

MASTER AGREEMENT
BETWEEN
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
THE CITY OF SANTA CLARA
RELATING TO VTA'S BART SILICON VALLEY PHASE II EXTENSION PROJECT

TABLE OF CONTENTS

RECITALS	1
AGREEMENT	3
SECTION 1. DEFINITIONS.....	3
SECTION 2. PURPOSE OF AGREEMENT	4
SECTION 3. PROJECT DESCRIPTION.....	4
SECTION 4. OPERATIVE DATE.....	5
SECTION 5. SPECIFIC MITIGATION MEASURES	5
SECTION 6. GENERAL COMMITMENTS	5
SECTION 7. CITY INFRASTRUCTURE.....	10
SECTION 8. TRAFFIC MAINTENANCE AND DETOURS.....	14
SECTION 9. PAYMENT TERMS	16
SECTION 10. DESIGNEES OF THE PARTIES.....	16
SECTION 11. CONTRACT DOCUMENTS INDEMNITY.....	16
SECTION 12. INDEMNIFICATION.....	17
SECTION 13. WARRANTIES	18
SECTION 14. RESOLUTION OF DISPUTES.....	18
SECTION 15. TERMINATION.....	20
SECTION 16. NOTICES.....	20
SECTION 17. PARTIES NOT CO-VENTURERS.....	21
SECTION 18. FURTHER ASSURANCES, TIME PERIODS, AND RECORDS.....	21
SECTION 19. NON-LIABILITY OF OFFICIALS, EMPLOYEES, AND AGENTS.....	22
SECTION 20. HEADING AND TITLES	22
SECTION 21. APPLICABLE LAW	22
SECTION 22. SEVERABILITY	22

SECTION 23. BINDING UPON SUCCESSORS.....	22
SECTION 24. REMEDIES NOT EXCLUSIVE	23
SECTION 25. FORCE MAJEURE	23
SECTION 26. INTEGRATION.....	23
SECTION 27. NO PRECEDENT SET BY AGREEMENT	24
SECTION 28. APPROVALS BY LEGISLATIVE BODY.....	24
EXHIBIT A. GEOGRAPHICAL AREA OF SANTA CLARA STATION AND NEWHALL MAINTENANCE FACILITY	A-1

This Master Agreement (hereinafter “Agreement”) is entered into between the Santa Clara Valley Transportation Authority (hereinafter “VTA”) and the City of Santa Clara (hereinafter “CITY”). This Agreement is entered into this ____ day of _____, 2020 (the “Effective Date”). VTA and CITY are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. WHEREAS, VTA intends to construct an extension of the Bay Area Rapid Transit (“BART”) system rail line within Santa Clara County, under the project entitled: VTA’s BART Silicon Valley Phase II Extension Project (“PROJECT”), as further defined below in Section 3 of this Agreement.
- B. WHEREAS, VTA has undertaken a program of activities leading to the aforementioned extension of BART service, to be constructed by VTA and operated by BART.
- C. WHEREAS, VTA, in coordination with the Federal Transit Administration of the United States Department of Transportation (the “FTA”), has prepared the Final Supplemental Environmental Impact Statement/ Subsequent Environmental Impact Report (“Final SEIS/SEIR”) for the PROJECT and has adopted the Mitigation Monitoring and Reporting Program (“MMRP”) which includes certain mitigation measures in the City of Santa Clara. As part of the Final SEIS/SEIR process, CITY reviewed the environmental documents and provided comments and suggestions on, and proposed revisions to, the PROJECT.
- D. WHEREAS, NEPA and CEQA require, among other things that each significant adverse environmental impact of a project be identified in that project’s environmental impact statement/ environmental impact report and that feasible mitigation measures or alternatives be identified and implemented. The Final SEIS/SEIR identifies each significant adverse environmental impact of the PROJECT. A comprehensive list of mitigation measures associated with the PROJECT is set forth in the MMRP.
- E. WHEREAS, VTA is seeking Federal and State financial assistance to implement the PROJECT.

- F. WHEREAS, such Federal and State financial assistance imposes certain obligations on VTA regarding construction, financing, ownership, maintenance, and operation of the PROJECT.
- G. WHEREAS, the FTA has allocated \$125 million to VTA for the Program under its Expedited Project Delivery Pilot Program (the “EPD Program”).
- H. WHEREAS, the FTA has determined this Agreement constitutes a “critical third-party agreement” as set out in the FTA’s Notice of Funding Opportunity for the EPD Program and as such must be executed to ensure Program eligibility under the EPD Program.
- I. WHEREAS, VTA and CITY, acknowledging the mutual benefit to be derived from the PROJECT, desire to consult and cooperate with one another on the preliminary engineering, final design, and construction of those portions of the PROJECT affecting CITY Infrastructure.

