



DRAFT

August 30, 2016

Mr. Osby Davis  
Mayor, City of Vallejo  
Chairman, SR 37 Policy Committee  
555 Santa Clara Street,  
Vallejo, California 94590

Re: Letter of Intent for the Proposed Acquisition of a Portion of California State Route 37 between Mare Island and Sears Point

Dear Mayor Davis and Members of the SR 37 Policy Committee:

This Letter of Intent (this "**Letter of Intent**") confirms the interest of United Bridge Partners, a Delaware limited partnership ("**UBP**"), in: (1) acquiring the portion of California State Route 37 between the intersection of SR 37 and CA 121 ("**Sears Point**") and the intersection of SR 37 and the Mare Island Causeway ("**Mare Island**"), currently operating with one lane in each direction (the "**Existing Highway**"); (2) immediately constructing a new, two-lane elevated bridge and roadway system immediately to the south of the Existing Highway (the "**New Highway**"); (3) provide new interchanges at 121 and SR 37 and Mare Island and SR 37 working closely with community needs; (4) once the New Highway is completed, converting the Existing Highway into two lanes of travel westbound and opening the New Highway with two lanes of travel eastbound; (5) installing a toll on the New Highway; and (6) constructing a new, two-lane elevated bridge and roadway (the "**Replacement Highway**") next to the Existing Highway to replace the Existing Highway as further defined by timing conditions in the final agreement. The Existing Highway, the New Highway and the Replacement Highway shall collectively be referred to as "**the Project**".

This Letter of Intent (this "**Letter of Intent**") sets forth the parties' agreement as to their intent to (i) work collaboratively with Caltrans to facilitate the relinquishment of the Existing Highway and all rights of way, easements and real property associated with the Existing Highway to the SR 37 Policy Committee or such successor organization as the committee may form and authorize (the "**JPA**"), and (ii) to enter into a Vacation and Development Agreement (the "**Development Agreement**") between UBP and the JPA to transfer the Existing Highway to UBP.

This Letter of Intent also references the proposal given by United Bridge Partners to the SR 37 Policy Committee on May 5, 2016 and includes Attachment A, UBP Responses to Questions from SR 37 Policy Committee dated August 30, 2016. Upon execution of this Letter of Intent, UBP will proceed with all funding of environmental and project studies and processes without any government funding.

**Section 1. Development Agreement.** The proposed terms and conditions of the Development Agreement will include, but are not limited to, the following.

(a) Recitals. The recitals will:

(i) contain a brief history of California State Route 37 (“**SR 37**”), including the fact that it has been operating at a reduced capacity and Level of Service due to congestion for many years;

(ii) set forth the fact that an expansion of the Existing Highway is not in Caltrans’ forty year plan;

(iii) set forth the fact that Caltrans has determined that public funds are not available to expand the Existing Highway or construct the New Highway;

(iv) set forth the fact that the SR 37 Policy Committee has determined it is in the local public interest to construct a New Highway;

(v) set forth the fact that UBP approached the counties of Sonoma, Solano, Marin and Napa (the “**Counties**”) to determine whether one or more agreements could be reached, whereby UBP would accomplish the Project;

(vi) set forth the fact that the SR 37 Policy Committee has determined the best course of action is for UBP to privately develop, own and construct the Project;

(b) Steps for the Acquisition of Property.

(i) The Counties shall create Joint Powers Authority (the “**JPA**”) to act as lead state agency for the project.

(ii) The Counties and UBP shall work collaboratively to establish a cooperative agreement between United Bridge Partners and CalTrans to define responsibilities of UBP upon taking ownership of SR 37.

(iii) UBP and the JPA shall execute this Letter of Intent (“**LOI**”) which, among other terms, shall lay out the terms and conditions of the development and establish exclusivity for UBP.

(iv) UBP and the Counties shall clarify/modify existing “relinquishment” and “vacation” processes which authorize the state to transfer ownership of SR 37 to the JPA and the JPA to transfer ownership to UBP. The enabling legislation shall, among other things, clarify the authority of UBP to toll the new structure under existing California statutory tolling authority.

(v) UBP and the Counties shall Conduct CEQA environmental review. UBP and JPA are lead private and public participants.

(vi) Financial close shall occur, at which time the following will occur contemporaneously:

(A) UBP and the JPA execute the Development Agreement based on terms and conditions outlined in this LOI,

(B) Caltrans and the JPA complete the relinquishment of SR 37 from the State to the JPA,

(C) JPA immediately “vacates” SR 37 to UBP using existing processes based on the terms and conditions of this LOI,

(D) Property ownership is transferred to UBP, and

(E) UBP begins development and construction based on the terms and conditions outlined in the Development Agreement.

(c) Obligations of United Bridge Partners

(i) Prior to the commencement of the construction of the New Bridge, UBP shall obtain all necessary permits from Caltrans, the Counties and other relevant governmental bodies with respect to the construction and connection of the New Highway to the existing State Route 37 at either end of the Project (the "**Permits**").

