Refer to the Measure A/B Ballot Language, Resolution adopted by the Board on May 11, 1999, to restrict use of Measure B funds and the *Base Case Plan*.

more common and more intense flooding based on multi-agency government climate studies. To prepare for these extreme weather events, they believe that it is most prudent to build and maintain a conservative cash reserve. Their fiscal management strategy also takes into account the instability of California's fiscal condition, as the State Legislature has in the past proposed eliminating and has in practice delayed payment to the County of the State gas tax, which currently provides 90 percent of the Department's operating revenue. They believe a conservative cash reserve is essential to maintain cash flow and a positive cash balance to avoid disrupting or curtailing basic operations; without this contingency fund, County Roads would be forced to discontinue road maintenance should the State eliminate or defer gas tax payments for any significant amount of time.

Considering that the intent of Measure A has been met, and all Measure B funds that are neither committed to County Roads nor required for remaining administrative expenses may be expended on any legal County purpose, the Board of Supervisors should authorize the transfer of the estimated \$6.2 million of surplus funds in the Measure B Fund to the General Fund for use on one-time general County purposes, as determined by the Board. This would enable the County to fund high priority public safety, health and human services in FY 2011-12.

Reporting Requirements

The "Completion Agreement" also requires that VTA provide periodic reports, including monthly invoices, as long as Measure B funds remain unexpended. At this point, VTA feels that the effort and cost involved in continuing monthly invoices and other reports to the County for several more years is significant compared to the low level of efforts being undertaken on the projects themselves. Management Audit staff agree and recommend that the County Executive's Office allow VTA to provide invoices, with the exception of final invoices, and other reports on a quarterly or semi-annual basis.

CONCLUSION

Nearly all MBTIP projects have been completed and closed out, and all projects have been fully funded. While the County must reduce its FY 2011-12 budget by at least \$220 million, the Measure B Fund has an estimated \$6.2 million of surplus funds that may be used on any general County purpose. If the Board agrees that the intent of Measure A has been met and additional transportation projects should not be funded, all surplus funds in the Measure B Fund should be transferred to the General Fund for use on one-time general County purposes. This would enable the County to fund high priority public safety, health and human services in FY 2011-12.

RECOMMENDATIONS

The Board of Supervisors should:

- 1.1 Authorize the transfer of the estimated \$6.2 million of surplus funds in the Measure B Fund to the General Fund for use on one-time general County purposes, as determined by the Board. (Priority 1)

The County Executive's Office should:

- 1.2 Allow VTA to provide invoices, with the exception of final invoices, and other reports on a quarterly or semi-annual basis. (Priority 2)

SAVINGS AND BENEFITS

Implementing Recommendation 1.1 would enable the County to use \$6.2 million of surplus Measure B funds on one-time general County purposes, allowing the County to fund high priority public safety, health and human services in FY 2011-12. In addition, reducing the frequency of invoices and other reports required of VTA would also help minimize staff effort and cost, matching the low level of efforts being undertaken on the projects themselves.

Section 2. Residual Sales Tax Revenue Paid to VTA and Surplus Funds

Background

- The Measure B half-cent sales tax expired on March 30, 2006, but the County continues to receive residual sales tax distributions as a result of amended merchant tax returns or audits of merchants conducted by the State Board of Equalization (BOE). To date, the Measure B Transportation Improvement Program (MBTIP) has received \$8,929,966 in residual sales tax revenues, of which \$8,770,704 has been paid to the Santa Clara Valley Transportation Authority (VTA). As a result of this audit, the County has not paid the most recent residual sales tax distribution of \$159,262, which was received in March 2011 for FY 2010-11 second quarter collections. Residual sales tax distributions may continue quarterly for another five years or more, with the next distribution expected in June 2011.

Problem

- The County and VTA entered into a *Master Agreement* in 1999 that set forth the terms and conditions of the implementation and termination of the MBTIP. These terms were altered by a 2004 *Fund Swap Implementation Letter of Agreement (ILA)* that called for the County to use residual sales tax revenues to reimburse VTA a total of \$7.23 million for highway landscaping projects. In addition, a final amendment to the *Master Agreement*, identified as *Amendment 20* and executed in 2007, called for the County to pay VTA the “fixed and final” sum of \$51.2 million, which included \$4.14 million of residual sales tax revenues, to closeout all MBTIP projects for which it was responsible. Despite having negotiated a fixed and final payment in June 2007, the County continued to pay residual sales tax revenues collected through September 2010. Due to the size of these payments, VTA received \$1.54 million more than required by *Amendment 20* and *Fund Swap ILA 2004-01*. Moreover, the County failed to authorize the payment of residual sales tax revenues through budget appropriations as required by Government Code Section 29000 et seq.

Adverse Effect

- Because of ambiguity over the County’s obligation and authority to continue making residual sales tax payments to VTA, the County overpaid VTA by at least \$1.54 million, and perhaps by as much as \$4.07 million. If the County continues to turn over residual sales tax distributions to VTA for five or more years, an additional \$1 million or more in revenue could be paid to VTA without contractual or legal authority.

Recommendations and Savings/Benefits

- The County should negotiate a reimbursement from VTA for any overpayment that exceeded the County’s obligations, as well as retain the \$159,262 received for the second quarter of FY 2010-11 and any future residual sales tax distributions received from the BOE. Once the overpayment issue is resolved, VTA should be directed to apply surplus funds to the priorities outlined in *Amendment 20*, including paying up to \$1.5 million to the County Roads and Airports Department.

Background

The County of Santa Clara began collecting sales tax revenue as a result of a voter-approved ballot measure on April 1, 1997. The Measure B half-cent sales tax expired nine years later on March 30, 2006, but the County continues to receive residual sales tax distributions every three months as a result of amended merchant tax returns or audits of merchants conducted by the State Board of Equalization (BOE). To date, the Measure B Transportation Improvement Program (MBTIP) has received \$8,929,966 in residual sales tax revenues, of which \$8,770,704 has been paid to the Santa Clara Valley Transportation Authority (VTA). As will be discussed, as a result of this audit, the County has not paid the most recent residual sales tax distribution of \$159,262, which was received in March 2011 for FY 2010-11 second quarter collections (i.e., October through December).

According to Revenue and Taxation Code Sections 6736, 6738 and 6711¹, the BOE may continue to collect unpaid sales tax due under Measure B for at least 10 years after the expiration of the tax. Since the Measure B sales tax expired in March 2006, the County may continue to receive residual sales tax distributions quarterly for another five years or more, but the distributions would likely diminish over this time. The next quarterly distribution of residual sales tax should be paid in June 2011 for the third quarter ending March 31, 2011.

Contractual Agreements

As a result the companion advisory measure, Measure A, which specified that any new sales tax be spent on a specific package of County transportation improvements, the County adopted the *Blueprint for Delivery: Measure B Transportation Improvement Program*, which identified a framework for delivering the transportation improvements outlined in the advisory measure. This framework specified that the Board of Supervisors would retain program level responsibilities and authority, but that VTA, the County Roads and Airports Department (County Roads) and local cities would be responsible for project delivery.

Master Agreement

The County and VTA entered into a *Master Agreement* for implementing the MBTIP (Appendix C). The *Master Agreement*, which took effect July 1, 1999, governs the relationship between the County and VTA, sets forth the obligations and responsibilities of the parties regarding the implementation, management, and operation of the MBTIP's projects, and establishes the funding principles and procedures of the MBTIP. Under the terms of the *Master Agreement*, VTA assumed the role of the primary implementing agency delivering the rail and highway projects, and the County acted as the bank-funding source and project monitor, distributing sales tax revenues for project construction.

¹ Revenue and Taxation Code Section 6736 provides that the BOE may request that summary judgment be entered for any sales tax not paid, together with interest and penalty, within 10 years after the amount is due. Section 6738 provides that a judgment lien may be filed and continue for 10 years from the date of a filed judgment. Section 6711 provides that the BOE may bring a court action for any delinquent tax within three years after the tax is due, or within the period during which a lien is in force as the result of the recording of an abstract of the judgment under Section 6738.

Fund Swap Implementation Letter of Agreement 2004-01

The County also entered into six different agreements with VTA between FY 2000-01 and FY 2005-06 that permitted VTA to exchange Measure B sales tax revenue for other sources of federal and State categorical grant income and local restricted funds. These “swap agreements” provided VTA with the ability to maximize spending flexibility, expedite capital projects, and avoid more stringent federal and State design and construction review requirements on numerous smaller projects.

Fund Swap Implementation Letter of Agreement (ILA) 2004-01 provided that VTA would swap \$22.5 million in STIP funding for the Route 237/880 Stage C project in exchange for an equal amount of Measure B funding to be returned to VTA (Appendix D). Additionally, the agreement provided for Measure B to reimburse VTA \$7.23 million for future costs incurred for highway landscaping projects after the tax expires in the third quarter of FY 2005-06. The letter lays out an installment payment schedule for transferring the total amount of \$29,730,000, including the last two payments totaling \$7.23 million that were to be made using residual sales tax revenues collected after the tax expired on March 30, 2006.² The letter clearly and unambiguously caps the amount to be reimbursed to VTA for future costs incurred for highway landscaping projects at \$7.23 million.

Amendment 20

On June 26, 2007, the County executed *Amendment 20* to the *Master Agreement* (Appendix E). This “Completion Agreement” amends the Article X Termination section of the *Master Agreement* by adding subdivisions (j), (k), (l), (m), and (n). It does not amend or omit any other sections in the *Master Agreement*, so all other sections, including subdivisions (a) through (i), remain intact as originally executed in July 1999. Consequently, Article X continues to provide that either party may terminate the agreement without cause by giving advance written notice to the other party at least 120 days in advance of the last day of the County’s fiscal year.³ According to subdivision (c), upon termination of the Master Agreement, any unencumbered Measure B funds remaining with VTA shall be promptly released or reimbursed to the County Measure B Fund.

The purpose of *Amendment 20* was to “allow the MBTIP to closeout at a fixed cost all projects and programs implemented by VTA”.⁴ According to the January 23, 2007 Transmittal provided to the Board when it delegated authority to the County Executive to execute *Amendment 20*, Measure B staff worked with VTA staff to develop final payment amounts, including a lump sum of \$4.0 million attributable to any and all potential future costs or claims. *Amendment 20* was intended to be the final amendment and provided for both a “fixed and final payment” and a method to achieve final closure by reasonably sharing the risks of project completion.

² The first payment of \$5.0 million was to take place in January 2007, and the second payment of \$2.23 million was to take place in July 2007.

³ The County is also authorized to terminate the *Master Agreement* upon the occurrence of a material breach by VTA, in which case the County must give 60 days prior notice.

⁴ January 23, 2007 Transmittal to the Board of Supervisors, Agenda Item No. 40, p. 2.

Section 2. Residual Sales Tax Revenue Paid to VTA and Surplus Funds

VTA's obligations under *Amendment 20* included paying for completion of highway landscaping projects previously identified in *Fund Swap ILA 2004-01*. According to Attachment F to the January 23, 2007 Transmittal, the amendment's "proposed significant terms" included the following:

Swap Fund Implementation Letter 2004-01 will be revised to eliminate the last two payment installments, and in exchange all residual sales tax collected, after a date to be specified with Amendment 20, will be forwarded by the County, as received, to VTA in consideration for VTA assuming the financial risk for the \$7.23 million of highway landscaping projects identified in that Implementation Letter.

However, since neither the County Executive's Office nor VTA was able to produce a revised version of *Fund Swap ILA 2004-01*, the original letter signed by both parties on October 6, 2004 remains the controlling agreement, and the County's obligation for highway landscaping projects cannot exceed the \$7.23 million cap.

Ambiguity Regarding Residual Sales Tax Distributions

While Attachment F to the January 23, 2007 Transmittal discussed "proposed" terms of *Amendment 20*, the actual terms of *Amendment 20*, which was executed some five months later on June 26, 2007, did not discuss any revision to *Fund Swap ILA 2004-01* and, in fact, no revision to the letter was made. Rather, *Amendment 20* states in section (j) that the County shall pay to VTA a "Final Payment" in the sum of \$51,217,102.66 comprised of the following elements:

- (i) Approved budgets for all MBTIP projects implemented by VTA, including all rail, highway and fund swap projects, including *Fund Swap ILA 2004-01*, and ancillary programs;
- (ii) A lump sum of \$4,000,000 to pay for any and all claims, expenses, costs, damages, or liability, whether known or unknown, anticipated or unanticipated, associated with any MBTIP projects for which VTA is responsible;
- (iii) All Measure B residual sales tax revenue collected through the date of execution of the amendment (June 26, 2007) for the period beginning April 1, 2006; and
- (iv) An interest adjustment related to other swaps.

Some ambiguity has arisen due to the language of section (j)(iii), which provides:

All MBTIP residual sales tax revenue collected through the date of execution of this Amendment [June 26, 2007] for the period beginning April 1, 2006. Said residual sales tax revenues received between June 1, 2006, and March 31, 2007, are further detailed in Attachment A-10: Residual Sales Tax to this Amendment

Section 2. Residual Sales Tax Revenue Paid to VTA and Surplus Funds

and included in the Final Payment. Future residual sales tax revenues shall be paid to VTA within 15 days of receipt by the County.

Final Payment

As detailed in Attachment A-10 of *Amendment 20* and summarized in Table 2.1 below, the final payment included residual sales tax amounting to approximately \$4.14 million, comprised of revenues received between April 1, 2006 and March 31, 2007. This represented collections through December 31, 2006, since there is a three-month delay between when revenues are collected by the BOE and received by the County. As a result, collections between January 1, 2007 and June 26, 2007 were not received by the County until June and September 2007.

Table 2.1
Residual Tax Revenues Paid to the
Santa Clara Valley Transportation Authority

<u>Description</u>	<u>Amount</u>
<i>Paid as Part of the Final Payment:</i>	
June 2006 Advance	\$1,051,300
July 2006 Advance	1,051,300
August 2006 Advance	1,401,700
September 2006 Net Settlement	-
December 2006 Net Settlement	-
March 2007 Settlement	632,581
Total as of March 2007	\$4,136,881
Over (Under) \$7.23 million Fund Swap	(\$3,093,119)
 <i>Paid After the Final Payment for Collections During the Last Two Quarters of FY 2006-07:</i>	
FY 2006-07 Quarter 3 (January to March)	\$203,462
FY 2006-07 Quarter 4 (April to June)	364,549
Total as of September 2007	\$4,704,891
Over (Under) \$7.23 million Fund Swap	(\$2,525,109)
 <i>Paid After the Final Payment for Collections from FY 2007-08 through September 2010:</i>	
FY 2007-08 Total	\$2,656,516
FY 2008-09 Total	408,357
FY 2009-10 Total	786,414
FY 2010-11 Quarter 1 (July to September)	214,525
Total as of September 2010	\$8,770,704
Over (Under) \$7.23 million Fund Swap	\$1,540,704

The plain language of section (j) of *Amendment 20* provides that the County's final payment to VTA of \$51.2 million is capped at the amounts specified in the four following subsections (i.e., subsections (i), (ii), (iii), and (iv)), and subsection (iii) states that "[a]ll MBTIP residual sales tax revenue collected through the date of execution of [*Amendment 20*]..." is subsumed in that total sum. Therefore, it would be reasonable for the County to interpret its obligation under

Section 2. Residual Sales Tax Revenue Paid to VTA and Surplus Funds

Amendment 20 to have been satisfied once it paid the \$51.2 million final payment and all residual sales tax revenues collected through June 26, 2007, the date of execution of *Amendment 20*. This reasonable interpretation would have required the County to pay to VTA only residual sales tax revenue collected by the BOE through the end of FY 2006-07, or a total of \$4.70 million, as shown in Table 2.1.

Since this amount would have fallen \$2.53 million short of the \$7.23 million agreed upon in *Fund Swap ILA 2004-01*, the County interpreted the last line of section (j) (iii) to mean that it should continue to pay residual sales tax revenues to VTA beyond what was collected through the amendment's date of execution. However, the County continued to transfer residual sales tax payments not only beyond the date of execution of the amendment, but also beyond the \$7.23 million agreed to in *Fund Swap ILA 2004-01*. Most recently, the County paid \$214,525 to VTA for residual tax revenues received in December 2010 (for FY 2010-11 first quarter collections), bringing total residual sales tax payments made to VTA to \$8.77 million, or \$4.07 million beyond what was reasonably required by subsection (j) (iii) of *Amendment 20*, and \$1.54 million more than the \$7.23 million cap agreed to for highway landscaping projects.

On March 25, 2011, the BOE paid another \$159,262 to the County for FY 2010-11 second quarter collections of residual sales tax. However, when Management Audit staff informed County staff of the probable overpayment of residual sales tax revenues to VTA, the County Executive's Office agreed to hold onto that distribution and not forward it to VTA until the County's legal obligations were more clearly determined.

Budget Appropriation

The County also has failed to authorize the payment of additional residual sales tax revenues through budget appropriations as required by Government Code Section 29000 et seq. In particular, Government Code Section 29120 provides that the County Board of Supervisors "is limited in the incurring or paying of obligations to the amounts of the appropriations allowed by the budget as originally adopted or as thereafter revised by addition, cancellation or transfer." Since the Board has not approved any appropriation of residual sales tax revenues it has received from the BOE, payments made subsequent to the \$4.14 million included in the final payment were unauthorized. The County Executive's Office should budget and forward to the Board for its approval any future payments of Measure B residual sales tax revenue.

The County's Obligations to Pay Residual Sales Tax

Based on the agreements entered into between the County and VTA, the County has exceeded its obligation under *Amendment 20* and overpaid VTA by at least \$1.54 million, and perhaps by as much as \$4.07 million. The clear language of *Fund Swap ILA 2004-01* caps residual sales tax payments for highway landscaping costs at \$7.23 million, and the January 23, 2007 Transmittal indicates that the \$51.2 million payment from the County to VTA (which comprised all Fund Swap payments, including the \$7.23 million for landscaping) was intended to be a "fixed and final payment".