NOW THEREFORE, VTA and CITY, in consideration of the foregoing, hereby agree as follows:

AGREEMENT

SECTION 1. DEFINITIONS

In addition to those terms defined in context elsewhere in this Agreement, the following definitions apply to all capitalized terms in this Agreement, including any Exhibits hereto.

- A. “CEQA” means the California Environmental Quality Act set forth in California Public Resources Code Section 21000 *et. seq.*
- B. “CITY” means the City of Santa Clara, a municipal corporation under the State of California, including its officers, employees, agents, consultants, and contractors.
- C. “CITY Infrastructure” means CITY streets (including but not limited to curbs, gutters, and sidewalks), traffic control devices, storm drains, sanitary sewers, water lines, hydrants, electroliers, landscaping, irrigation systems, electric facilities, and all other CITY-owned facilities and appurtenances.
- D. “Contract Documents” means the executed construction contract and the associated contract drawings, construction drawings and construction specifications, design criteria, contract bonds, addenda, change orders, and/or additional documents incorporated by express reference into the construction contract.
- E. “Final SEIS/SEIR” means the February 2018 Final Supplemental Environmental Impact Statement/ Subsequent Environmental Impact Report for the PROJECT.
- F. “FTA” means the Federal Transit Administration, an operating administration of the United States Department of Transportation.
- G. “MMRP” means the Mitigation Monitoring and Reporting Program for the PROJECT, which identifies the mitigation measures associated with the PROJECT and discusses the timing and party responsible for implementation of such mitigation measures.
- H. “NEPA” means the National Environmental Policy Act.
- I. “Plans and Specifications” means drawings, plans, specifications, general and special conditions, and related construction documents for the PROJECT.
- J. “ROD” means the Record of Decision issued by FTA for the PROJECT, indicating FTA’s acceptance of the Final SEIS/SEIR and the conclusion of the environmental review process for the PROJECT.
- K. “Standard Specifications” means the standard construction details, drawings, general and special conditions, usually and customarily utilized by CITY for public works projects.

- L. “VTA” means the Santa Clara Valley Transportation Authority, a public agency organized as a special district under California law, including its officers, employees, agents, consultants, and contractors.

SECTION 2. PURPOSE OF AGREEMENT

- A. This Agreement embodies the general provisions for interaction, consultation, and cooperation between the Parties for preliminary engineering, final design, and construction of the PROJECT. The Agreement defines the Parties’ respective rights and obligations, ensures cooperation between VTA and CITY in connection with the PROJECT, and provides a framework for ongoing interaction between the Parties, to be supported by subsequent agreements about specific issues related to the PROJECT, as necessary.
- B. This Agreement may be amended/supplemented during design or construction of the PROJECT to implement other cooperative arrangements by the mutual consent of the Parties, subject to appropriate approvals of each Party’s governing body. The Parties recognize that this Agreement may not reasonably anticipate all aspects of the PROJECT and changes thereto which may occur due to unforeseen circumstances. Accordingly, the Parties acknowledge their respective obligations to act reasonably and in good faith and to modify the terms hereof when necessary to accomplish their mutual goals.
- C. The Parties acknowledge that the PROJECT is funded in part with funds made available by FTA. Accordingly, this Agreement and the obligations imposed on the Parties hereby will be interpreted in a manner consistent with any applicable requirements of Federal and State laws and regulations, including the requirements of 49 U.S.C. Section 5309, and any grant agreements or guidelines as part of any funding for the PROJECT.

SECTION 3. PROJECT DESCRIPTION

VTA’s BART Silicon Valley Program is a 16-mile, six-station extension of the BART system from the Warm Springs Station in Fremont extending south into Santa Clara County, with six stations in Milpitas, San Jose, and Santa Clara. The Program has been split into two phases. The first phase is the 10-mile, two -station Berryessa Extension, with stations in Milpitas and Berryessa/North San Jose. Phase I opened for revenue service in June 2020. The PROJECT is

the second phase of VTA's BART Silicon Valley Program. The PROJECT will consist of an approximately 6-mile extension of the BART system from the Berryessa/North San Jose BART Station in the City of San Jose to the proposed Santa Clara BART Station located in the City of Santa Clara. The PROJECT will include (a) an approximately 5-mile tunnel or subway through downtown San Jose; (b) four stations, including (i) 28th Street/Little Portugal, (ii) Downtown San Jose, (iii) Diridon, and (iv) Santa Clara; (c) two mid-tunnel ventilation/emergency egress facilities located at (i) Santa Clara Street/13th Street and (ii) Stockton Avenue/Schiele Avenue; and (d) the Newhall Maintenance Facility located in San Jose and Santa Clara.

SECTION 4. OPERATIVE DATE

The term of this Agreement will commence on the Effective Date and continue through December 31, 2030. The parties may mutually agree, in writing, to extend the agreement until December 31, 2032.

SECTION 5. SPECIFIC MITIGATION MEASURES

Environmental mitigation measures are described in the MMRP. VTA will comply with and implement the requirements of the MMRP and perform all required environmental review for the PROJECT. At VTA's request, CITY must provide reasonable assistance in order to allow VTA to comply with the requirements of the MMRP for the PROJECT.