(ii) From and after the date of issuance of the Permits, UBP shall comply with all the terms and conditions stated therein and in any renewal or modification thereof.

(iii) UBP shall complete and fund the California Environmental Quality Act activities.

(iv) UBP shall use commercially reasonable efforts to complete and open the New Highway within four (4) years of the date UBP has received all permits and approvals from governmental units required to construct and operate the New Highway.

(v) UBP shall agree to construct, operate and maintain the New Highway in accordance with terms and conditions to be agreed by the JPA and UBP and outlined in the Development Agreement.

(vi) UBP shall agree that no fee or toll shall be charged for use of the New Highway by state, local or federal emergency vehicles, including vehicles operated by police, fire, emergency medical services and sheriff personnel, while responding to or returning from an emergency call. No tolls shall be charged for passage by any vehicle or pedestrian in the event of a national, state or local emergency, which is declared to be such an emergency in the local area of the New Highway by the President of the United States or the Governor of the State.

(vii) UBP shall be solely liable for operating the Project, including routine maintenance, emergency repairs and regular inspections. UBP shall agree to adhere to the National Bridge Inspection Program as appropriate in conducting inspections and shall provide Caltrans and the Counties with validations of such inspections by an engineer licensed in the State.

(viii) UBP shall operate the New Highway without any limitations on the persons or vehicles utilizing the New Highway, so long as each person crossing the bridge is willing to pay the applicable toll and fee, UBP will not attempt to limit the persons or class of persons crossing the New Highway, except as may be dictated by safety, security and the design and load capacities of the bridge structure.

(ix) UBP will enhance the connection of California State Route 37 to California State Route 121 at the west end of the Project to ensure free flowing traffic in such manner as is acceptable to the members of the SR 37 Policy Committee representing Sonoma County.

(x) UBP will enhance the connection of the Project to California State Route 37 at the east end of the Project to ensure free flowing traffic to Mare Island and businesses at the east end of the Project in such manner as is acceptable to the members of the SR 37 Policy Committee representing Solano County.

(xi) UBP will maintain existing connections along the route to existing property owners. Based on the existing right-of-way boundaries, UBP intends to design the New Highway and the Replacement Highway within the existing right-of-way. Final permitting conditions will determine if additional property will need to be obtained to achieve these requirements. UBP will be solely responsible for obtaining additional property if necessary.

(xii) UBP will, wherever economically feasible, utilize local labor and local materials to provide local economic stimulus. UBP anticipates that pre-cast concrete segments will be cast at a construction yard located on Mare Island.

(xiii) UBP will utilize environmentally sensitive construction techniques, including but not limited to, building bridges from above.

(xiv) UBP will contribute a portion of each paid toll to an environmental fund (the “**Environmental Fund**”) to be dedicated to the remediation of the San Pablo Bay Region. Upon financial close UBP will contribute a lump sum to create the Environmental Fund. The disposition of funds in the Environmental Fund shall be distributed at the sole authority of the Counties and the environmental organizations designated by the Counties, including the Bay Institute.

(xv) The design and construction of the New Highway and the Replacement Highway shall address future sea level rise.

(xvi) UBP shall begin construction on the Replacement Highway in a time period addressed in the Development Agreement. The trigger to begin construction of the Replacement

Highway shall be determined by mutual agreement between UBP and the JPA and be based on the impact of sea level rise on the Level of Service of the Existing Highway.

(xvii) Once completed, the New Highway will carry traffic eastbound in two lanes with wide shoulders. The Existing Highway will be converted to carry traffic westbound in two lanes.

(xviii) The New Highway and the Replacement Highway will include a protected bicycle lane that is wide enough to accommodate bicycles and pedestrians. The protected lane will include scenic overlooks.

(xix) The Project will be designed and built to achieve state and federal requirements and project specific sustainability goals

(xx) Tolls on the Project will be collected using user-friendly all electronic tolling using FasTrak. UBP is open to and desires to work closely with MTC to collect transponder-based tolls on UBP's behalf.

(xxi) Tolls on the Project will be capped at a level no higher than other toll bridges in the Bay Area. UBP intends to charge tolls in one direction, and retains the right to modify tolls beneath the cap.

(xxii) UBP will provide operational metrics such as vehicle count, transponder penetration, and other metrics to the JPA to be kept confidential.

(xxiii) UBP will provide:

(A) Subsidized van pool transportation and

(B) Subsidized transponders to low income residents.

(xxiv) UBP will require some form of "zone of exclusion" around the Project such that there would not be a free competing facility built immediately adjacent to the existing facility. UBP would require no limits on rail or mass transit.