Moreover, the first line of section (j) (iii) of *Amendment 20* unambiguously provides that only those residual sales tax revenues collected through the date of execution of the amendment (June

Section 2. Residual Sales Tax Revenue Paid to VTA and Surplus Funds

26, 2007) for the period beginning April 1, 2006 were to be paid to VTA. The section also specifies that residual sales tax payments received between June 1, 2006, and March 31, 2007 (for amounts collected between April 1, 2006 through December 31, 2006) were already accounted for. The “future residual sales tax revenues” in the last line thus refers to those residual sales tax revenues received between April 1, 2007 and September 30, 2007 due to the three-month delay between collections and distribution. In any event, in construing the meaning of these contractual terms, the very specific language in the beginning of the paragraph clearly limiting payments to residual sales tax revenues collected through June 26, 2007 should control over the more general language of the last line, which refers vaguely to “future residual sales tax revenues” with no stated endpoint.

Given that residual sales tax revenues collected through the end of FY 2006-07 fell short of the \$7.23 million agreed to in *Fund Swap ILA 2004-01*, it could be argued that it was appropriate for the County to continue paying residual sales tax revenues until the cost of highway landscaping was paid in full. However, continuing to pay residual sales tax revenues beyond the \$7.23 million contradicts the purpose of the “fixed and final payment” established by *Amendment 20*.

The County Executive’s Office should work with County Counsel to determine the limit of the County’s obligation to forward residual sales tax revenues to VTA under the terms of the *Master Agreement, Amendment 20, Fund Swap ILA 2004-01* and statutory law. Depending on the outcome of this determination, the County Executive’s Office should negotiate a reimbursement from VTA for any overpayment of residual sales tax revenues. Until these recommendations have been implemented, the County Executive’s Office should retain the \$159,262 received for the second quarter of FY 2010-11 and any future residual sales tax distributions received from the BOE. In addition, pursuant to recommendations in Section 1, residual surplus monies should be transferred to the General Fund for appropriation by the Board of Supervisors.

VTA’s Obligations Regarding Surplus Funds

In its December 2010 Progress Report, VTA acknowledged that residual sales tax revenues were to be forwarded from the County to VTA “up to a total value” of \$7.23 million and that revenues received in excess of \$7.23 million should be spent on the priorities listed in section (n) of *Amendment 20*. Consequently, if VTA is permitted to keep the additional \$1.54 million to \$4.07 million received to date, VTA would be required to apply the additional revenue and any other surplus funds to the following priority list:

1. Reimburse VTA the amount of \$1.05 million, representing one-half of the difference between the actual and estimated VTA indirect costs of non-rail MBTIP projects, as approved in *Amendment 18* to the *Master Agreement*.
2. Pay to County Roads the amount of \$1.5 million to be utilized for County expressway projects at the sole discretion of the County Board of Supervisors.
3. Reimburse VTA the amount of \$1.05 million, representing one-half of the difference between the actual and estimated VTA indirect costs of non-rail MBTIP projects, as approved in *Amendment 18* to the *Master Agreement*.

Section 2. Residual Sales Tax Revenue Paid to VTA and Surplus Funds

4. Fund additional Caltrain projects and/or Pavement Management Projects at the sole discretion of the VTA Board of Directors.

VTA's bank account for Measure B funds had an ending balance of \$11,309,490 as of December 31, 2010. As discussed in Section 1, only one rail project and three highway projects remain open, and while about \$1.75 million is still allocated to these projects, VTA expects final expenditures on these projects to be minimal. The only remaining activities are right-of-way transfers, which should be resolved at low or no cost. VTA also has about \$297,000 left to spend on bicycle paths and \$1.6 million left to spend on biological mitigation, including the Habitat Conservation Plan. Finally, VTA is in the process of resolving outstanding litigation and has \$2.4 million remaining in closeout funds to pay for "any and all claims, expenses, costs, damages or liability". As a result, as shown in Table 2.2, Management Audit staff conservatively estimate that approximately \$5.5 million is available.

Table 2.2

**Santa Clara Valley Transportation Authority Measure B Fund
Commitments and Surplus**

<u>Description</u>	<u>Amount</u>
<i>Remaining Measure B Funds:</i>	
Cash Balance as of December 31, 2010	\$11,309,490
Residual Sales Tax Paid in January 2011	214,525
Total Funds	\$11,524,015
 <i>Remaining Measure B Allocation:</i>	
Rail Projects	\$1,318,000
Highway Projects	432,000
Bicycle Paths	297,000
Biological Mitigation	1,593,000
Closeout Funds	2,400,000
Total Allocation	\$6,040,000
 Estimated Surplus Funds	 \$5,484,015

Since nearly all MBTIP projects have been completed, as discussed in Section 1, the County Executive's Office should direct VTA to apply surplus funds to the priorities outlined in *Amendment 20* once the overpayment issue is resolved. If the County is refunded the \$1.54 million that was paid in excess of the \$7.23 million fund swap, approximately \$3.94 million could be applied to the priority list, including \$1.5 million to County Roads. Staff with County Roads indicated they would like to receive the \$1.5 million from VTA as soon as possible, so that they can apply these funds to a Level of Service project in the City of Santa Clara, which will be matched with developer impact fees, and leverage another \$1.2 million in VTA's Local Program Reserve. According to County Roads, they are working against a five-year sunset date for use of the fees.

CONCLUSION

Although the County entered into a “Completion Agreement”, otherwise known as *Amendment 20*, with VTA to closeout and settle all previously approved MBTIP projects for a fixed and final payment of \$51.2 million, which included a set amount of residual sales tax distributions to pay for highway landscaping projects, the County exceeded its obligation under the agreement by at least \$1.54 million, and perhaps by as much as \$4.07 million. The County may continue to receive residual sales tax distributions from the BOE for another five years or more. The County should not forward anymore residual sales tax payments to VTA, and negotiate with VTA to obtain reimbursement for any overpayment. Any surplus funds should be applied to the priorities set out in *Amendment 20*.

RECOMMENDATIONS

The County Executive’s Office should:

- 2.1 Budget and forward to the Board for its approval any future payments of Measure B residual sales tax revenue. (Priority 1)
- 2.2 Work with County Counsel to determine the limit of the County’s obligation to forward residual sales tax revenues to VTA under the terms of the *Master Agreement, Amendment 20, Fund Swap ILA 2004-01* and statutory law. (Priority 1)
- 2.3 Negotiate with VTA to obtain a reimbursement for any overpayment of residual sales tax revenues and to apply surplus funds to the priorities outlined in *Amendment 20*. As shown in Table 2.2, approximately \$5.5 million is available for these purposes. (Priority 1)
- 2.4 Retain the \$159,262 residual sales tax distribution received for the second quarter of FY 2010-11 and any future residual sales tax distributions received from the BOE until the recommendations above have been implemented. Pursuant to Recommendation 1.1, residual surplus monies should be transferred to the General Fund for appropriation by the Board of Supervisors. (Priority 1)

SAVINGS AND BENEFITS

Implementing these recommendations would allow the County to properly appropriate residual sales tax revenue and recover between \$1.54 and \$4.07 million that has been overpaid to VTA. Although expected to diminish over time, residual sales taxes distributions from the BOE may continue until March 2016 or later, and the County could receive an additional \$1 million or more in residual sales tax that would be available for general County purposes or other transportation improvements, as determined by the Board of Supervisors.

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Complete Ballot Text of Measure A

This measure is NOT a tax. It is an advisory measure that states Santa Clara County voters' intent that any new sales tax funds be spent on the following transportation improvements:

PROJECT PACKAGE:

- **Maintaining Streets and Filling Potholes:** Improving local streets and filling potholes in all fifteen cities and on county roads and expressways by funding greatly needed street maintenance and repair.
- **Santa Clara County connection to BART:** Connecting Santa Clara County to BART by adding a CalTrain-type rail line on the UP tracks between downtown San Jose, through east San Jose and Milpitas, and up to the BART system in Alameda County for weekday service.
- **Traffic Signal Synchronization:** Improving the signal timing on all eight county expressways - Almaden, Capitol, Central, Foothill, Lawrence, Montague, Oregon, and San Tomas.
- **Tasman East Light Rail Line:** Extending the current Light Rail system to Milpitas and Northeast San Jose.
- **Highway 880:** Widening Highway 880, to a total of three lanes in each direction, from Highway 237 in Milpitas to Highway 101 in San Jose.
- **Interchange Improvements:** Improving key interchanges at 237/880 in Milpitas, 85/101 in Mountain View, 85/87 in the Almaden Valley of San Jose and 85/101 near Bernal Road in South San Jose.
- **Transit Service for Seniors and the Disabled:** Providing improved transit service for seniors and the disabled by purchasing low floor vehicles for all future light rail lines.
- **Safety Improvements:** Preventing head-on collisions by placing a safety barrier in the Highway 85 median, and building additional truck climbing lanes and pull-outs on Highway 152 over the Pacheco Pass.
- **CalTrain Improvements from San Jose North:** Improving CalTrain commuter rail service by adding trains and improving facilities from San Jose to Palo Alto
- **Highway 101:** Widening Highway 101, from Bernal Road in South San Jose to Cochrane Road in North Morgan Hill, from two to three lanes in each direction.
- **CalTrain Improvements between Gilroy and San Jose:** Improving CalTrain rail service by adding trains and improving facilities between Gilroy and San Jose.
- **Highway 17:** Widening Highway 17 and improving key interchanges between Lark Avenue in Los Gatos and Highway 280 in San Jose.

- Capitol Light Rail Line: Building the Capitol Light Rail line from northeast San Jose - the connection to the Tasman line - down Captiol Avenue through east San Jose to the Alum Rock area, with eventual service to Eastridge.
- Highway 87: Widening Highway 87 from two to three lanes in each direction from Highway 85 to San Jose Arena/CalTrain station and on to downtown Campbell, with eventual service to Los Gatos.
- Bicycle Facilities: Improving bicycle facilities throughout the county to improve safety and eliminate key gaps in the county wide bicycle network.

In addition, local decision-makers should aggressively pursue other regional, state and federal funds to leverage local funds so that traffic relief and mobility projects can be delivered more quickly, and build additional transportation and rail transit improvements that are needed to serve Santa Clara County.

Finally, this measure calls for the following accountability provisions:

Only 0.5 percent of the funds can be used for staff salaries and administration, reserving 99.5 percent of the funds for project delivery.

All projects can be implemented within nine years.

Complete Ballot Text of Measure B

This measure authorizes the enactment of a 1/2 cent retail transaction and use (sales) tax for general county purposes with the following mandatory restrictions:

- **The tax must expire in nine years.**
If approved by the voters, this half-cent sales tax must expire within nine years. The tax will be imposed for the period commencing April 1, 1997 and terminating March 30, 2006. The length of this tax cannot be extended without a vote - and the approval - of the residents of Santa Clara County.
- **An independent Citizens Watchdog Committee must review all expenditures. Responsibilities of the Committee:**
 - Public hearings and reports: The Committee must hold public hearings and issue reports on at least an annual basis to inform Santa Clara County residents how the funds are being spent. The hearings must be held in full compliance with the Brown Act, California's open meeting law, with information announcing the hearings well-publicized and posted in advance.
 - Annual Independent Audits: The Committee must contract with an Independent Auditor on an annual basis to ensure tax dollars are being spent wisely.
 - Published Results of Audits and Annual Reports: The Committee must publish the results of the Independent Audit and the Annual Report in local newspapers. In addition, copies of these documents must be made available to the public at-large.
- **The Independent Citizens Watchdog Committee must consist of private citizens, not elected officials.**

Selection Process: To ensure that members of the Citizens Watchdog Committee are independent the selection process will be conducted with the help of the League of Women Voters and the County Grand Jury.

Term Limits: To ensure that citizens from throughout the county have an opportunity to serve on the independent Citizens Watchdog Committee, the at-large members will be limited to single two-year term.

Membership: The independent Citizens Watchdog Committee will consist of 17 private citizens from throughout Santa Clara County. Ten members will be selected at-large from throughout the county to ensure geographic balance, with two of the ten members residing in each of the five Supervisorial districts.

- District 1: Gilroy, Los Gatos, Monte Sereno, Morgan Hill, south San Jose
- District 2: Downtown San Jose, east San Jose, Willow Glen
- District 3: Milpitas, portions of northeast, east and southeast San Jose, portions of Sunnyvale
- District 4: Campbell, west San Jose, Cambrian and Santa Clara

- District 5: Cupertino, Los Altos, Los Altos Hills, Palo Alto, Mountain View, Saratoga, Stanford and portions of Sunnyvale

Seven Members will be selected to reflect a balance of viewpoints across the county:

- A representative from the California Taxpayers Association
- A representative from the San Jose Metropolitan Chamber of Commerce
- A representative from the Sierra Club
- A representative from the South Bay Labor Council
- A representative from the Santa Clara Valley Manufacturing Group
- A representative from the Greenbelt Alliance
- A representative from the Building and Construction Trades Council

The seventeen members must provide a balance of viewpoints, geography, age, gender and ethnicity to represent the different perspectives of taxpayers throughout Santa Clara County.

Eligibility: The members must be private citizens who live or work in Santa Clara County. No elected city, county, special district, state or federal public office holder will be eligible to serve as a member of the Citizens Watchdog Committee.

MASTER AGREEMENT

BETWEEN THE

COUNTY OF SANTA CLARA

AND THE

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

FOR THE IMPLEMENTATION OF THE

**SANTA CLARA COUNTY MEASURE B TRANSPORTATION
IMPROVEMENT PROGRAM**

EFFECTIVE DATE: July 1, 1999

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TABLE OF ATTACHMENTS

ATTACHMENT A	Form of Monthly Billing and Reconciliation Statement
ATTACHMENT B	Form of Quarterly Report
ATTACHMENT C	Baseline Scopes*
ATTACHMENT D	Baseline Schedules*
ATTACHMENT E	Baseline Cost Estimates*
ATTACHMENT F	Memorandum of Understanding
ATTACHMENT G	Base Case Implementation Plan
ATTACHMENT H	Current Revenue and Expenditure Plan**
ATTACHMENT I	Streamlined Arbitration Rules and Procedures
ATTACHMENT J	Comprehensive Arbitration Rules and Procedures

* - Sample form and content. Actual Baseline Scope, Baseline Schedule and Baseline Cost Estimate to be attached for current PROJECT.

** - To be updated annually.

**MASTER AGREEMENT (AGREEMENT)
BETWEEN THE
COUNTY OF SANTA CLARA (COUNTY)
AND THE
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA)
FOR THE IMPLEMENTATION OF THE SANTA CLARA COUNTY MEASURE B
TRANSPORTATION IMPROVEMENT PROGRAM**

EFFECTIVE DATE OF AGREEMENT: July 1, 1999

FUND AUTHORIZATIONS:

<u>FUND SOURCE*</u>	<u>AMOUNT*</u>	<u>FISCAL YEAR*</u>
MEASURE B	\$292,570,000	2000

* - To be updated annually.

This AGREEMENT shall be effective as of July 1, 1999 and is entered into by the **County of Santa Clara ("COUNTY")** and the **Santa Clara Valley Transportation Authority ("VTA")**. VTA has the authority to agree and has agreed to the provisions contained herein, including all ATTACHMENTS and Addenda (the "Provisions"), as a condition of its receipt and acceptance of funds transferred from COUNTY pursuant to the terms and condition of this AGREEMENT.

RECITALS

A. On November 5, 1996, the voters of Santa Clara County approved Measure A, an advisory vote concerning the expenditure of new COUNTY sales tax revenues approved by the voters. The purpose of Measure A was to indicate the general opinion of COUNTY voters as to whether new sales tax revenues should be used for certain transportation projects listed in the measure; whether those projects should be implemented in nine years; and whether the administrative expenses incurred in completing the improvements identified in the measure should be limited to one half of one percent of the sales tax revenues:

B. On November 5, 1996, the voters of Santa Clara County approved Measure B, a countywide measure to authorize a one half cent sales tax as a general tax, to become effective on April 1, 1997. Pursuant to the provisions of Measure B, the sales tax is to be used for general COUNTY purposes, including any legal governmental purpose without restriction, and COUNTY is not in any way legally bound to use the tax proceeds for any special purpose or for any particular project or projects:

C. Measure B contains three mandatory restrictions: (i) the tax must expire after nine years, the voters approving the imposition of the tax for a period commencing April 1, 1997 and terminating March 31, 2006; (ii) a "Citizen's Watchdog Committee" ("CWC") the members of which cannot be elected officials, is created to conduct public hearings and a yearly audit of the expenditure of the sales tax; and (iii) COUNTY shall cooperate with the CWC in the completion of audits; which audits conducted by the CWC must be reported to the public and published in local newspapers:

D. In September 1998, the Board of Supervisors of COUNTY authorized the development of a Base Case Implementation Plan to determine the scope, budget and timeline for each Measure A Project and Measure A Program:

E. The Draft Base Case Implementation Plan was referred to VTA, and was presented to the Board of Supervisors on May 11, 1999, the cities, and to the public through a series of community workshops and meetings, and to the Board of Supervisors and the Board of Directors of VTA at a Joint Workshop on May 19, 1999:

F. On January 7, 1999, COUNTY and VTA entered into a non-binding Memorandum of Understanding (the "MOU"), a copy of which is attached to this AGREEMENT as ATTACHMENT F, and incorporated by this reference, pursuant to which the parties agreed to cooperate in good faith in the implementation of transportation projects funded by COUNTY, to establish joint staff

committees to address management and technical issues; to cooperate in the development of the Revenue and Expenditure Plan, to consider interim funding actions to facilitate Project development pending the completion of the Revenue and Expenditure Plan; and to fund projects through program and project grant agreements;

G. COUNTY and VTA developed a joint proposal which was approved by the Board of Directors on June 23, 1999 and approved by Board of Supervisors on June 29, 1999:

H. COUNTY and VTA desire to enter into this AGREEMENT in order to set forth the terms, conditions and requirements under which the MBTIP shall be administered by VTA.

The parties hereto therefore agree as follows:

AGREEMENT

ARTICLE I. DEFINITIONS

The terms defined in this Article I shall for all purposes of this AGREEMENT have the meanings specified herein.

"AGREEMENT" shall mean this AGREEMENT whereby COUNTY transfers responsibility for operating, administering, and implementing the MBTIP to VTA, including all applicable cost controls established hereunder.

"Base Case Implementation Plan" or "BCIP" shall mean the document that is the first step in achieving a concise MBTIP definition, by building on the list of PROJECTS in Measure A. The BCIP adheres closely to the ballot Measure list of PROJECTS. Each PROJECT in the BCIP is defined in terms of scope, budget and timing to ensure that PROJECTS are delivered. In addition to scope, schedule and budget, the BCIP also makes recommendations regarding implementation policies, forecasted revenues, expenditures and cashflow.

"Baseline Cost Estimate" or "BCE" shall mean a detailed cost estimate for the activities comprising each PROJECT, and is derived from cost estimates of individual contracts that comprise each PROJECT and reflects appropriate escalations to estimated year of expenditure dollars.

"Baseline Schedule" shall mean a schedule for each PROJECT that demonstrates how VTA intends to implement each PROJECT and achieve the In-Service Date.

"Baseline Scope" shall mean the scope for each PROJECT as defined by the Project Report or Preliminary Engineering, whichever is appropriate.

"Board of Directors" shall mean the duly appointed and serving Board of Directors of VTA.

"Board of Supervisors" shall mean the duly elected and serving board of supervisors of COUNTY.

"Business Day" shall mean Monday through Friday, excluding any holiday observed by County.

"City" shall mean the city in which a PROJECT is located.

"COUNTY" shall mean the County of Santa Clara.

"CWC" shall mean the Citizens Watchdog Committee none of the members of which is an elected official, and which conducts public hearings and a yearly audit of the expenditure of the sales tax.

"Direct Costs" shall mean, in general, those costs that can be identified specifically with a particular final cost objective. Typical Direct Costs are:

- (a) Contractor billings for professional services such as design, engineering and construction management;
- (b) Contractor billings for construction;
- (c) Compensation of employees for the time devoted and identified specifically to the development of the MBTIP Projects;
- (d) Cost of materials acquired, consumed, or expended specifically for the purpose of those awards;
- (e) Equipment and other approved capital expenditures;

"Effective Date" shall mean the date set forth on the first page of this AGREEMENT.

"Encumber" shall mean legally or contractually obligated to pay.

"Indirect Costs" shall mean those costs incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Typical Indirect Costs are those costs that do not change with the addition of a new activity such as accounting services and existing facilities.

"In-Service Date" shall mean the date in which a project opens for revenue service, or in the case of roadway projects, the date in which each PROJECT opens for traffic.

"Light Rail Program Reserve" shall mean a reserve of \$49 million established by the Base Case Implementation Plan. Funds are available, subject to approval by the Board of Supervisors, to meet unforeseen costs for any of the three Measure A light rail projects.

"MBTIP" shall mean Measure B Transportation Improvement Program.

"MBTIP Documents" shall mean this Agreement, the Base Case Implementation Plan, and the Revenue and Expenditure Plan.

"Measure A" shall mean the advisory measure approved by the voters of Santa Clara County on November 5, 1996 concerning the expenditure of new COUNTY sales tax revenues.

"Measure B" shall mean the countywide measure to authorize a one-half cent sales tax as a general tax approved by the voters of Santa Clara County on November 5, 1996.

"Measure B Fund" is a fund that consists of all Measure B sales tax receipts and interest earnings received by COUNTY since inception of Measure B that have been deposited into a segregated COUNTY account.

"MOU" shall mean the Memorandum of Understanding entered into by COUNTY and VTA by which the parties agreed to cooperate in good faith in the implementation of transportation PROJECTS funded by COUNTY, to establish joint staff committees to address management and technical issues, to cooperate in the development of the Revenue and Expenditure Plan, to consider interim funding actions to facilitate PROJECT development pending the completion of the Revenue and Expenditure Plan, and to fund PROJECTS through Program and PROJECT grant agreements.

"Preliminary Engineering" shall mean those tasks (e.g. design and engineering) necessary to determine baseline scope, cost and schedule for a PROJECT.

"Program" shall mean a Measure B program described and defined in the MBTIP Documents.

"PROJECT" shall mean a Measure A project defined and described in the MBTIP Documents.

"Project Costs" shall mean any and all Direct Costs incurred from and after November 5, 1996 for any and all work needed for PROJECT completion, including without limitation project planning, environmental work, property acquisition and relocation costs, engineering costs, insurance costs, procurement costs and construction costs.

"Project Design, Construction and Procurement" shall mean all activities needed to satisfactorily complete each PROJECT including real property acquisition and relocation activities, environmental work, purchase of owner furnished equipment and civil and systems construction.

"Project Liaison" shall mean both the individual appointed by the General Manager of VTA and the individual appointed by COUNTY Executive to oversee all aspects of each PROJECT and to coordinate the activities of VTA and COUNTY in the prosecution of each PROJECT.

"Project Report" shall mean a report that contains feasibility studies of the needs, alternatives, costs, and overall impacts of a proposed highway PROJECT, and that includes an engineering decision document and the appropriate draft environmental document regarding the PROJECT.

"Project Study Report" shall mean a feasibility study to develop PROJECT concept and scope that is used to obtain conceptual approval before a more detailed study is performed.

"Revenue and Expenditure Plan" shall mean a plan which describes the Measure A PROJECT scope, schedule and budget, along with cash flow projections from the Measure B sales tax and other funding sources.

"State" shall mean the State of California.

"VTA" shall mean the Santa Clara Valley Transportation Authority, a public agency created by and organized pursuant to California Public Utilities Code Sections 100000 et seq.

"VTA LABOR" shall mean the standard cost by job classification which is calculated by determining the mean pay rate for incumbents within a job series and includes the costs of direct employee benefits.

ARTICLE II. PURPOSE OF THE AGREEMENT

Section 1. The purpose of this AGREEMENT is to:

- (a) Provide COUNTY financial assistance to VTA in the form of an appropriation and possible future appropriations for purposes consistent with the 1996 Measure A transportation ballot language;
- (b) To set forth the mutual understandings of, rights and obligations of, and conditions placed upon, the parties related to implementing PROJECTS, the future management and operation of PROJECTS and the manner in which each PROJECT, real property and equipment shall be used;
- (c) To establish the total anticipated COUNTY financial contribution to PROJECTS, and the manner in which all future County funds for PROJECTS, if any, shall be appropriated and released to VTA;
- (d) To establish VTA's financial commitment to PROJECTS, including its obligation to fund specified elements, and its obligation to complete each PROJECT; and
- (e) To facilitate timely and efficient management of PROJECTS.

ARTICLE III. FUNDING PRINCIPLES AND PROCEDURES

Section 1. INTENTION TO COMPLETE PROJECTS.

- (a) COUNTY. COUNTY intends to provide financial assistance in the actual amount of the cumulative receipts from the 1996 Measure B sales tax to complete the PROJECTS. COUNTY has no obligation, and does not intend, to make financial assistance available in

excess of the contribution to Measure B Sales tax receipts necessary to complete the PROJECTS.

- (b) VTA. VTA agrees to use its best efforts to complete the projects solely from the total anticipated COUNTY financial contribution. VTA agrees to contribute \$16.5 million in year of expenditure dollars in funding towards the cost of the Vasona Light Rail Project and the amount by which the acquisition of Low Floor Light Rail Vehicles exceeds \$90 million in year of expenditure dollars. The total amount of VTA funding is approximately \$23.5 million in year of expenditure dollars as identified in the Base Case Expenditure Plan.

Section 2. TOTAL ANTICIPATED COUNTY FINANCIAL CONTRIBUTION.

COUNTY's determination to provide financial assistance for the projects is based, in significant part, upon the total receipts anticipated from the 1996 Measure B sales tax, which are anticipated to be approximately \$1,330,000,000 (estimated year of receipt dollars).

Section 3. LIMITATIONS OF COUNTY FUNDING COMMITMENT.

With the execution of this AGREEMENT, COUNTY obligates and appropriates for FY 1999-2000 \$292,270,000 in COUNTY financial assistance for PROJECTS as part of the total anticipated COUNTY financial contribution. Anything to the contrary contained in this Section 3 notwithstanding, the obligation of COUNTY to provide Measure B Funds, shall in each case of a funding request, be expressly subject to prior appropriation by the Board of Supervisors and compliance by VTA with each of the requirements or conditions to funding for COUNTY fiscal year contained in this AGREEMENT applicable to VTA.

Section 4. CASH FLOW.

- (a) Measure B Fund Account. COUNTY has established an account within COUNTY's book of accounts captioned the "Measure B Fund" account. All Measure B sales tax receipts received and interest income earned by COUNTY since inception have been deposited into the Measure B Fund account.
- (b) MBTIP Funds Held By VTA. VTA shall invest un-disbursed Measure B funds in one or all of the following options: (1) California LAIP; (2) VTA's sweep account; or (3) a separate mutually agreeable mutual fund.
- (c) Monthly Billing And Reconciliation Statement.
 - (i) For each month during which this AGREEMENT is in effect, VTA shall provide to COUNTY, not later than 15 days prior to the first business day of such month, a monthly billing and reconciliation statement in the form of ATTACHMENT A hereto, which ATTACHMENT A is incorporated herein by this reference, which includes an estimate of VTA's cash flow needs for implementation of the MBTIP for the month covered by the monthly billing and reconciliation statement.

- (ii) The monthly advance shall be adjusted to reflect the difference between the advance of the second previous month and the actual expenditures and grant and other revenues of that month.
- (iii) Adjustments made relating to interest earnings will be accomplished on a quarterly basis.
- (iv) Applicable monthly adjustments will include such items as any Measure B Funds deposited by VTA in connection with any eminent domain action, and the amount of any reimbursement to VTA upon negotiation, settlement or completion of litigation regarding the valuation of the property in question. Any interest that accrues on deposited funds and subsequently returned to VTA shall be applied to Measure B PROJECTS.
- (v) Not later than the first day of the month to which the monthly advance applies, COUNTY will wire funds in the amount specified in the billing and reconciliation statement determined to be payable for such month to a VTA account.
- (d) Dispute Of MBTIP Expenditure. If, upon review of a monthly billing and reconciliation statement, COUNTY disputes an MBTIP expenditure proposed to be made by VTA, COUNTY shall advise VTA of the amount of disputed proposed expenditure, and the actions that COUNTY considers necessary to resolve the disputed amount. If resolution of the disputed amount has not been achieved within 30 days between COUNTY and VTA , COUNTY and VTA will follow dispute resolution procedures pursuant to Article X. If resolution is achieved in favor of COUNTY, VTA will make appropriate adjustments on the next monthly billing and reconciliation statement. In no way does COUNTY's approval or payment of the monthly billing and reconciliation statement of MBTIP Funds waive any rights COUNTY may have as to its accuracy.
- (e) No Obligation To Advance Funds. The monthly billing and reconciliation statement shall provide for payment of invoices received by VTA in such a manner that VTA shall not be required to advance its own funds to pay invoices which, in accordance with the provisions of this AGREEMENT, are to be paid with MBTIP Funds.
- (f) Emergency Payments Requested By VTA. To the extent that VTA anticipates that amounts on hand will not be sufficient, considering source and application of funds, to cover incurred costs, VTA may request a emergency payment sufficient to cover the shortfall. COUNTY agrees to advance funds sufficient for such purpose not later than 7 business days following the date of such request.
- (g) Monitoring By VTA. VTA shall monitor the actual versus the planned expenditures monthly to assure that COUNTY payments pursuant to this AGREEMENT will be sufficient.
- (h) Detailed Statement Of Portion Of Project Cost. Upon substantial completion of a PROJECT and all work incidental thereto, VTA shall furnish COUNTY with a detailed

statement of the portion of PROJECT cost borne by COUNTY, including resolution of PROJECT related claims which have been authorized and approved for payment to the PROJECT contractor.

- (i) Final Report. VTA shall submit a final report of expenditures to COUNTY within 120 days after completion and acceptance of each PROJECT.
- (j) Annual Reconciliation Statements. VTA shall submit a final reconciling statement of MBTIP expenditures funded from each COUNTY fiscal year appropriation not later than 90 days from the end of COUNTY fiscal year (each June 30th).
- (k) Final Adjustments. Upon substantial completion of all PROJECTS, VTA shall refund to COUNTY, promptly after completion of VTA's final accounting of Project Costs, any amount of COUNTY deposits and earnings remaining after actual costs to be borne by COUNTY have been deducted, or to bill COUNTY for any additional amount required to complete COUNTY's financial obligations subject to the limitations of COUNTY's participation as stipulated in Article III, Section 3, of this AGREEMENT.
- (l) Post-Termination Cost Final Reimbursements. Notwithstanding the termination of this AGREEMENT, VTA may pay from amounts appropriated by the Board of Supervisors and transferred to VTA segregated account for legitimate allowable costs for MBTIP performed during the term of this AGREEMENT and for the allowable costs of PROJECTS encumbered prior to the termination of this AGREEMENT but forwarded after the termination of this AGREEMENT, up to, but not in excess of, the amount which is appropriated for the MBTIP (or applicable portion thereof for any partial COUNTY fiscal year of the AGREEMENT).
- (m) Authorization To Advance Project Without Prejudice. VTA may incur cost or expend other funds for all phases of each PROJECT as is reasonably necessary to advance a PROJECT prior to an award of Measure B funding assistance without prejudice to possible future participation in or reimbursement of Project Costs to the extent that such costs are incurred in accordance with all applicable requirements of this AGREEMENT. The authority conferred on VTA to advance a PROJECT without prejudice does not constitute a legal commitment by COUNTY to obligate and award Measure B Funds. VTA agrees to use its best efforts to involve the County in PROJECT development activities to the fullest extent possible prior to such award of Measure B Funds.

Section 5. PROJECT COSTS.

VTA shall seek advances and/or reimbursement for Direct Costs but not Indirect Costs.

Section 6. PROGRAM AND PROJECT CONTINGENCY MANAGEMENT.

(a) VTA's PROJECT Contingency:

- (i) Each PROJECT BCE will contain a budget category entitled "project contingency". VTA will report on the amount and reason for the monthly utilization of this PROJECT contingency for base scope items that were unforeseen at the time of BCE preparation.
- (ii) VTA will manage each PROJECT's contingency throughout a PROJECT's implementation and if necessary formally request an adjustment from COUNTY's Light Rail Program Reserve of \$ 49 million.
- (iii) If VTA has a surplus of PROJECT contingency available upon completion of a majority of contract activities PROJECT contingency and budget shall be reduced accordingly as set forth in this AGREEMENT.
- (iv) Upon completion of a PROJECT, any contingency surplus shall benefit the MBTIP as a whole, reducing the need for non-Measure B Funds to fund Measure A PROJECTS.

(b) COUNTY's Light Rail Program Reserve:

- (i) The approved Base Case Implementation Plan establishes a reserve of \$49 million, to be held in a COUNTY special contingency reserve and earmarked as the COUNTY Light Rail Program Reserve.
- (ii) If Project Costs exceed the approved BCE, VTA will request supplemental funding from the County Light Rail Program Reserve.
- (iii) After review and concurrence by COUNTY and VTA Project Liaison (as defined in Article IV, Section 4) that the Project Costs of the light rail projects are substantially complete, the Board of Supervisors will be notified of any surplus funds within the COUNTY Light Rail Program Reserve. This surplus shall benefit the MBTIP Program as a whole, reducing the need for Non-Measure B funds to fund Measure A PROJECTS.
- (iv) Upon completion of all light rail PROJECTS, any contingency surplus shall benefit the MBTIP as a whole, reducing the need for non-Measure B funds to fund Measure A PROJECTS.

ARTICLE IV. OBLIGATIONS AND RESPONSIBILITIES OF COUNTY AND VTA.

Section 1. MBTIP RESPONSIBILITIES.

The respective duties, obligations and responsibilities of VTA and of COUNTY for the MBTIP, effective, unless otherwise indicated, as of the Effective Date, shall be as specified in this Article IV.

Section 2. OBLIGATIONS AND RESPONSIBILITIES OF COUNTY.

The duties, obligations and responsibilities of COUNTY shall be the following:

- (a) Request For Appropriation. Submit to the Board of Supervisors any annual request for appropriation for funding the MBTIP as part of COUNTY's annual budget process. In connection therewith, VTA shall prepare and present to COUNTY not later than January 31st of each year during which this AGREEMENT is in effect, a detailed estimate of Program funding requirements for the fiscal year commencing July 1st.
- (b) Disburse MBTIP Funds. Disburse MBTIP funds in accordance with the provisions of this AGREEMENT and the MBTIP Documents.
- (c) Account For Disbursement. Account for the disbursement to VTA of amounts appropriated by COUNTY in accordance with this AGREEMENT and the MBTIP Documents.
- (d) Audit Operations. Audit the operations of VTA in accordance with this AGREEMENT and the MBTIP Documents.
- (e) Conduct Project Management Oversight. Conduct Project Management Oversight, which is the monitoring of PROJECT progress in order to determine if each PROJECT is on time, within budget, in conformance with approved plans and specifications, and is implemented efficiently and effectively. Monitoring activities include, but are not limited to interviews, document review, observations, examination of records and analysis of information. Monitoring activities may yield both general and specific recommendations on the performance of development and implementation activities of PROJECT, as well as forming the basis for information to be included in reports.
- (f) Prepare Reports and Summaries. Prepare or cause to be prepared, reports, summaries as required by the State Board of Equalization, the State Controller and other applicable State and federal regulators with respect to the receipt of Measure B sales taxes, and as may be required by the Board of Supervisors, or otherwise required or deemed advisable by COUNTY, with input from VTA regarding the MBTIP as requested by COUNTY.
- (g) Payment Advances. Initiate all payment advances to the County Roads and Airports Department for eligible COUNTY PROJECTS not funded through this AGREEMENT.

- (h) Update Revenue and Expenditure Plan. Coordinate and prepare annual update of Revenue and Expenditure Plan.
- (i) Timely Notice. Provide VTA Project Liaison with timely notice of any action or proposed action which requires review and concurrence by Project Liaison and Board of Directors and/or Board of Supervisors.

Section 3. OBLIGATIONS AND RESPONSIBILITIES OF VTA.