**Section 2. Exclusivity.** From and after the date of the signing of this Letter of Intent until its termination in accordance with the provisions of this letter, neither the SR 37 Policy Committee, the JPA nor any of their affiliates or agents will solicit or encourage inquiries or proposals from third parties other than UBP with respect to California State Route 37 or participate in any negotiations or discussions concerning an expansion of, investment in, Public Private Partnership related to, or other non-governmental source of funding for California State Route 37. Further, the JPA will instruct their elected officials, officers, directors, agents and affiliates to

refrain from engaging in any of the activities described in the preceding sentence; and will notify UBP promptly of any such inquiries and solicitations

**Section 3. Confidentiality.** Except as and to the extent required by law or pursuant to an order of a court of competent jurisdiction, no party hereto shall, directly or indirectly, disclose or use (and no party shall permit its representatives to disclose or use) any Confidential Information (as defined in this Section) with respect to any other party furnished, or to be furnished, by such other party hereto or its employees, commissioners, officers, agents or representatives to any other party hereto or its employees, commissioners, officers, agents or representatives in connection herewith at any time or in any manner, other than in connection with the completion of the execution and delivery of this Letter of Intent and the related transactions (collectively, the "**Proposed Transaction**"). For purposes of this Section, the term "**Confidential Information**" means any information about Caltrans, the JPA, UBP, the New Highway, or the Replacement Highway; provided, however, that such term does not include information which the receiving party can demonstrate: (a) is generally available to or known by the public other than as a result of improper disclosure by the receiving party; (b) is obtained by the receiving party from a source other than the disclosing party, provided that such source was not bound by a duty of confidentiality to the disclosing party with respect to such information; or (c) is legally in the public domain.

**Section 4. Governing Law.** This Letter of Intent shall be governed by California law, without regard to principles of conflicts of laws. The venue for any State judicial action between or among any of the parties hereto or their respective successors in interest, brought under this Letter of Intent shall be the United States District Court, Northern District of California.

**Section 5. Termination Date.** This letter will terminate on the earlier of:

- (a) December 31, 2017, provided that, if by December 31, 2017, the parties are continuing to negotiate but have not executed a Development Agreement, then the parties shall negotiate in good faith to extend the term of this letter in order to provide the parties with a reasonable amount of time to attempt to finalize the terms of and execute a Development Agreement;
- (b) upon mutual written agreement by the parties to terminate; or
- (c) the execution and delivery by the parties hereto of a Development Agreement.

**Section 6. Expenses.** Each party shall be responsible for and bear all of their respective costs and expenses incurred in connection with the Project, including, without limitation, any legal, accounting or other representative or advisor costs and expenses.

**Section 7. Binding Effect; Termination.** The JPA and UBP intend to negotiate the terms and conditions of the Development Agreement until this Letter of Intent is terminated in accordance with Section 5 hereof. Except for Sections 2-6, 8 and 10-12 hereof and this Section, which are intended to be binding, the parties agree that this Letter of Intent is not intended to be a



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binding agreement between the parties, but merely an expression of their intent with regard to the Development Agreement and the Project, and each party covenants never to contend to the contrary.

**Section 8. Amendments.** This Letter of Intent may be amended only by the parties hereto in writing.

**Section 9. Notices.** All notices and other communications hereunder shall be in writing and shall be furnished by email and by hand delivery or registered or certified mail to the other party at the applicable address set forth below. Any such notice shall be duly given upon the date it is delivered to the applicable address shown below, addressed as follows:

If to UBP, to:                   Ed Diffendal  
United Bridge Partners, LP  
950 Tower Lane, Suite 800  
Foster City, CA 94404  
Telephone: (650) 854-6000  
Email: ediffendal@unitedbridgepartners.com

Linda Figg  
United Bridge Partners, LP  
Telephone: (850) 224-7400  
Email: lfigg@figgbridge.com

with a copy to:               Gary Giacomini  
Hansen Bridgett  
80 E. Sir Francis Drake Blvd., Suite 3E  
Larkspur, CA 94939  
Telephone: (415) 925-8400  
Email: ggiacomini@hansonbridgett.com

If to the SR 37  
Policy Committee:           Mr. Osby Davis  
Mayor, City of Vallejo  
Chairman, SR 37 Policy Committee  
555 Santa Clara Street,  
Vallejo, California 94590  
Telephone: (707) 648-4377  
Email: Mayor@cityofvallejo.net

with a copy to:               []

**Section 10. Severability.** If any term, provision, covenant or restriction contained in this Letter of Intent that is intended to be binding and enforceable is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants



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and restrictions contained in this Letter of Intent shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**Section 11. Entire Agreement.** This Letter of Intent represents the entire agreement among the Parties hereto with respect to the subject matter set forth herein, and it supersedes all prior or contemporaneous written or oral agreements or understandings of any kind among the parties hereto with respect to the subject matter hereof.

**Section 12. Counterparts.** This Letter of Intent may be executed in two or more counterparts, each of which shall be deemed an original and both of which shall be deemed to be one and the same document.

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If the foregoing is acceptable to you, please execute a copy of this Letter of Intent in the places set forth below and return it to us by November 30, 2016.

Very truly yours,

UNITED BRIDGE PARTNERS, LP

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

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

Title: \_\_\_\_\_

Accepted and agreed to by:

SR 37 POLICY COMMITTEE

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

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

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_