The duties, obligations and responsibilities of VTA shall be the following:

- (a) Administration of MBTIP. On the Effective Date, assume responsibility for administration of the MBTIP in accordance with the terms and conditions set forth herein and in the MBTIP Documents.
- (b) Revenue and Expenditure Projection. Prepare and provide to COUNTY no later than January 31st of each year a revenue and expenditure projection for the MBTIP for the ensuing COUNTY fiscal year.
- (c) Duties, Obligations and Responsibilities. As of the effective dates applicable to such specific responsibilities as may be set forth herein (and if no such date is set forth herein, as of the Effective Date of this AGREEMENT), assume from COUNTY, any and all duties, obligations and responsibilities of COUNTY related to management, administration, operation, facilities, finance, contracts, marketing and legal services for the MBTIP, and excluding only those obligations and responsibilities expressly retained by COUNTY and set forth in Article IV, Section 2 above.
- (d) Project Design, Construction and Procurement. Subject to the conditions and restrictions contained below, award and administer all third-party contracts for each PROJECT including environmental, design, construction and procurement in accordance with all applicable statutes, regulations, grant conditions and VTA's Administrative Code.
- (e) Annual Listing Of All Jobs and Mean Pay Rate. Prepare and provide to COUNTY an annual listing of all applicable jobs and mean pay rate of employees by job series.
- (f) Preliminary Schedule. A preliminary schedule shall be prepared in connection with the preparation of Highway Project Study Reports and Rail Project Conceptual Engineering for each PROJECT. The schedule shall be refined by VTA pursuant to the process set forth in Article V as each PROJECT proceeds. VTA shall act diligently and use every effort to complete all activities within the time frame specified in the schedules, as they may be modified from time to time.
- (g) State Board of Equalization Analysis. VTA will act on behalf of COUNTY, at no charge to COUNTY, to examine sales and use tax records of the State Board of Equalization (Board) for the purposes of tracking, forecasting, and notification of misallocations. Information

obtained by examination of Board records will be used only for these governmental functions as listed above and will be provided to COUNTY on a quarterly basis.

- (h) Update Revenue and Expenditure Plan. Coordination and preparation of annual update of Revenue and Expenditure Plan.
- (i) Timely Notice. Provide COUNTY Project Liaison with timely notice of any action or proposed action which requires review and concurrence by Project Liaison and Board of Supervisors and/or Board of Directors.

Section 4. PROJECT LIAISON.

- (a) Appointment. The General Manager of VTA and COUNTY Executive shall each designate one person to act as Project Liaison to oversee all aspects of each PROJECT and to coordinate the activities of VTA and COUNTY in the prosecution of each PROJECT. Such designees (Project Liaison) shall be appointed as soon as feasible after the execution of this AGREEMENT. Unless otherwise indicated, any reference to "Project Liaison" refers to both COUNTY and VTA Project Liaison.
- (b) Duties. Project Liaison shall have the power to exercise all of the rights and obligations as provided for under the terms and conditions of this AGREEMENT. Project Liaison shall monitor each PROJECT and report to their respective organizations on such matters as, but not limited to, the PROJECT budget, real property acquisition, schedule, design, construction and such other activities as they consider appropriate, including, for example, design and construction claims and warranty claims. Any actions taken on the basis of recommendations of Project Liaison shall be subject to applicable statutes and regulations. Project Liaison shall cooperate in development of Quarterly Reports, based on the form and contents as provided in ATTACHMENT B, to which adjustments may be made to the extent mutually agreeable.
- (c) Review By Project Liaison. Project Liaison shall review and comment upon agreements directly negotiated with local governmental agencies or owners of public utilities relating to a PROJECT at least 15 calendar days prior to execution.
- (d) Access. Project Liaison, their agents, consultants, and attorneys, shall have access to, including the right to make copies thereof, all books, records and accounts of each PROJECT, to all documents in the possession of either party pertaining to PROJECTS, and to the construction sites, at all reasonable times.
- (e) Cash Flow Projections. For each PROJECT, VTA shall develop and Project Liaison shall review cash flow projections pursuant to Article III, Section 4, to facilitate the monitoring of PROJECT expenditures and budgetary planning by both parties until completion of PROJECT construction.

ARTICLE V. PROJECT DEFINITION

Section 1. BASELINE TIMING.

- (a) Highway Project Study Reports And Rail Project Conceptual Engineering. Project Liaison shall be afforded the opportunity to review and comment on highway Project Study Reports and rail project conceptual engineering. Any such review shall be completed in an expeditious manner.
- (b) Baseline Cost Estimate, Baseline Schedule And Baseline Scope. Not later than completion of a Project Report or Preliminary Engineering, which ever is appropriate, VTA shall submit Baseline Cost Estimate, Baseline Schedule and Baseline Scope (if scope was not sufficiently defined in Base Case Implementation Plan) to COUNTY's Project Liaison.

Section 2. BASELINE SCOPE.

- (a) Preliminary Or Initial Scopes. Preliminary or initial scopes are as defined in the Base Case Implementation Plan or the baseline scope submitted pursuant to provisions in Section 1 above.
- (b) Baseline Or Project Scope. Baseline or Project Scope shall mean the scope for each PROJECT as defined by the Project Report or Preliminary Engineering, whichever is appropriate.
- (c) Amendments To Scope. Amendments to scope shall be pursuant to the provisions set forth in this Article V, Section 5 below.

Section 3. BASELINE COST ESTIMATE.

- (a) Detailed Baseline Cost Estimate. Pursuant to the terms of Section 1(b) above, VTA shall provide a detailed Baseline Cost Estimate for the activities comprising each PROJECT. The Baseline Cost Estimate shall be substantially in the form of ATTACHMENT E of this AGREEMENT. The BCE shall reflect appropriate escalation to estimated year-of-expenditure dollars.
- (b) Modification Of PROJECT Budget. Each PROJECT budget may be modified; however, the Baseline Cost Estimate shall not be modified since it is to be used as a basis for comparing planning to actual PROJECT implementation.
- (c) Procedure For Modifications. Modifications to each PROJECT budget shall be made pursuant to the provisions of this Article V, Section 5 below.

Section 4. BASELINE SCHEDULE.

- (a) VTA To Provide Baseline Schedule. Pursuant to the terms of Section 1(b) above, VTA shall provide a Baseline Schedule for each PROJECT that demonstrates how VTA intends to

implement each PROJECT and achieve the In-Service Date. The Baseline Schedule shall be substantially in the form of ATTACHMENT D of this AGREEMENT.

- (b) Schedule Modifications. The schedule for each PROJECT may be modified from time to time. However, the Baseline Schedule shall not be modified since it is to be used as a basis for comparing planned to actual PROJECT implementation. VTA shall notify COUNTY when a PROJECT schedule modification has the potential to change the In-Service Date and what action if any, is planned to recover the schedule.
- (c) Procedure For Modifications. Schedule modifications for each PROJECT shall be accomplished using procedures set forth in this Article V, Section 5 below.

Section 5. REVIEW AND CONCURRENCE.

- (a) Recommendation For Approval Of Baseline Scope, Baseline Schedule, and Baseline Cost Estimate. After review and concurrence by COUNTY and VTA Project Liaison, the Baseline Scope, Baseline Schedule, and Baseline Cost Estimate shall be recommended for approval by Board of Supervisors and Board of Directors.
- (b) Amendments to Project Scope.
 - (i) Scope Change. Material changes to the scope of each PROJECT shall require approval of both parties. Proposed scope change shall go through VTA committee structure followed by a recommendation to VTA Board of Directors. If a material scope change does not increase the PROJECT budget, then COUNTY Project Liaison shall review the change. If a material scope change increases the PROJECT budget, the scope change shall be concurred in by the Board of Directors and the Board of Supervisors and the budget shall be adjusted in accordance with (d)(i) through (d)(vi) below.
 - (ii) Community Oriented Design Enhancements ("CODE"). VTA and COUNTY acknowledge that a portion of Measure B Funds shall be made available for CODE for which the determination of the expenditure of Measure B Funds shall be a cooperative process between VTA and COUNTY. A subcommittee, established by the parties and co-chaired by representatives from the Board of Supervisors and the Board of Directors, shall recommend the expenditure of Measure B Funds.
- (c) Shifts Within Budget Categories. Material shifts within budget categories in a PROJECT Baseline Cost Estimate shall require approval of both parties. Each PROJECT shall have the Baseline Cost Estimate sub-divided into the following categories: Construction and Major Procurements; Real Estate; Labor, Services and Support; and Contingency. If the PROJECT budget remains constant but the cumulative budget transfers exceed +/-15% of the original budget for any category, the PROJECT budget shall be referred to Project Liaison for review. Any subsequent budget transfers between categories, which exceed an amount of 25%, shall require an approval of the Board of

Supervisors. Following such approval by the Board of Supervisors, the budget shall be deemed amended and the cumulative budget transfers shall be considered zero.

(d) Amendments To PROJECT Budget.

- (i) Budget adjustments are based on the recommendation of the Project Liaisons.
- (ii) Budget adjustments may result from:
 - A scope change in a Measure A PROJECT.
 - Adding PROJECT elements beyond a Measure A PROJECT that would be built simultaneously with the Measure A Scope.
 - Funds swaps.
- (iii) Budget adjustments may be funded from:
 - Measure B funds.
 - Other Non-Measure B funds acquired or subject to control of COUNTY.
 - Federal, state, local or private funds acquired by or subject to the control of VTA.
- (iv) With respect to budget amendments funded with Measure B Funds, the Board of Directors will consider the budget adjustment and forward its recommendation to the Board of Supervisors which will take appropriate action.
- (v) The Project Liaisons shall seek concurrence on any budget adjustment; however final determination rests with the party who controls or acquires the funding source.
- (vi) Any fund swap that impacts a PROJECT shall require the concurrence of the Project Liaisons.

ARTICLE VI. REPORTS, RECORDS AND AUDITS**Section 1. ESTABLISHMENT AND MAINTENANCE OF VTA ACCOUNTING SYSTEM.**

VTA shall establish and maintain an accounting system and record of accounts that properly accumulate and track incurred costs, or disbursed funds, in the case of the Pavement Management and Bikeway Program, for the MBTIP and which reflect interest or other income received on MBTIP fund balances retained by VTA. VTA accounting systems shall conform to generally accepted accounting principles, enable the determination of incurred costs at interim points or completion, and provide support for payment vouchers or invoices. All accounting records and other supporting papers of VTA connected with performance under this AGREEMENT by it and connected with performance of the Cities and COUNTY as MBTIP fund recipients, shall be maintained for a minimum of 3 years from the date of final payment to VTA under these provisions and shall be held open to inspection and audit by representatives of COUNTY and the CWC and their respective external and internal certified public accountants, their respective external and internal auditors and other representatives, and copies thereof shall be furnished upon request. In conducting an audit of the costs claimed under these provisions, COUNTY shall rely to the maximum extent possible on any prior audit of VTA pursuant to the provisions of federal and State laws. In the absence of such an audit, any acceptable audit work performed by VTA's external and internal auditors and/or State or federal auditors may be relied upon and used by COUNTY when planning and conducting additional audits as the awarding body as defined under the California Labor Code Sections 1720 through 1815. COUNTY's reliance on any audits, whether conducted by State or federal auditors and/or VTA's external and internal auditors, shall be based entirely on COUNTY's own evaluation of the usefulness, thoroughness, scope, documentation and findings of the audits. Notwithstanding any reliance on any prior audits, COUNTY reserves the right to use its independent auditors to audit Measure B related financial records of VTA.

Section 2. VTA AND RECIPIENT COMPLIANCE WITH APPLICABLE ACCOUNTING REQUIREMENTS.

For the purpose of determining compliance with Public Contract Code Section 10115 *et seq.*, and Title 21, California Code of Regulations, Section 2500 *et seq.*, when such provisions of law or regulation are applicable, and other matters connected with the performance of contracts between MBTIP fund recipients and third parties pursuant to Government Code Section 8546.7, VTA and VTA's contractors shall maintain, and VTA shall include provisions in its agreements with MBTIP fund recipients, requiring MBTIP fund recipients' contractors to include such provisions in their contracts with subcontractors to maintain, all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including but not limited to, the costs of administering the various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under such contract. COUNTY and the CWC shall have reasonable access to any books, records, and documents that are pertinent to the AGREEMENT for audits, examinations, excerpts, and transactions and copies thereof shall be

furnished if requested. VTA agrees to cooperate with the CWC in fulfilling the CWC's obligations under Measure B.

Section 3. ACCOUNTING PROVISIONS IN RECIPIENT AGREEMENTS.

VTA will insert clauses in any agreements with MBTIP fund recipients which are funded by COUNTY in whole or part, and shall require MBTIP fund recipients' contractors to include such provisions in their subcontracts which are wholly or partially funded by COUNTY, to the effect of Section 2 above of this ARTICLE VI, imposing such requirements on such contractors and subcontractors.

Section 4. QUARTERLY REPORTS.

VTA and COUNTY shall jointly prepare and provide Quarterly Reports containing the information required by and pursuant to the form set forth in ATTACHMENT B.

Section 5. REVENUE AND EXPENDITURE PLAN.

VTA shall provide COUNTY with a Revenue and Expenditure Plan. COUNTY shall prepare an annual update to the Revenue and Expenditure Plan based on data and analysis provided by VTA. VTA will provide such data and analysis not later than the time COUNTY's budget process is initiated and finalized at the time of approval of COUNTY's budget.

ARTICLE VII. REAL PROPERTY ACQUISITION AND OWNERSHIP

Section 1. GENERAL.

For the purposes of implementing MBTIP, it may be necessary to acquire property and provide relocation assistance. VTA shall provide COUNTY with a title report for all properties acquired for implementation of MBTIP, prior to acquisition and by negotiation, and VTA shall clear all liens and encumbrances itemized in the title report which interfere with use of property for PROJECT.

Section 2. RAIL PROJECTS.

VTA shall acquire all property interests necessary to construct MBTIP rail PROJECTS.

Section 3. CALTRAIN.

VTA shall acquire all property interests necessary to construct MBTIP Caltrain PROJECTS.

Section 4. ROADWAY.

VTA shall acquire all property interests necessary to construct MBTIP roadway/highway PROJECTS on behalf of COUNTY and City in which the roadway PROJECT is located. Title shall be transferred to COUNTY or the State of California upon completion of each PROJECT. If it is necessary to acquire property by eminent domain, COUNTY, City or VTA, if authorized, shall adopt the appropriate resolutions of necessity and VTA legal counsel shall prosecute the actions.

Section 5. BIKEWAY.

Real property acquisition for the purposes of implementing MBTIP shall be by VTA, COUNTY or the City in which each PROJECT is located. If it is necessary to acquire property by eminent domain, COUNTY or City, as the case may be, shall adopt the appropriate resolutions of necessity and may engage services of VTA legal counsel.

Section 6. PERSONAL PROPERTY.

Personal property obtained for use in each PROJECT, not required following In-Service Date, shall be transferred to COUNTY after PROJECT completion. COUNTY, at its sole option may transfer the property to VTA or may request assistance from VTA for sale or disposition of property.

Section 7. REVENUES FROM PROJECTS.

COUNTY and VTA shall enter into joint development and/or shared use agreements in connection with implementing MBTIP on a PROJECT by PROJECT basis. Any revenues from PROJECTS, including revenue from joint development and/or shared use or the sale of surplus property acquired with Measure B Funds that will not be used for PROJECTS, shall be retained by MBTIP for Program purposes until the end of MBTIP.

ARTICLE VIII. PUBLICITY, SIGNAGE AND COMMUNITY OUTREACH

Section 1. LOGOS AND SIGNAGE.

VTA will use and will provide formats to recipients of MBTIP funds for COUNTY and VTA approved logos and signage in connection with all PROJECTS or Programs funded in whole or part with MBTIP funds, and request that such logos be included on signs posted at the site of any construction PROJECT, overlay PROJECT, rehabilitation PROJECT or other PROJECT funded with MBTIP funds, and on any printed materials intended for public display or distribution and associated with the MBTIP, such as, public notices, announcements, promotional materials, brochures, handbooks, maps and any other materials intended for public distribution and use. VTA agrees, and to include provisions in its contracts with recipients of MBTIP funds, requiring that appropriate signage, public notices, announcements, promotional materials and other related materials shall be provided and maintained during the construction of any PROJECT involving an expenditure in excess of \$100,000.

Section 2. ACKNOWLEDGE AND CREDIT COUNTY.

VTA will acknowledge and credit COUNTY, and will provide language to recipients of MBTIP funds to acknowledge and credit COUNTY, as a funding source in any articles, press releases or other publicity materials or press opportunities related to the MBTIP or a PROJECT or Program funded in whole or part with MBTIP funds. To the extent reasonably possible, VTA will notify COUNTY in advance and coordinate with COUNTY with respect to all community outreach opportunities related to the MBTIP or any MBTIP funded PROJECT or Program.

Section 3. PUBLIC/COMMUNITY RELATIONS PLAN.

VTA shall develop (in cooperation with COUNTY Measure B staff) and implement, a public/community relations plan for the Measure B highway and rail Programs.

ARTICLE IX. RESOLUTION OF CLAIMS AND DISPUTES

Section 1. RESOLUTION BY PROJECT LIAISON, VTA CHIEF FINANCIAL OFFICER AND DEPUTY COUNTY EXECUTIVE.

Project Liaison shall act on behalf of their respective agencies in a spirit of cooperation to accomplish each PROJECT on schedule and within budget. Any comments to PROJECT documents shall as fully as reasonably possible be made in a timely manner so as not to adversely affect the PROJECT schedules. All such documents shall be provided sufficiently in advance of their anticipated effective dates to allow meaningful comment to be offered. If Project Liaison cannot resolve any issue related to such documents or the activities of each PROJECT within 30

days, VTA Chief Financial Officer and the Deputy County Executive shall meet to attempt to resolve such issues. If necessary, VTA General Manager and County Executive shall meet and initiate actions to resolve the dispute so as to accommodate the concerns of both parties. If VTA General Manager and the County Executive cannot resolve the dispute, each shall notify their respective boards, and each board shall determine whether it wishes to attempt to resolve the dispute itself, and proceed accordingly.

Section 2. IMPASSE.

If the process set forth in Section 1. above results in impasse, the matter will be submitted to J·A·M·S/ENDISPUTE, or its successor, for mediation.

Section 3. NON-BINDING MEDIATION.

If the dispute ends in impasse, the issue will be submitted to J·A·M·S/ENDISPUTE, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to J·A·M·S/ENDISPUTE, or its successor, for final and binding arbitration. Either party may commence mediation by providing to J·A·M·S/ENDISPUTE and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with J·A·M·S/ENDISPUTE and with one another in selecting a mediator from J·A·M·S/ENDISPUTE's panel of neutrals, and in scheduling the mediation proceedings. The mediator may not be a judge retired from the state or federal bench of Santa Clara County, and shall not be an attorney who has represented either party within the 10 years preceding execution of this AGREEMENT. The parties covenant that they will participate in the mediation in good faith. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any J·A·M·S/ENDISPUTE employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or 45 days after the date of filing the written request for mediation, whichever occurs first. The provisions of this Clause may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the party against whom enforcement is ordered.

Section 4. ARBITRATION.

- (a) Streamlined Arbitration. Where no disputed claim or counterclaim exceeds \$250,000, the parties agree that any and all disputes, claims or controversies arising out of or relating to this AGREEMENT that are not resolved by their mutual agreement shall be submitted to final and binding arbitration before J·A·M·S/ENDISPUTE, or its successor, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq. The arbitrator may not be a judge

retired from the state or federal bench of Santa Clara County, and shall not be an attorney who has represented either party within the 10 years preceding execution of this AGREEMENT. Either party may commence the arbitration process called for in this agreement by filing a written demand for arbitration with J·A·M·S/ENDISPUTE, with a copy to the other party. The arbitration will be conducted in accordance with the provisions of J·A·M·S/ENDISPUTE's Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. A copy of such Rules and Procedures in effect at the time of execution of this AGREEMENT is attached as ATTACHMENT I hereto and incorporated by this reference. The parties covenant that they will participate in the arbitration in good faith. The provisions of this Paragraph may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the party against whom enforcement is ordered.

- (b) Comprehensive Arbitration. Where any disputed claim or counterclaim exceeds \$250,000, the parties agree that any and all disputes, claims or controversies arising out of or relating to this agreement that are not resolved by their mutual agreement shall be submitted to final and binding arbitration before J·A·M·S/ENDISPUTE, or its successor, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq. The arbitrator may not be a judge retired from the state or federal bench of Santa Clara County, and shall not be an attorney who has represented either party within the 10 years preceding execution of this AGREEMENT. Either party may commence the arbitration process called for in this agreement by filing a written demand for arbitration with J·A·M·S/ENDISPUTE, with a copy to the other party. The arbitration will be conducted in accordance with the provisions of J·A·M·S/ENDISPUTE's Comprehensive Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. A copy of such Rules and Procedures in effect at the time of execution of this AGREEMENT is attached as ATTACHMENT J hereto and incorporated by this reference. The parties covenant that they will participate in the arbitration in good faith. The provisions of this Paragraph may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the party against whom enforcement is ordered.
- (c) Demand For Arbitration. A party who files notice of demand for arbitration must assert in the demand all claims then known to that party on which the arbitration is permitted. When a party fails to include a claim through oversight, inadvertence or excusable neglect, or when a claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment of the demand.

Section 5. COST OF MEDIATION AND ARBITRATION.

The parties may use MBTIP funds to pay for all costs, fees and expenses, including attorneys fees incurred and/or awarded by the mediator and/or arbitrator as a result of either party submitting the matter to JAMS/ENDISPUTE or its successor, for mediation or arbitration.

Section 6. NOTICES.

Any notice which may be required under this AGREEMENT shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addressees set forth below, or to such other addresses as may be specified in writing and given to the other party in accordance herewith.

If given to COUNTY:

County of Santa Clara
70 W. Hedding Street, 11th Floor
San Jose, California 95110
Attention: Jeff Davis

with a copy to:

County Counsel's Office
County of Santa Clara
70 W. Hedding Street, 10th Floor
San Jose, California 95110
Attention: William Anderson, Esq.

If given to VTA:

Santa Clara Valley Transportation Authority
3331 N. First Street, Bldg B-2
San Jose, California 95134-1906
Attention: Board Secretary

with a copy to:

VTA Counsel's Office
Santa Clara Valley Transportation Authority
3331 N. First Street, Bldg. C-2
San Jose, California 95134-1906
Attention: Suzanne Gifford, Esq.

With additional copy to:

Chief Financial Officer
 3331 N. First Street, Bldg. C-2
 San Jose, California 95134-1906
 Attention: Scott Buhrer

ARTICLE X. TERMINATION

- (a) Advance Notice. Either party may terminate this AGREEMENT without cause, by giving advance written notice to the other party at least 120 days in advance of the last day of any COUNTY fiscal year.
- (b) Cooperation By Parties. If a party terminates this AGREEMENT pursuant to the foregoing subdivision (a), the parties agree to cooperate with each other to facilitate the transfer of responsibilities from VTA to another entity or to COUNTY with minimum disruption to the MBTIP and in the most cost effective manner possible. Costs associated with the termination of this AGREEMENT are eligible Measure B expenditures.
- (c) Release Or Reimbursement Of Funds. Any unencumbered Measure B funds remaining with VTA shall be promptly released or reimbursed to COUNTY Measure B Fund.
- (d) Material Breach By VTA. The foregoing notwithstanding, COUNTY may terminate this AGREEMENT upon not less than 60 days prior notice upon the occurrence of a material breach of the AGREEMENT, which material breach shall include:
 - (i) VTA's failure, in the good faith judgment of COUNTY, or its refusal to administer the MBTIP as required when such failure or refusal significantly disrupts the MBTIP and is not excused by any other provision of this AGREEMENT;
 - (ii) VTA's insolvency or inability to meet its obligations, the filing of an involuntary petition in bankruptcy, its making of an assignment for the benefit of creditors, filing a petition for an arrangement, composition or compromise with its creditors under any applicable laws or having a trustee, receiver, or other officer appointed to take charge of its assets;
 - (iii) VTA's failure to comply with any valid law, ordinance, rule, regulation or order of any legal entity or authority which failure has a material impact on the MBTIP or VTA's ability to perform this AGREEMENT, or upon a decision by a court or other tribunal of competent jurisdiction, that VTA is ineligible to administer the MBTIP or any material element thereof;
 - (iv) The abolition, termination or other dissolution of VTA; and

- (v) The material breach of any other obligation, duty, responsibility, covenant or condition agreed to by VTA pursuant to the AGREEMENT or the MBTIP Documents.
- (e) Material Breach By COUNTY. The foregoing notwithstanding, VTA may, at its sole discretion, terminate this AGREEMENT upon not less than 60 days prior notice upon the occurrence of a material breach of the AGREEMENT by COUNTY, which shall include, but not be limited to:
- (i) The failure of the Board of Supervisors to appropriate sufficient funds to implement the MBTIP at budgeted MBTIP levels;
 - (ii) The failure of COUNTY to make payments as required by this AGREEMENT. The material breach of any other obligation, duty, responsibility, covenant or condition agreed to by COUNTY pursuant to this AGREEMENT.
- (f) Basis For Termination. When giving notice of termination, the party electing to terminate shall notify the other party in writing stating the basis for termination. If termination is for cause, and the other party has taken effective action to remedy the default within the notice period, termination shall not become effective.
- (g) Options Upon Termination. Upon termination for cause, COUNTY or VTA shall have the option to enter into an agreement with another party for administration of the MBTIP, to retain all or some portion of the MBTIP for administration by COUNTY, or, subject to any legally binding commitment to fund a PROJECT or Program, to terminate the MBTIP, unless in the event of termination for cause by COUNTY, not for any administrative or operating costs which it incurs in connection with continuation of the MBTIP which would otherwise have been incurred had COUNTY not exercised its right to terminate.
- (h) Recovery Of Unavoidable Costs. In the event of termination for cause, the terminating party shall also be entitled to recover from the non-breaching party, the unavoidable allowable costs actually incurred and attributable to the termination.
- (i) No Liability Upon Termination. Except as set forth in this Article X, no party shall have any liability or obligation to the other party by reason of termination of this AGREEMENT.

ARTICLE XI. LIABILITY, INDEMNIFICATION AND INSURANCE

Liability, indemnification and insurance coverage for liability imposed for injury or damage to COUNTY, VTA or any third party related to or arising out of any obligation, responsibility or duty delegated to or assumed by COUNTY or VTA under this AGREEMENT shall be provided for as follows:

- (a) VTA To Indemnify. VTA shall indemnify, defend and hold harmless COUNTY and its officers, contractors, agents and employees, from any liability imposed for injury or damages occurring by reason of anything done or omitted to be done by VTA under this AGREEMENT or in conjunction with any obligation, responsibility or duty delegated to or assumed by VTA under this AGREEMENT.
- (b) COUNTY To Indemnify. COUNTY shall indemnify, defend and hold harmless VTA and its officers, agents, contractors and employees, from any liability imposed for injury or damages occurring by reason of anything done or omitted to be done by COUNTY under this AGREEMENT or in conjunction with any obligation, responsibility or duty delegated to or assumed by COUNTY under this AGREEMENT.
- (c) Expenses And Costs. The indemnifying party shall bear all expenses, costs and shall pay all settlements or final judgments arising out of any claim, action or proceeding involving the injury to and/or death of any person or damages to or any loss of any property arising from any indemnification obligation of the indemnifying party under (a) or (b) above, including the costs of defense and settlement. Should a claim, action or proceeding of any nature be brought at any time against a party entitled to indemnification pursuant to (a) or (b) above, such party for injury, death, damage or loss, the party entitled to indemnification shall promptly provide notice to the indemnifying party of such claim, and shall tender the defense of such claim, to the indemnifying party which shall thereafter provide all such defense, indemnity and protections as are necessary under the provisions of this AGREEMENT. The party entitled to indemnification shall provide such additional information or assistance as is reasonably requested by the indemnifying party to assist in the defense, prosecution or settlement of any such claim. The indemnified party may engage counsel of its choice to defend indemnified party subject to the indemnifying party's consent, such consent not to be unreasonably withheld.
- (d) Additional Insured. VTA will name or cause to be named COUNTY as an additional insured, indemnified party and/or loss payee (pertaining to COUNTY property) to any policy of insurance purchased by VTA and in any indemnity provision in all agreements between VTA and design professionals, contractors, or any other party VTA has an agreement with that involves or is related in any way to the administration, operation, or maintenance of the MBTIP by VTA or the expenditure of MBTIP funds. VTA will provide or cause to be provided to COUNTY, copies of all applicable certificates and agreements containing indemnity provisions.
- (e) COUNTY's Insurance Coverage. Except as may be purchased hereafter, COUNTY does not maintain, nor does it intend to maintain or cause to be maintained during the course of this AGREEMENT, any insurance coverage for its indemnification obligations herein. The foregoing notwithstanding, COUNTY reserves the right to purchase or cause to be purchased at any time during the term of this AGREEMENT or any extension thereof, insurance coverage for such indemnification obligations.

- (f) Provisions In Contracts Or Agreements. VTA shall include a provision in each contract or agreement it enters into with design professionals, contractors, or any other party VTA has an agreement with that involves or is related in any way to the administration, operation, or maintenance of the MBTIP by VTA or the expenditure of MBTIP funds, requiring such recipients to indemnify COUNTY against liabilities related to the contractor's acts or omissions as set forth in (a) above and to provide a defense for COUNTY as set forth in (c) above.
- (g) Entire Agreement. Pursuant to California Government Code Section 895.4, the foregoing (a) through (f) constitute the entire agreement between the parties hereto regarding indemnification for liabilities which may be incurred by either party under this AGREEMENT.
- (h) Resolution Of Disputes. Any disputes under this Article XI shall be resolved pursuant to the provisions of Article IX hereof.

ARTICLE XII. GENERAL PROVISIONS

Section 1. AMENDMENT OR MODIFICATION OF AGREEMENT.

This AGREEMENT may not be changed, modified, or amended except in writing, signed by the parties hereto, and any attempt at oral modification of this AGREEMENT shall be void.

Section 2. EFFECTIVE DATE AND TERM OF AGREEMENT.

This AGREEMENT shall be effective as of the Effective Date first set forth above, shall remain in effect unless and until terminated in accordance with the provisions of Article X.

Section 3. FORCE MAJEURE.

- (a) Excused From Non-Performance. Each party will be excused from performance of its obligations where such non-performance is caused by any event beyond its control, such as any nonappealable order, rule or regulation of any federal or State governmental body, agent or instrumentality, a work stoppage, major accident or incident, a natural disaster declared as such by a public official authorized to make such declaration, or civil disorder, provided that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.
- (b) Amendment Of MBTIP Documents. Should a *force majeure* event occur which renders it impossible for a period of 45 or more consecutive days for either party to perform its obligations hereunder, the parties agree to negotiate in good faith to amend the relevant provisions of the MBTIP Documents to deal with such event and, if necessary, to seek additional sources of funding to continue the operation of the MBTIP.

Section 4. REPRESENTATIONS AND WARRANTIES OF THE PARTIES.

(a) VTA hereby represents and warrants to COUNTY that:

- (i) VTA is in good standing under applicable law, with all requisite power and authority to carry on the activities which it is obligated to perform or to cause to be conducted pursuant to this AGREEMENT and the MBTIP Documents.
- (ii) VTA has the requisite power and authority to execute and deliver the AGREEMENT and to carry out its obligations hereunder and under the MBTIP Documents. The execution and delivery of the AGREEMENT by VTA, the performance by it of its obligations hereunder and the consummation of the transactions contemplated hereby have been duly authorized by the governing board of VTA and no other proceedings are necessary to authorize the AGREEMENT or to consummate the transactions contemplated hereby. The AGREEMENT have been duly and validly executed and delivered by VTA and constitute valid and binding obligations of VTA, enforceable against it in accordance with its terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.
- (iii) Neither the execution and delivery of the AGREEMENT and the performance of its obligations hereunder nor the consummation of the transactions contemplated hereby will:
 - (1) conflict with or result in a breach of any provision of any agreement between VTA and any other party; or
 - (2) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to VTA or its property or assets, or pursuant to which VTA exists and operates.

(b) COUNTY does hereby represent and warrant with respect to the AGREEMENT to VTA that:

- (i) It is validly existing with all requisite power and authority to carry on the activities proposed to be conducted by it pursuant to the AGREEMENT.
- (ii) It has the requisite power and authority to execute and deliver the AGREEMENT and to carry out its obligations hereunder. The execution and delivery of the AGREEMENT, the performance by it of its obligations hereunder and the consummation of the transactions contemplated hereby have been duly authorized

and no other proceedings are necessary to authorize the AGREEMENT or to consummate the transactions contemplated hereby. The AGREEMENT has been duly and validly executed and delivered by it and constitute valid and binding obligations, enforceable against it in accordance with its terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(iii) Neither the execution and delivery of the AGREEMENT and the performance of its obligations hereunder nor the consummation of the transactions contemplated thereby will:

(1) conflict with or result in a breach of any other agreement to which the COUNTY is a party; or

(2) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to it or its property or assets, or pursuant to which COUNTY exists and operates.

Section 5. REIMBURSEMENT OF VTA EXPENDITURES FOR MBTIP COSTS INCURRED PRIOR TO EFFECTIVE DATE OF THIS AGREEMENT.

The parties acknowledge that VTA has incurred expenditures for Direct Costs related to the MBTIP, a portion of which has been reimbursed pursuant to a Reimbursement Agreement dated October 19, 1999. The remainder of reimbursable costs will be submitted pursuant to Article III, Section 4(c).

Section 6. IMPLEMENTATION LETTERS.

VTA General Manager and COUNTY Executive may enter into implementation letters or side agreements for the purpose of implementing MBTIP. The implementation letters may not contradict the provisions of this AGREEMENT and shall be limited to resolving any ambiguities or issues not addressed in this AGREEMENT.

Section 7. COMPLIANCE WITH APPLICABLE NON-DISCRIMINATION REQUIREMENTS BY VTA AND MBTIP FUND RECIPIENTS.

VTA will comply with, and shall include provisions in its agreements with recipients of MBTIP funds, and shall require the recipients of MBTIP funds to include, and if VTA is the Sponsor, to include, provisions in their contracts and subcontracts requiring their contractors and any subcontractors to comply with, all applicable requirements of Non-Discrimination and other law, including, without limitation, requirements of the State Fair Employment Practices and Housing

Commission. VTA agrees to insert in its agreements with recipients of MBTIP funds, and to require recipients of MBTIP funds receiving MBTIP funds to include in appropriate contracts, any required clauses in contracts and subcontracts with respect thereto, including, without limitation, the California Labor Code requirements that all workers employed on public works (as defined in California Labor Code Sections 1720 *et seq.*) will be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations. As between COUNTY and VTA, VTA shall have the sole duty and authority under this AGREEMENT to enforce these obligations as the awarding body as defined under the California Labor Code.

Section 8. DEDICATION OF MBTIP FUNDS TO PUBLIC USE.

VTA is obligated as provided herein to implement the MBTIP components for which MBTIP funds have been transferred to VTA. Right of way, facilities constructed or reconstructed, or property purchased (excluding construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this AGREEMENT) shall remain dedicated to public use in the same proportion and scope and to the same extent as described in the MBTIP Documents unless COUNTY agrees otherwise, and VTA shall include such requirements in its agreements with Recipients of MBTIP funds. Unless COUNTY agrees otherwise, equipment acquired as part of the MBTIP with MBTIP funds shall be dedicated to that public use for its full economic life cycle, including any extensions of that life cycle achieved by reconstruction, rehabilitation or enhancements, and VTA shall include such requirements in its agreements with Recipients of MBTIP funds.

Section 9. LIMITATION ON OBLIGATIONS OF COUNTY.

For the mutual benefit of both parties, this AGREEMENT may have been entered into prior to the full availability of funds. This AGREEMENT is valid and enforceable only if sufficient funds for this AGREEMENT are made available to COUNTY for the purpose of this program for each full or partial COUNTY fiscal year of the MBTIP and are contained in the Measure B Fund. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress of the United States or the California State Legislature that may affect the provisions, terms or funding of this AGREEMENT in any manner.

Section 10. COMPLIANCE WITH APPLICABLE LAW.

VTA will comply with, and shall include provisions in its agreements with recipients of MBTIP funds, and shall require the recipients of MBTIP funds to include, and if VTA is the recipient of MBTIP funds, to include, provisions in their contracts and subcontracts requiring their contractors, subcontractors, and any other third party to comply with, all applicable requirements of State, federal, and other law. VTA agrees to insert in its agreements with recipients of MBTIP funds, and to require recipients of MBTIP funds receiving MBTIP funds to include in appropriate contracts, any required clauses in contracts and subcontracts with respect thereto. As between COUNTY and VTA, VTA shall have the sole duty and authority under this AGREEMENT to enforce these obligations.

Section 11. ASSIGNMENT, TRANSFER, HYPOTHECATION OF AGREEMENT.

Neither this AGREEMENT, nor the rights, duties, powers or obligations of a party hereunder, may be assigned, transferred, hypothecated or pledged by any party without the express written consent of the other party.

Section 12. CONSTRUCTION: NUMBER, GENDER AND CAPTIONS.

This AGREEMENT has been executed in the State of California and shall be construed according to the law of said State. Numbers and gender as used herein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included therein for the purposes of ease of reading and identification. Neither gender, number nor captions used herein shall be construed to alter the plain meaning of the text in which any or all of them appear.

Section 13. COUNTERPARTS.

This AGREEMENT may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this AGREEMENT may be used in lieu of the original.

Section 14. STATUTES DEEMED TO INCLUDE SUCCESSOR STATUTES.

All statutes cited herein shall be deemed to include successor statutes to the cited statutes as they presently exist.

Section 15. ENTIRE AGREEMENT.

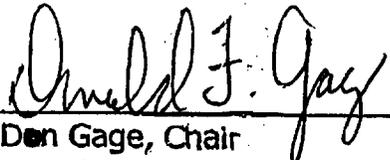
This AGREEMENT and the MBTIP Documents collectively constitute the entire agreement between the parties regarding the subject matter hereof.

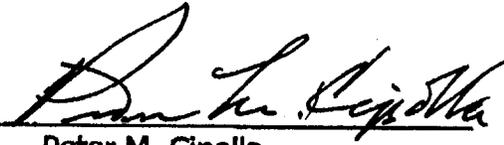
[SIGNATURES APPEAR ON FOLLOWING PAGE]

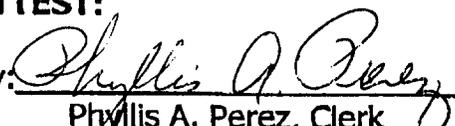
IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT by their duly authorized officers.

"COUNTY"
COUNTY OF SANTA CLARA

"VTA"
SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY

By: 
Don Gage, Chair
Board of Supervisors

By: 
Peter M. Cipolla
General Manager

ATTEST:
By: 
Phyllis A. Perez, Clerk
Board of Supervisors

ATTEST:
By: 
Sandy Weymouth, ~~Clerk~~ Board Secretary
Valley Transportation Authority

Approved as to Form and
Legality

Approved as to Form:

By: 
William I. Anderson
Assistant County Counsel

By: 
Suzanne Gifford
Counsel for Valley Transportation Authority

Fund Swap Procedures
 Implementation Letter of Agreement 2004-01
 Between

Santa Clara County and Santa Clara Valley Transportation Authority

PREAMBLE:

Pursuant to Article V, Section 5 of the Cooperative Agreement between Santa Clara County (COUNTY) and Santa Clara Valley Transportation Authority (VTA), the two jurisdictions can enter into a fund swap involving Measure B funds, so long as the swap has concurrence of the Measure B Transportation Improvement Program (MBTIP) Project Liaisons of both jurisdictions. This swap will provide \$22.5 million in STIP funding for the Route 237/880 Stage C Project in exchange for an equal amount of MBTIP funding to be returned to VTA. The intent of the swap is to provide cash flow benefit and interest generation benefit to the MBTIP and to provide a local source of flexible funding to VTA for future projects. In order to accomplish cash flow and interest generation benefit to the MBTIP the repayment of the \$22.5 million to VTA will follow the scheduled outlined below.

In addition, the agreement provides for MBTIP reimbursing VTA \$7,230,000 for future costs incurred for landscaping of MBTIP highway projects after the tax expires in the 3rd Quarter of FY 2006. This amount is over and above the \$22.5 million for Route 237/880 Project. The final two payments repayment schedule below anticipates there will be residual sales tax revenue after the tax is collected as a result of audits performed by State Board of Equalization to meet the costs incurred relating to MBTIP landscaping for certain highway projects. The total amount to be reimbursed to VTA is \$29,730,000.

COUNTY AGREES:

Subject to appropriation by COUNTY, to transfer \$29,730,000, pursuant to method of transfer below, from the Measure B Trust Fund to VTA in the following amounts:

<u>AMOUNT OF TRANSFER TO VTA</u>	<u>FISCAL YEAR AND QUARTER OF DISBURSEMENT</u>
\$2,500,000	January, 2005
\$2,500,000	July, 2005
\$5,000,000	January, 2006
\$12,500,000	July, 2006
\$5,000,000	January, 2007
\$2,230,000	July, 2007

Note: Draw down schedule above is flexible and may be adjusted based on financial performance of MBTIP. Measure B funds collected after June 30, 2006, will be the source of disbursement of the final two payments.

IN EXCHANGE FOR \$22,500,000 IN AWARDED GRANT FUNDS TO THE VTA, AS SPECIFIED BELOW:

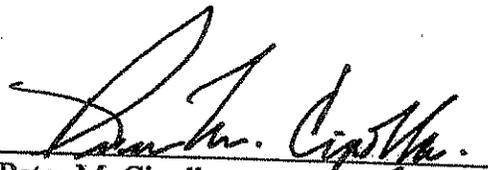
FUND TYPE	DESCRIPTION	AMOUNT	MEASURE B PROJECT TO APPLY
State	State Transportation Improvement Program (STIP)	\$22,500,000	Route 237/880 Stage C

METHOD OF TRANSFER:

An invoice for VTA will be forwarded to the County, as required, with the requested amount to County, which will, in turn, wire funds within 10 days of receipt of such invoice.

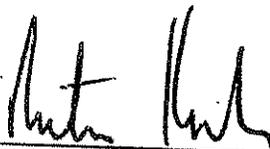
VTA AGREES:

1. To apply all STIP grant funds described in this fund swap agreement to the Route 237/880 Stage C Project.
2. To forward requests for Measure B swapped funds only after such time as the County has been fully reimbursed from STIP grant funds against expenses incurred by the 237/880 Stage C project.
3. To apply swapped funds received from the County towards landscaping for the 85/101(N) Interchange, the 880 Widening, the 87 (N&S) and the 237/880 Interchange Measure B projects.



Peter M. Cipolla
General Manager
Santa Clara Valley Transportation Authority

10/6/04

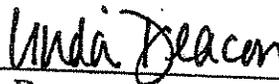


Peter Kutras, Jr.
County Executive
Santa Clara County



Suzanne Gifford
General Counsel
Santa Clara Valley Transportation Authority

10-6-04



Linda Deacon
Deputy County Counsel
Santa Clara County

AMENDMENT No. 20

**To the Master Agreement between the County of Santa Clara
and the Santa Clara Valley Transportation Authority (VTA)
for the Implementation of the Santa Clara County
Measure B Transportation Improvement Program (MBTIP)**

Completion Agreement

Whereas, the Measure B Transportation Improvement Program (MBTIP) half-cent sales tax expired on March 30, 2006, and all of the projects included in the 1996 Measure A advisory vote have been authorized; and

Whereas, the County and VTA wish to amend the Master Agreement to provide for VTA to assume full responsibility for completion of the remaining MBTIP Projects for which VTA is currently responsible, and to closeout the MBTIP Program;

Whereas, the Santa Clara County Board of Supervisors delegated authority to the County Executive, at their meeting on January 23, 2007, to finalize and execute a Measure B closeout amendment;

Whereas, the VTA Board of Directors authorized the General Manager, at their meeting on January 4, 2007, to finalize and execute a Measure B closeout amendment,

Now, Therefore, the Master Agreement is amended as follows:

1. Article X, TERMINATION of the Master Agreement is amended by adding sections (j), (k), (l), (m) and (n) thereto as follows:

(j) **Final Payment.** County, not later than July 15, 2007, shall pay to VTA the sum of \$51,217,102.66 comprised of the following:

(i) The approved budgets for all MBTIP Projects implemented by VTA, including Rail, Highway, Fund Swap Projects and Ancillary Programs authorized by the Master Agreement and its Amendments through Amendment No. 19, less the MBTIP funds paid by County to VTA through invoices dated April 15, 2007. This amount is further detailed in Attachment A to this Amendment as follows: Attachment A-1: Overall Payment Summary; Attachment A-2: Transit/Rail Program; Attachment A-3: Highway Program; Attachment A-4: Mitigation Program; Attachment A-5: Pavement Management Program; Attachment A-6: Bicycle Paths; Attachment A-7 Fund Swap Projects; and Attachment A-8; Low Floor Vehicles Swap.

(ii) A lump sum of \$4,000,000 to pay any and all claims, expenses, costs, damages or liability, whether known or unknown, anticipated or unanticipated, associated with any pending MBTIP Projects that VTA is responsible to complete and which may exceed the currently approved budgets of those projects. This amount is further detailed in Attachment A-9: Amendment 20 Closeout Payment to this Amendment.

(iii) All MBTIP residual sales tax revenue collected through the date of execution of this Amendment for the period beginning April 1, 2006. Said residual sales tax revenues received between June 1, 2006, and March 31, 2007, are further detailed in Attachment A-10: Residual Sales Tax to this Amendment and included in the Final Payment. Future residual sales tax revenues shall be paid to VTA within 15 days of receipt by the County.

(iv) An interest adjustment related to other swaps has been mutually agreed upon and included in Attachment A-11: Less 50% Interest Adjustment. An interest discount is included in the final payment at the annual rate of 2% based on the latest agreed-upon MBTIP cashflow from December 2006 through the projected end of the MBTIP and prorated on a mutually agreeable basis as incorporated in Attachment A-12: Less Interest Discount for Pre-payment. All future actual interest earnings will continue to be credited by VTA to the benefit of the MBTIP.

(k) **Advances to VTA.** All previous advances to VTA and prior carryovers due to Measure B from VTA have been mutually agreed upon and deducted from the final payment. These are itemized as follows: Attachment A-13: Transit/Rail, Highway and Ancillary Advances; Attachment A-14: Less Net Carryover due to the MBTIP. After the Final Payment is made under this Amendment, advances to VTA will cease. VTA shall reflect actual expenditures and credits against the Final Payment on the periodic Invoice Advices as described within Section 3 of this Amendment. Invoice Advices shall be submitted to the County for all activity against the Final Payment.

(l) **Funds Due to County Roads and Airports.** Remaining funds due to County Roads and Airports are excluded from the calculation of the Final Payment due to VTA.

(m) **VTA Obligation.** VTA shall apply funds received pursuant to section (j) above to complete the following MBTIP elements:

(i) To pay the currently-identified costs to complete authorized MBTIP Projects, including Fund Swap Projects and Ancillary Programs.

(ii) To pay any claims, expenses, costs, damages or liability, whether known or unknown, anticipated or unanticipated, associated with any pending MBTIP Projects even if they exceed the currently approved budgets of those projects.

(iii) To pay for completion of Highway Landscaping Projects previously identified in Swap Fund Implementation Letter 2004-01.

(n) **VTA Use of Unspent Funds.** If VTA determines that savings and/or additional revenue pursuant to sections (j) or (l) above will be realized, VTA shall apply funds according to the following priority.

(i) To reimburse VTA the amount of \$1.05 million, representing one-half of the difference between the actual and estimated VTA indirect costs of non-rail MBTIP Projects as approved in Amendment No. 18 to the Master Agreement.

(ii) To pay to County Roads and Airports the amount of \$1.5 million to be utilized for County expressway projects at the sole discretion of the County Board of Supervisors.

(iii) To reimburse VTA the amount of \$1.05 million, representing one-half of the difference between the actual and estimated VTA indirect costs of non-rail MBTIP Projects as approved in Amendment No. 18 to the Master Agreement.

(iv) To fund additional Caltrain projects and/or Pavement Management Projects, at the sole discretion of the VTA Board of Directors.

2. Article VII, REAL PROPERTY ACQUISITION AND OWNERSHIP of the Master Agreement is amended by adding the following to Section 6. Personal Property:

Attachment A-15: Less Personal Property Valuation to this Amendment describes all personal property relating to MBTIP services currently in the possession of VTA. County hereby transfers to VTA all such personal property, regardless of whether its economic life has been exhausted. The agreed upon value for said personal property is also included in Attachment A-1: Overall Payment Summary.

3. Article VI, REPORTS, RECORDS AND AUDITS, of the Master Agreement is amended by deleting existing Section 4, Quarterly Reports and Section 5, Revenue and Expenditure Plan. A new Section 4, Reports, is added to read:

VTA shall provide regular periodic reports to County as long as MBTIP funds remain unexpended, according to the following schedule.

(i) Cost Reports -- quarterly until all projects are closed.

(ii) Rail and Highway Project Status Reports (Closeout Matrices) -- monthly through June 2007, and quarterly thereafter.

(iii) Closeout Punch Lists -- monthly for one month after the effective date of this Amendment, and quarterly thereafter.

(iv) Staffing Status Reports -- monthly through June 2007.

(v) Project Re-forecasts (April and October) -- semi-annually.

(vi) Cash flow -- semi-annually.

(vii) Invoice Advices (in the same format as current Program Invoices), including Rail, Highway, Ancillary Programs and Final Project Invoices -- monthly to the VTA MBTIP fund, with a copy to County.

(viii) VTA shall provide to County a Final Report, in the mutually-agreed-upon format known as a "Closeout Binder" for each VTA-implemented MBTIP Project -- to be updated quarterly until all projects reach completion and all funds are expended.

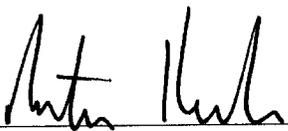
4. Article X, TERMINATION, of the Master Agreement is further amended by adding a new section (o) thereto as follows:

(o) **Expiration of Agreement.** The Master Agreement shall expire upon the filing of the last periodic report described herein, certifying that all MBTIP funds furnished to VTA have been expended in the manner described herein, or the provision of the last Final Report, indicating that all MBTIP Projects have been completed, whichever occurs later. VTA shall provide notice in writing to the County within 10 days of submitting the later report indicating that all terms and conditions of the Master Agreement, as amended, have been met.

5. As hereby amended, the Master Agreement remains in full force and effect.

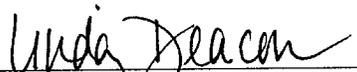
6. This Amendment to the Master Agreement becomes effective upon execution.

County of Santa Clara

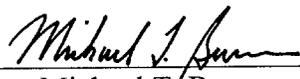
By: 
Peter Kutras, Jr.
County Executive

Date: 06/26/2007

Approved as to Form and Legality

By: 
Linda Deacon
Deputy County Counsel

**Santa Clara Valley
Transportation Authority**

By: 
Michael T. Burns
General Manager

Date: 06-22-07

Approved as to Form

By: 
Suzanne Gifford
General Counsel
June 22, 2007

**Measure B Transportation Improvement Program
Amendment 20 Overall Payment Summary**

ATTACHMENT A-1

Overall Summary

Program	Budget ¹	Budget Modifications ²	Final Budget	Paid by Measure B ³	Net Due to VTA
Transit/Rail Program	\$ 476,068,853.32	\$ 13,850,460.00	\$ 489,919,313.32	\$ 464,625,464.09	\$ 25,293,849.23
Highway Program	\$ 422,942,577.43	\$ -	\$ 422,942,577.43	\$ 408,250,838.13	\$ 14,691,739.30
Mitigation Site	\$ 7,181,000.00	\$ -	\$ 7,181,000.00	\$ 4,401,197.57	\$ 2,779,802.43
Pavement Management Program	\$ 90,000,000.00	\$ -	\$ 90,000,000.00	\$ 89,999,995.60	\$ 4.40
Bicycle Paths	\$ 12,000,000.00	\$ -	\$ 12,000,000.00	\$ 1,515,831.20	\$ 10,484,168.80
Fund Swap Projects ⁴	\$ 122,925,214.00	\$ 13,643.78	\$ 122,938,857.78	\$ 119,470,867.95	\$ 3,467,989.83
Low Floor Vehicles Swap	\$ 198,346,693.38	\$ -	\$ 198,346,693.38	\$ 198,346,693.38	\$ -
Amendment 20 Closeout Payment	\$ -	\$ 4,000,000.00	\$ 4,000,000.00	\$ -	\$ 4,000,000.00
TOTAL	\$ 1,329,464,338.13	\$ 17,864,103.78	\$ 1,347,328,441.91	\$ 1,286,610,887.92	\$ 60,717,553.99
			Plus Residual Sales Tax Revenues⁵		\$ 4,136,880.52
			Less 50% of Interest Adjustment related to Other Swaps⁶		\$ (58,775.44)
			Less Interest Discount for Pre-payment⁷		\$ (618,603.30)
			Less Outstanding Transit/Rail Program Advances		\$ (400,000.00)
			Less Outstanding Highway Program Advances		\$ (2,700,000.00)
			Less Outstanding Ancillary Program Advances		\$ (6,000,000.00)
			Less Net Carryover from 04/15/2007 Rail (T96) and Highway (H95) Invoices⁸		\$ (3,852,072.10)
			Less Personal Property Valuation⁹		\$ (7,881.00)
			TOTAL Net due to VTA		\$ 51,217,102.66

¹ Per the December 2006 Semi-Annual Report, as approved by the Santa Clara County Board of Supervisors on 12/12/2006.

² Per closeout reconciliations, and as specified in Amendment 19 and 20.

³ Through the 04/15/2007 Transit/Rail and Highway Invoices and the 03/22/2007 Ancillary Invoice.

⁴ Adjustments made to match Dec 2006 Semi-Annual Report - 25M & 1.8M MB/Swap projects, 4.907M Measure A Tasman/TEA-21 (A) & (C)).

⁵ Includes residual sales tax revenues as of 03/31/2007 to partially fund Section 2 of ILA 2004-01.

⁶ Reflects 50% interest earnings adjustment for those swaps where reimbursements to the County did not precede the swap/ancillary invoice from VTA.

⁷ Calculated at 2.0% annual interest rate of available balance attributed to VTA final payment between 07/2007 and the end of the Program, as estimated in the December 2006 Semi-Annual Report.

⁸ Reflects carryover from invoices through T96 and H95 (including \$6.672M adjustment).

⁹ Based on updated inventory lists of personal property items with valuation as of June 30, 2007.

Measure B Transportation Improvement Program
Amendment 20

ATTACHMENT A-2

Transit/Rail Program, by Project

Program	Budget ¹	Budget Modifications ²	Final Budget	Paid by Measure B ³	Net Due to VTA
P0002-Tasman East Light Rail Project	\$ 72,080,184.06		\$ 72,080,184.06	\$ 70,687,254.64	\$ 1,392,929.42
P0003-Capitol Light Rail Project	\$ 111,643,737.07		\$ 111,643,737.07	\$ 110,388,407.39	\$ 1,255,329.68
P0002-Vasona Light Rail Project ⁴	\$ 163,029,656.19		\$ 163,029,656.19	\$ 157,946,994.15	\$ 5,082,662.04
P0041-Low Floor Light Rail Vehicles	\$ 90,000,000.00		\$ 90,000,000.00	\$ 90,000,000.00	\$ -
P0031-40-Caltrain Service Improvements	\$ 29,729,375.00	\$ 13,850,000.00	\$ 43,579,375.00	\$ 26,031,720.16	\$ 17,547,654.84
P0004-Fremont/South Bay Connector	\$ 3,228,901.00	\$ 460.00	\$ 3,229,361.00	\$ 3,229,459.73	\$ (98.73)
P0337-CODE	\$ 6,357,000.00		\$ 6,357,000.00	\$ 6,341,628.02	\$ 15,371.98
TOTAL	\$ 476,068,853.32	\$ 13,850,460.00	\$ 489,919,313.32	\$ 464,625,464.09	\$ 25,293,849.23

¹ Per the December 2006 Semi Annual Report, as approved by the Santa Clara County Board of Supervisors on 12/12/2006.

² Per closeout reconciliations, and as specified in Amendment 19 and 20.

³ Through the 04/15/2007 Transit/Rail and Highway Invoices and the 03/22/2007 Ancillary Invoice.

⁴ Vasona includes charge of \$2.777M related to Measure B Swap within this project's budget **{F-2}**.

Measure B Transportation Improvement Program
Amendment 20

ATTACHMENT A-3

Highway Program, by Project

Program	Budget ¹	Budget Modifications ²	Final Budget	Paid by Measure B ³	Net Due to VTA
P0186-Route 880 Widening	\$ 61,168,997.05		\$ 61,168,997.05	\$ 60,945,520.01	\$ 223,477.04
P0187-Route 85/87 Interchange	\$ 39,850,000.00		\$ 39,850,000.00	\$ 39,324,266.88	\$ 525,733.12
P0188-Route 101 Widening	\$ 50,395,519.38		\$ 50,395,519.38	\$ 50,395,519.67	\$ (0.29)
P0189-Route 85/101 Interchange (North) ⁴	\$ 123,055,000.00		\$ 123,055,000.00	\$ 117,580,027.55	\$ 5,474,972.45
P0190-Route 237/880	\$ 27,037,061.00		\$ 27,037,061.00	\$ 26,927,526.56	\$ 109,534.44
P0191-Route 87 HOV Lanes (North)	\$ 10,996,000.00		\$ 10,996,000.00	\$ 11,007,341.88	\$ (11,341.88)
P0192-Route 17 Improvements	\$ 26,536,000.00		\$ 26,536,000.00	\$ 23,850,230.14	\$ 2,685,769.86
P0193-Route 85/101 Interchnage (South)	\$ 43,039,000.00		\$ 43,039,000.00	\$ 41,303,879.21	\$ 1,735,120.79
P0272-Route 87 HOV Lanes (South)	\$ 12,625,000.00		\$ 12,625,000.00	\$ 12,250,553.83	\$ 374,446.17
P0273-Route 152 Improvements	\$ 20,631,000.00		\$ 20,631,000.00	\$ 17,244,639.88	\$ 3,386,360.12
P0288-Route 85 Noise Mitigation	\$ 7,609,000.00		\$ 7,609,000.00	\$ 7,352,274.04	\$ 256,725.96
P0338-CODE	\$ -		\$ -	\$ 69,058.48	\$ (69,058.48)
TOTAL	\$ 422,942,577.43	\$ -	\$ 422,942,577.43	\$ 408,250,838.13	\$ 14,691,739.30

¹ Per the December 2006 Semi Annual Report, as approved by the Santa Clara County Board of Supervisors on 12/12/2006.

² Per closeout reconciliations, and as specified in Amendment 19 and 20.

³ Through the 04/15/2007 Transit/Rail and Highway Invoices and the 03/22/2007 Ancillary Invoice.

⁴ 85/101 North includes charge of \$10.283M related to Measure B Swap within this project's budget **{F-3}**.

Measure B Transportation Improvement Program
Amendment 20

ATTACHMENT A-4

Mitigation Program, by Project

Program	Budget ¹	Budget Modifications ²	Final Budget	Paid by Measure B ³	Net Due to VTA
P0274/560-Mitigation Site	\$ 7,181,000.00	\$ -	\$ 7,181,000.00	\$ 4,401,197.57	\$ 2,779,802.43
TOTAL	\$ 7,181,000.00	\$ -	\$ 7,181,000.00	\$ 4,401,197.57	\$ 2,779,802.43

¹ Per the December 2006 Semi Annual Report, as approved by the Santa Clara County Board of Supervisors on 12/12/2006.

² Per closeout reconciliations, and as specified in Amendment 19 and 20.

³ Through the 03/15/2007 Transit/Rail and Highway Invoices and the 03/22/2007 Ancillary Invoice.

Measure B Transportation Improvement Program
 Amendment 20
Pavement Management Program

ATTACHMENT A-5

<u>Program</u>	<u>Decription (Fund name/#)</u>	<u>Amount Type</u>	<u>Grand Totals:</u>	<u>Variance [Unfav/(Fav)]</u>
^	Campbell	Budget	\$ 1,620,032.00	
		Ancillary Invoice	\$ 1,620,032.20	\$ (0.20)
^	County Roads and Airports	Budget	\$ 27,000,000.00	
		Ancillary Invoice	\$ 27,000,000.00	\$ -
^	Cupertino	Budget	\$ 1,801,294.00	
		Ancillary Invoice	\$ 1,801,294.40	\$ (0.40)
^	Gilroy	Budget	\$ 1,416,112.00	
		Ancillary Invoice	\$ 1,416,112.20	\$ (0.20)
^	Los Altos	Budget	\$ 1,178,206.00	
		Ancillary Invoice	\$ 1,178,205.60	\$ 0.40
^	Loas Altos Hills	Budget	\$ 328,538.00	
		Ancillary Invoice	\$ 328,537.80	\$ 0.20
^	Los Gatos	Budget	\$ 1,223,520.00	
		Ancillary Invoice	\$ 1,223,520.00	\$ -
^	Milpitas	Budget	\$ 2,311,096.00	
		Ancillary Invoice	\$ 2,311,095.60	\$ 0.40
^	Monte Sereno	Budget	\$ 147,276.00	
		Ancillary Invoice	\$ 147,275.60	\$ 0.40
^	Morgan Hill	Budget	\$ 1,098,904.00	
		Ancillary Invoice	\$ 1,098,904.40	\$ (0.40)
^	Mountain View	Budget	\$ 3,047,474.00	
		Ancillary Invoice	\$ 3,047,474.00	\$ -
^	Palo Alto	Budget	\$ 2,503,686.00	
		Ancillary Invoice	\$ 2,503,685.60	\$ 0.40
^	San Jose	Budget	\$ 35,493,436.00	
		Ancillary Invoice	\$ 35,493,435.60	\$ 0.40
^	Santa Clara	Budget	\$ 4,214,350.00	
		Ancillary Invoice	\$ 4,214,350.00	\$ -
^	Saratoga	Budget	\$ 1,257,508.00	
		Ancillary Invoice	\$ 1,257,507.80	\$ 0.20
^	Sunnyvale	Budget	\$ 5,358,568.00	
		Ancillary Invoice	\$ 5,358,564.80	\$ 3.20
Total PMP differences =				\$ 4.40

	Total Budgets =	\$ 90,000,000.00
	Total Ancillary Invoices =	\$ 89,999,995.60
	Difference =	\$ 4.40

Program	Implem. Ltr or Sponsor (if any)	Description (Fund name/#)	Amount Type	Grand Totals:	Variance [Unfav/(Fav)]
^	Campbell	B03-Camden/Los Gatos Crk Tr	MB Programmed	\$ 124,400.00	
			Ancillary Invoice	\$ 124,400.00	\$ -
^	Campbell	B01-Campbell Ave Bridge Widening...	MB Programmed	\$ 12,000.00	
			Ancillary Invoice	\$ -	\$ 12,000.00
^	County	B05-Almaden Exp/Bike&Ped	MB Programmed	\$ 75,328.70	
			Ancillary Invoice	\$ 75,328.70	\$ -
^	County	B07-Foothill Exp Loyola Bike&Ped	MB Programmed	\$ -	
			Ancillary Invoice	\$ -	\$ -
^	Cupertino	B11-Mary Ave (I-280) Bike-Ped OC	MB Programmed	\$ 5,885,200.00	
			Ancillary Invoice	\$ 163,885.00	\$ 5,721,315.00
^	Cupertino	B17-Union Pacific RR/DeAnza Trail	MB Programmed	\$ 157,655.00	
			Ancillary Invoice	\$ 157,655.00	\$ -
^	Gilroy	B15-Stevens Creek	MB Programmed	\$ -	
			Ancillary Invoice	\$ -	\$ -
^	Los Altos	B15-Stevens Creek	MB Programmed	\$ -	
			Ancillary Invoice	\$ -	\$ -
^	Los Altos	B14-Adobe Crk Bike-Ped bridge repl	MB Programmed	\$ 80,000.00	
			Ancillary Invoice	\$ -	\$ 80,000.00
^	Los Altos Hills	B52-El Monte Moody Road Bike imp	MB Programmed	\$ -	
			Ancillary Invoice	\$ -	\$ -
^	Milpitas	B18-Union Pacific RR Bike-ped OC	MB Programmed	\$ 200,000.00	
			Ancillary Invoice	\$ 194,113.00	\$ 5,887.00
^	Milpitas	B51-Piedmont Ave Bike/Ped impr	MB Programmed	\$ 41,300.00	
			Ancillary Invoice	\$ 41,253.00	\$ 47.00
^	Milpitas	B17-02SC01-CoyoteCrkTrail	MB Programmed	\$ 160,400.00	
			Ancillary Invoice	\$ 160,412.00	\$ (12.00)
^	San Jose	B19-Hwy 9 Corridor impr (Saratoga...)	MB Programmed	\$ 15,000.00	
			Ancillary Invoice	\$ -	\$ 15,000.00
^	Morgan Hill	B21-West Little Llagas Creek Trail	MB Programmed	\$ 300,000.00	
			Ancillary Invoice	\$ 228,023.50	\$ 71,976.50
^	Palo Alto	B27-Homer Undercrossing	MB Programmed	\$ 1,000,000.00	
			Ancillary Invoice	\$ -	\$ 1,000,000.00
^	San Jose	B33-Los Gatos creek Trail reach 5	MB Programmed	\$ 500,000.00	
			Ancillary Invoice	\$ -	\$ 500,000.00
^	Saratoga	B39-Union Pacific RR/DeAnza Trail	MB Programmed	\$ 380,000.00	
			Ancillary Invoice	\$ 85,761.00	\$ 294,239.00
^	Sunnyvale	B42-Borregas Bike/Ped OC...	MB Programmed	\$ 285,000.00	
			Ancillary Invoice	\$ 285,000.00	\$ -
^	VTA	B46-Pilot Parking Program	MB Programmed	\$ 100,000.00	
			Ancillary Invoice	\$ -	\$ 100,000.00
^	VTA, SC, SJ	B35-Gradalupe River Bridge@Rvr Oks	MB Programmed	\$ 1,640,000.00	
			Ancillary Invoice	\$ -	\$ 1,640,000.00
^	Unallocated	Misc.	MB Programmed	\$ 1,043,716.30	
			Ancillary Invoice	\$ -	\$ 1,043,716.30
				Total Bikedifferences =	\$ 10,484,168.80

Total MB Programmed =	\$ 12,000,000.00
Total Ancillary Invoices =	\$ 1,515,831.20
Difference =	\$ 10,484,168.80

Measure B Transportation Improvement Program
 Amendment 20
 Fund Swap Projects

ATTACHMENT A-7

Program	Implem. Ltr or Sponsor (if any)	Description (Fund name/#)	Amount Type	Grand Totals:	Budget to Reimbursement Variance [Fav/(Unfav)]	Budget to Ancillary Invoice Variance [Unfav/(Fav)]
RAIL	SWAP ILA 2000-02	Tasman East - CMAQ 1st (F00CMAQ) {A} ({A-1}; Swap. {A-2}; TEA-21-1, {A-3}; SCC-PMP/StrmDmg)	Total Budget	\$ 18,384,000.00		
			Reimbursement	\$ (18,384,000.00)	\$ -	
			Budget {A-1}	\$ 880,000.00		
			Ancil Inv {A-1}	\$ 880,000.00		\$ -
			Budget {A-2}	\$ 11,204,000.00		
			Ancil Inv {A-2}	\$ 11,204,079.00		\$ (79.00)
		Budget {A-3}	\$ 6,300,000.00			
		Ancil Inv {A-3}	\$ 6,300,000.00		\$ -	
		Tasman East - STIP (F00SSTP) {B} ({B-1}; Swap, {B-2} & {AQ}; 101Hab, {B-3}; SCC-Mntguc, {B-4}; SCC-TDA3, {B-5}; SCC-Expwy Stdy)	Total Budget	\$ 28,098,159.00		
			Reimbursement	\$ (28,098,158.97)	\$ 0.03	
			Budget {B-1}	\$ 20,023,159.00		
			Ancil Inv {B-1}	\$ 20,013,473.49		\$ 9,685.51
			Budget {B-2}	\$ 3,800,000.00		
			Ancil Inv {B-2}	\$ 3,800,000.00		\$ -
			Budget {B-3}	\$ 3,200,000.00		
			Ancil Inv {B-3}	\$ 3,200,000.00		\$ -
			Budget {B-4}	\$ 75,000.00		
			Ancil Inv {B-4}	\$ 75,000.00		\$ -
Budget {B-5}	\$ 1,000,000.00					
Ancil Inv {B-5}	\$ 999,999.51		\$ 0.49			
Tasman East - CMAQ 2nd (F01CMAQ) {C} ({C-1}; Swap, {C-2}; TEA-21-2, {C-3}; SCC-PMP/StrmDmg)	Total Budget	\$ 20,000,000.00				
	Reimbursement	\$ (19,591,419.54)	\$ 408,580.46			
	Budget {C-1}	\$ -				
	Ancil Inv {C-1}	\$ -		\$ -		
	Budget {C-2}	\$ 14,000,000.00				
	Ancil Inv {C-2}	\$ 14,000,001.00		\$ (1.00)		
Budget {C-3}	\$ 6,000,000.00					
Ancil Inv {C-3}	\$ 6,000,000.00		\$ -			
Tasman East-CMAQ Match (M0005SHACQ) {D}	Budget	\$ 1,408,000.00				
	Reimbursement	\$ (1,408,000.00)	\$ -			
	Ancillary Invoice	\$ 1,408,000.00		\$ -		
RAIL	AP ILA 2001-02	Vasona - STIP (F01STP) {F} ({F-1}; Swap, {F-2} & {V}; Winchester, {F-3} & {AZ}; 101/85N, {F-4} & {AQ}; 101Hab, {F-5}; SCC-Expwy Stdy)	Total Budget	\$ 46,566,643.78		
			Reimbursement	\$ (46,553,000.00)	\$ 13,643.78	
			Budget {F-1}	\$ 18,166,643.78		
			Ancil Inv {F-1}	\$ 14,953,000.00		\$ 3,213,643.78
			Budget {F-2}	\$ 1,800,000.00		
			Ancil Inv {F-2}	\$ 1,652,896.09		\$ 147,103.91
			Budget {F-3}	\$ 25,000,000.00		
			Ancil Inv {F-3}	\$ 24,333,771.76		\$ 666,228.24
			Budget {F-4}	\$ 600,000.00		
			Ancil Inv {F-4}	\$ 355,357.55		\$ 244,642.45
			Budget {F-5}	\$ 1,000,000.00		
			Ancil Inv {F-5}	\$ 1,000,000.00		\$ -

Program	Implem. Ltr or Sponsor (if any)	Description (Fund name/#)	Amount Type	Grand Totals:	Budget to Reimbursement Variance [Fav/(Unfav)]	Budget to Ancillary Invoice Variance [Unfav/(Fav)]
RAI	SW	Vasona - RABA Fed STP (F01STP) {G} ({G-1}: Swap, {G-2}: RABA TEA-21 PMP, {G-3}: SCC-RABA/PMP)	Total Budget	\$ 5,040,876.00		
			Reimbursement	\$ (3,815,194.92)	\$ 1,225,681.08	
			Budget {G-1}	\$ 504,000.00		
			Ancil Inv {G-1}	\$ 504,000.00		\$ -
			Budget {G-2}	\$ 3,175,839.00		
			Ancil Inv {G-2}	\$ 3,175,741.00		\$ 98.00
	SWAP ILA 2003-01	PA Transit - Fed 5309 FY97 Funds {L}	Budget	\$ 500,000.00		
			Reimbursement	\$ (500,000.00)	\$ -	
			Ancillary Invoice	\$ 500,000.00		\$ -
	SWAP ILA 2003-02	Vasona - Fed 5309 FY97 Funds (F03FG03) {M}	Budget	\$ 7,241,179.00		
			Reimbursement	\$ (7,241,179.00)	\$ -	
			Ancillary Invoice	\$ 7,241,179.40		\$ (0.40)
HIGHWAY	SWAP ILA 2004-01	Route 237/880 - P0190-STIP {N} ({N-1}: Swap, {N-2}&{AX}:P0186-880, {N-3}&{AR}:P0189-85/101N, {N-4}&{AY}:P0272-87S)	Total Budget	\$ 22,500,000.00		
			Reimbursement	\$ (22,500,000.00)	\$ -	
			Budget {N-1}	\$ 15,828,000.00		
			Ancil Inv {N-1}	\$ 15,828,000.00		\$ -
			Budget {N-2}	\$ 1,178,000.00		
			Ancil Inv {N-2}	\$ 1,178,000.00		\$ -
			Budget {N-3}	\$ 2,654,000.00		
			Ancil Inv {N-3}	\$ 2,654,000.00		\$ -
			Budget {N-4}	\$ 2,840,000.00		
			Ancil Inv {N-4}	\$ 2,840,000.00		\$ -
				Totals =	\$ 1,647,905.35	\$ 4,281,321.98

	Total Budgets¹	= \$ 149,738,857.78	per footnote 1 below:	\$ 122,938,857.78
	Total Ancillary Invoices²	= \$ 145,457,535.80	per footnote 2 below:	\$ 119,470,867.95
	Difference	= \$ 4,281,321.98	> > > >	\$ 3,467,989.83

	Total Budgets	= \$ 149,738,857.78
	Total Reimbursements	= \$ (148,090,952.43)
	Difference	= \$ 1,647,905.35

¹ Total budget has been reduced on the Overall Summary by \$25M for 85/101N and \$1.8M for Vasona Winchester.

² Total ancillary invoice has been reduced on the Overall Summary by \$24.33M for 85/101N and \$1.65M for Vasona Winchester.

² Remaining unspent funds for {B-5}:SCC-Expwy Stdy in the amount of \$0.49 has been attributed to VTA instead of County Roads.

Measure B Transportation Improvement Program
 Amendment 20
 Low Floor Vehicles Swap

ATTACHMENT A-8

	Implem. Ltr or Sponsor (if any)	Description (Fund name/#)	Amount Type	Grand Totals:	Budget to	Budget to	
					Reimbursement	Ancillary Invoice	
					Variance	Variance	
					[Fav/(Unfav)]	[Unfav/(Fav)]	
SWAP ILA 2001-03 (Incl. Amendment #1)		Vasona - 01 Series A Bond {H}	Budget	\$ 56,416,885.28			
			Reimbursement	\$ (56,416,885.28)	\$ -		
			Ancillary Invoice	\$ 56,416,885.28		\$ -	
		Capital - 01 Series A Bond {B}	Budget	\$ 41,970,403.59			
			Reimbursement ¹	\$ (41,970,402.59)	\$ 1.00		
			Ancillary Invoice	\$ 41,970,403.59		\$ -	
		Tasman East - 01 Series A Bond {J}	Budget	\$ 99,959,404.51			
			Reimbursement	\$ (99,959,404.51)	\$ -		
			Ancillary Invoice	\$ 99,959,404.51		\$ -	
	All 04/01 - 01 Series A Bond {K}	Budget	\$ -				
		Reimbursement	\$ -	\$ -			
		Ancillary Invoice	\$ -		\$ -		
	Totals =					\$ 1.00	\$ -

	Total Budgets =	\$ 198,346,693.38
	Total Ancillary Invoices =	\$ 198,346,693.38
	Difference =	\$ -

	Total Budgets =	\$ 198,346,693.38
	Total Reimbursements =	\$ (198,346,692.38)
	Difference =	\$ 1.00

¹ Measure B waived the \$1.00 indicated due from VTA as a remaining reimbursement.

Measure B Transportation Improvement Program
Amendment 20

ATTACHMENT A-9

Amendment 20 Closeout Payment

Category	Description	Dollar Amount
R	Amendment 20 Closeout Rail	\$ 2,500,000.00
H	Amendment 20 Closeout Highway	\$ 550,000.00
P	Amendment 20 Closeout Program-wide	\$ 950,000.00
Total:		\$ 4,000,000.00

Measure B Transportation Improvement Program
 Amendment 20

ATTACHMENT A-10

Residual Sales Tax

Description	Cash Basis \$ Amount
June 2006 Advance	\$ 1,051,300.00
July 2006 Advance	\$ 1,051,300.00
August 2006 Advance	\$ 1,401,700.00
September 2006 Net Settlement	\$ -
December 2006 Net Settlement	\$ -
March 2007 Settlement	\$ 632,580.52
TOTAL as of March 2007	\$ 4,136,880.52

Measure B Transportation Improvement Program
Amendment 20

ATTACHMENT A-11

Less 50% of Interest Adjustment related to Other Swaps

Reference	\$ Amount ¹	Interest Total
C-2	\$ (69,276.00)	\$ (2,585.07)
C-3	\$ (339,304.46)	\$ (21,563.87)
TOTAL	\$ (408,580.46)	\$ (24,148.94)
G-2	\$ (1,012,848.00)	\$ (76,572.60)
G-1	\$ (212,833.08)	\$ (16,829.35)
TOTAL	\$ (1,225,681.08)	\$ (93,401.95)
	<u>\$ (1,634,261.54)</u>	<u>\$ (117,550.89)</u>
	50% of Total =	\$ (58,775.44)

¹ This amount excludes interest related to the \$13.6K related to **{F}**.

Measure B Transportation Improvement Program
Amendment 20

ATTACHMENT A-12

Less Interest Discount for Pre-payment¹

	<u>Jul-07</u>	<u>Aug-07</u>	<u>Sep-07</u>	<u>Oct-07</u>	<u>Nov-07</u>	<u>Dec-07</u>	<u>Jan-08</u>	<u>Feb-08</u>	<u>Mar-08</u>	<u>Apr-08</u>
Projected Interest Earnings	\$ (49,737)	\$ (46,072)	\$ (42,521)	\$ (40,677)	\$ (38,406)	\$ (36,298)	\$ (35,001)	\$ (34,463)	\$ (34,000)	\$ (32,425)
	<u>May-08</u>	<u>Jun-08</u>	<u>Jul-08</u>	<u>Aug-08</u>	<u>Sep-08</u>	<u>Oct-08</u>	<u>Nov-08</u>	<u>Dec-08</u>	<u>Jan-09</u>	<u>Feb-09</u>
	\$ (29,769)	\$ (27,280)	\$ (24,728)	\$ (23,340)	\$ (23,232)	\$ (23,127)	\$ (23,035)	\$ (22,944)	\$ (22,840)	\$ (22,738)
	<u>Mar-09</u>	<u>Apr-09</u>	<u>May-09</u>	<u>Jun-09</u>	<u>Jul-09</u>	<u>Aug-09</u>	TOTAL			
	\$ (22,659)	\$ (22,590)	\$ (21,938)	\$ (20,796)	\$ (20,289)	\$ (26,348)	\$ (767,251.37)			

TOTAL Net due to VTA (prior to interest discount) = \$ 51,835,706
 MB Cash Balance as of 05/31/2007 = \$ 64,291,633
 VTA payment proportional share as a percentage = 80.63%

TOTAL interest discount as a proportional share = \$ (618,603.30)

¹ Based on Interest Earnings as projected within the cashflow from the December 2006 Semi-Annual Report.

Measure B Transportation Improvement Program
Amendment 20

ATTACHMENT A-13

Less Outstanding Transit/Rail Program Advances

Description	\$ Amount
Rail Advance for March 2007 (February 2007 Invoice)	\$ (200,000.00)
Rail Advance for April 2007 (March 2007 Invoice)	\$ (100,000.00)
Rail Advance for May 2007 (April 2007 Invoice)	\$ (100,000.00)
TOTAL	\$ (400,000.00)

Less Outstanding Highway Program Advances

Description	\$ Amount
Highway Advance for March 2007 (February 2007 Invoice)	\$ (1,000,000.00)
Highway Advance for April 2007 (March 2007 Invoice)	\$ (1,000,000.00)
Highway Advance for May 2007 (April 2007 Invoice)	\$ (700,000.00)
TOTAL	\$ (2,700,000.00)

Less Outstanding Ancillary Program Advances

Description	\$ Amount
Ancillary Advance	\$ (6,000,000.00)
TOTAL	\$ (6,000,000.00)

Measure B Transportation Improvement Program
Amendment 20

ATTACHMENT A-14

Less Net Carryover from 04/15/2007 Rail (T96) and Highway (H95) Invoices

Invoice #	Description	Dollar Amount
T96	Transit/Rail Net to VTA	\$ 411,923.07
H95	Highway Net to Measure B	\$ (4,266,957.49)
61/60	Administrative Service Fees to VTA	\$ 2,962.32
Total:		<u>\$ (3,852,072.10)</u>

Measure B Transportation Improvement Program
Amendment 20

Attachment A-15

Less Personal Property Valuation

Acquisition Type	Valuation
Transit/Rail Technology Items	\$ (430.00)
Highway Technology Items	\$ (3,150.00)
Rail Furniture Items	\$ (2,375.00)
Highway Furniture Items	\$ (1,926.00)

TOTAL \$ (7,881.00)

County of Santa Clara

Office of the County Executive

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-5105



May 24, 2011

TO: Roger Mialocq
Harvey Rose Accountancy Corporation

FROM: Jeffrey V. Smith
County Executive

RE: Administration Response to the Management Audit of the Measure B
Transportation Improvement Program

Thank you for the opportunity to provide a response to the audit report on the Measure B Transportation Improvement Program. Our comments are as follows:

SECTION 1

On Page 16, the audit report indicates that "County Roads had \$45.2 million in surplus cash as of June 30, 2012. This cash reserve exists as an emergency fund in the event of revenue shortfalls or natural disasters." The Roads and Airports Department indicates that the actual amount of cash available for emergencies is \$11.3 million. The remaining \$33.9 million represents obligations for specific projects such as Prop. 1B projects that are under development.

Recommendation 1.1: Authorize the transfer of the estimated \$6.2 million of surplus funds in the Measure B Fund to the General Fund for use on one-time general County purposes, as determine by the Board. (Priority 1)

Partially agree. Administration concurs with the Report calculations regarding the unexpended, uncommitted fund balance of approximately \$6.2 million for the Measure B Fund (Fund 0011).

There are five projects managed by VTA, and two projects managed by the Roads and Airports Department that are not closed out, and for which final accounting has not been completed. The County will have continued administrative oversight responsibility for these projects, including support of the Citizens Watchdog Committee, and preparation and publishing of annual financial audits. Audits will be required through FY 2012 and possibly longer, as the final biological mitigation site closeout is estimated to be in 2016. Reimbursement of administrative costs will be charged against the \$233,000 available in the administrative funds.

The severity of the County's General Fund budget and cash flow situation are of sufficient concern to make it necessary to evaluate the use of Measure B funds for one-time General Fund purposes. However, in considering this action, Administration also notes the County's success with local tax measures for transportation over the years. This is certainly due in part to the record built of being a "self-help" county with a longstanding reputation for fidelity in using tax dollars consistent with representations made to the public. Even though Measure B was a general tax and Measure A was only advisory in nature, the County must give thoughtful consideration to the possibility of this use having long-term consequences for possible future ballot measures.

Recommendation 1.2: The County Executive's Office should allow VTA to provide invoices with the exception of final invoices, and other reports on a quarterly or semi-annual basis. (Priority 2)

Agree.

SECTION 2

Recommendation 2.1: Budget and forward to the Board for its approval any future payments of Measure B residual sales tax revenue. (Priority 1)

Partially agree. As noted in the audit report, residual sales tax revenues of \$8.9 million have been generated since March 2006. The majority was collected prior to FY 2009; the total for FY 2009 and FY 2010 together is approximately \$1.1 million. While remaining payments cannot be predicted with accuracy, it is likely they will continue to decrease over the remaining time during which they will be received.

This recommendation pertains to a situation in which residual sales tax monies would continue to be paid to VTA. If such payment is the result of the additional review of the requirement to forward these revenues to VTA, as recommended in 2.2, Administration agrees that the process for making payments should include a transmittal to the Board of Supervisors which budgets receipt of the funds from the BOE as a revenue, and formally seeks authority to transfer that revenue to VTA, pursuant to the Master Agreement. However, this process would delay payments to VTA beyond the 15-day period provided in the 20th Amendment, so this issue should be discussed with VTA.

Recommendation 2.2: Work with County Counsel to determine the limit of the County's obligation to forward residual sales tax revenues to VTA under the terms of the Master Agreement, Amendment 20, Fund Swap ILA 2004-01 and statutory law. (Priority 1)

Agree; clarification of the requirements pertaining to residual sales tax revenues would be beneficial.

Recommendation 2.3: Negotiate with VTA to obtain a reimbursement for any overpayment of residual sales tax revenues and to apply surplus funds to the priorities outlined in Amendment 20. As show in Table 2.2, approximately \$5.5 million is available for these purposes. (Priority 1)

Partially agree. Administration concurs that surplus funds from the Final Payment should be applied as soon as possible to priorities outlined in Amendment 20, amended Section X (n).

Administration does not concur with the recommendation to obtain reimbursement of previously paid residual sales tax revenues. Rather, the Administration proposes that the County should negotiate with VTA regarding the proper use of these revenues, which have been much greater than the parties likely expected in 2007 and have significantly exceeded the purpose of reimbursing VTA for landscaping projects in the SWAP letter.

Recommendation 2.4: Retain the \$159,262 residual sales tax distribution received for the second quarter of FY 2010-11 and any future residual sales tax distributions

received from the BOE until the recommendations above have been implemented. Pursuant to Recommendation 1.1, residual surplus monies should be transferred to the General Fund for appropriation by the Board of Supervisors. (Priority 1)

Partially agree. Use of the phrase "residual surplus monies" is somewhat confusing, as the word "surplus" has been used to refer to funds from the Final Payment. Administration concurs that residual sales tax revenues should be held until clarification has been achieved about the intent of Amendment 20. It is in this area that Administration believes there could be discussion with VTA to achieve a mutual understanding, and determine if further amendment to the Master Agreement is necessary.



May 20, 2011

County of Santa Clara
Board of Supervisors Management Audit Division
County Administration Building East Wing, 10th Floor
70 West Hedding Street, San Jose, CA 95110

VTA is in receipt of the revised Draft Management Audit of the Measure B Transportation Improvement Program, dated May 17, 2011. Please note that VTA did not receive adequate opportunity to review the report in depth.

VTA disagrees with the audit recommendation regarding the transfer of surplus funds in the County's Measure B Fund to the General Fund (Recommendation 1.1).

As the Congestion Management Agency for Santa Clara County, VTA has the responsibility for countywide transportation planning and funding as well as for managing the county's blueprint to reduce congestion and improve air quality. VTA's position is that all local funds available for transportation, including the Measure B Fund surplus cash balance of approximately \$6.2 million being held by the County, should be used on transportation projects. VTA recommends that any excess Measure B funds the County now holds be put to use on transportation projects that will benefit the citizens of Santa Clara County.

VTA also disagrees with the audit recommendations regarding residual sales tax revenues (Recommendations 2.1, 2.2, 2.3, and 2.4). These recommendations violate specific elements of the Measure B Closeout Amendment and, moreover, the spirit of the Measure B partnership between the County of Santa Clara and VTA.

The concept of residual sales tax revenues was first considered to help address costs associated with landscaping Measure B highway projects. This landscaping work was necessary, as it was a condition of the respective Environmental Clearance Documents for these highway improvement projects. At the time, insufficient 1996 Measure A sales tax receipts were available to fund the work. Consequently, Swap Fund Implementation Letter 2004-01 introduced the concept of using residual sales tax revenues to repay VTA for \$7.23 million in landscaping costs for which it would advance funding. Relying on residual sales tax revenues presented a risk to VTA that it was willing to assume in the interest of completing this work in a timely manner.

At the time *Amendment No 20 to the Master Agreement between the County of Santa Clara and the Santa Clara Valley Transportation Authority (VTA) for the Implementation of the Santa Clara County Measure B Transportation Improvement Program (MBTIP)* (Amendment 20) was drafted, residual sales tax revenues continued to be received, but they had not yet reached the \$7.23 million amount required to repay VTA for the highway landscaping work. As a result,

section (j)(iii) was included, which addressed the issue in plain language. The first portion of this section addressed the residual sales tax revenues collected to date and included in the Final Payment:

All MBTIP residual sales tax revenue collected through the date of execution of this Amendment for the period beginning April 1, 2006. Said residual tax revenues received between June 1, 2006, and March 31, 2007, are further detailed in Attachment A-10: Residual Sales Tax to this Amendment and included in the Final Payment...

The second portion of this section addressed all future residual sales tax revenues and stated in the plainest of language not only that the County shall pay these revenues to VTA, but provided a deadline for it to do so:

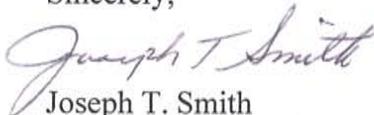
... Future residual sales tax revenues shall be paid to VTA within 15 days of receipt by the County.

The revised draft audit report states that section (j)(iii) introduces some ambiguity (page 22). VTA takes issue with this assertion and with the revised draft audit report's claim that "The 'future residual sales tax revenues' in the last line thus refers to those residual sales tax revenues received between April 1, 2007 and September 30, 2007 due to the three-month delay between collections and distribution." (page 25) The revised draft audit report offers no evidence to support this claim. Amendment 20 contains no such date restriction on VTA's receipt of residual sales tax revenues.

Section (m)(iii) of Amendment 20 clearly obligates VTA "To pay for completion of Highway Landscaping Projects previously identified in Swap Fund Implementation Letter 2004-01." At the time Amendment 20 was drafted, both parties recognized that VTA continued to take a risk in advancing highway landscaping projects using uncertain residual sales tax revenues as a payback mechanism. By turning over all future sales tax residuals to VTA, the County was able to eliminate the risk of VTA demanding repayment from the County should these revenues fall short of the \$7.23 million cost of the highway landscaping projects. Amendment 20 went further by contemplating residual sales tax revenues potentially exceeding the \$7.23 million in landscaping costs. Section (n) of Amendment 20 "VTA Use of Unspent Funds" provided guidance to VTA on how to distribute these excess revenues in a mutually agreeable way.

VTA expects the County to abide by Amendment 20, as authorized by the County of Santa Clara Board of Supervisors and the VTA Board of Directors, and looks forward to working with County staff to complete this highly successful transportation program.

Sincerely,



Joseph T. Smith
Chief Financial Officer

c: Michael T. Burns, General Manager