SECTION 6. GENERAL COMMITMENTS

A. The Parties will consult and cooperate in negotiating and executing any additional agreements required to modify and/or relocate CITY Infrastructure that may be affected by the PROJECT. VTA acknowledges that such agreements may require approval by CITY's City Council. The Parties will cooperate with one another to identify (i) CITY Infrastructure that may be affected and (ii) cost-effective designs for the modified or relocated CITY Infrastructure. VTA has identified the following potential minimum geographical area of potential impact, as shown in Exhibit A.

1. The northerly portion of the Newhall Maintenance Facility adjacent to the northerly approximate 1,600-linear-feet of the proposed transit guideway. The maintenance facility will be constructed on the former Union Pacific Railroad

Newhall Yard that was purchased by VTA in 2004, located in the Cities of San Jose and Santa Clara, beginning north of the West Tunnel Portal at Newhall Street in San Jose and extending to Brokaw Road near the Santa Clara Station in Santa Clara. A secondary secured entrance to the maintenance facility will be provided with access from Brokaw Road via a proposed roadway identified as Champion Parkway.

2. Santa Clara will be an at-grade station located at the west end of Brokaw Road in Santa Clara. A pedestrian underpass will connect from the concourse level of the BART station to the Santa Clara Caltrain plaza and connect from the station concourse level to a new BART plaza adjacent to the proposed Champion Parkway consisting of passenger, bus and shuttle loading areas. A parking structure accommodating 500 BART parking spaces will be constructed at the station.
- B. The Parties will develop procedures to ensure careful and continued cooperation between them, including: (1) procedures for finalizing any necessary design, construction, and operation relating to CITY Infrastructure; (2) procedures to avoid unnecessary delays to either the contracting or construction process; and (3) procedures for inspecting the construction, relocation, and replacement, as necessary, of CITY Infrastructure.
- C. VTA is pursuing federal funding from FTA, which is an essential component of the financial plan for the PROJECT. The Parties acknowledge the necessity of complying with FTA requirements and agree to cooperate in the effort to secure said funding.
- D. As part of the final construction documents, VTA will provide CITY with plan(s) addressing construction delivery routes for CITY review and approval, which review and approval must not be unreasonably withheld or delayed.
- E. During construction of the PROJECT, VTA shall provide CITY with a list of VTA personnel to be contacted in the event of an emergency on the PROJECT construction sites within the CITY's jurisdiction.
- F. Construction Outreach Management Program (COMP). As a condition precedent to the issuance of any encroachment permit by CITY to any of VTA's contractors for the construction of the PROJECT, VTA shall incorporate the COMP into the Contract

Documents of all construction and design-build contracts through which the PROJECT will be implemented. The COMP will be subject to CITY approval, which approval will not be unreasonably withheld, and must include the following elements:

1. A detailed PROJECT description, including site maps.
2. A detailed description of (i) the potential physical, environmental, and other impacts of the construction activities on residents, businesses, commuters, and other potentially impacted parties and (ii) the anticipated duration of such activities.
3. A detailed description of the mitigation measures proposed to be undertaken by VTA, to the extent reasonably practicable, to mitigate each of the construction impacts identified.
4. Construction Education and Outreach Plan (CEOP). VTA will develop a CEOP in coordination with CITY to foster communication between VTA, CITY, and the public during construction of the PROJECT. The CEOP must include the following components:
 - a. Appropriately timed public workshops, meetings, or webinars for community members, surrounding businesses, and residents adhering to VTA's Project Communications and Outreach Policy and Procedures ("PCOPP") throughout all phases of the PROJECT.
 - b. A display of maps and construction schedule information posted in PROJECT field office(s) and around the construction area.
 - c. Establishment of field office(s) or office space accessible to the public with dedicated community outreach staff with defined hours.
 - d. A 24 hours per day/7 days per week project hotline for emergencies that begins operation upon commencement of construction.
 - e. Preconstruction operational surveys of businesses located adjacent to construction areas to identify hours of operation, access, deliveries, customer base, special circumstances, and key contacts.
 - f. CITY-provided information about upcoming adjacent construction projects and development plans to minimize disruptions and delays.

- g. A plan to inform and engage partnering agencies, stakeholders (including PROJECT Community Working Groups), business organizations, business owners, tenants, the media, and the public throughout the life of the PROJECT.
- h. Project information and advanced construction notification distributed and posted via VTA's website, social and traditional media, signage, face-to-face visits, flyers, mailers, emails, and other communication methods as appropriate.
- i. A PROJECT signage program identifying the PROJECT corridor, station areas, construction timeline, and funding.
- j. Signage, website postings, and other communication methods to increase visibility of alternative parking and access.
- k. The designation of a VTA community outreach coordinator to serve for the duration of the construction of the PROJECT.
- l. A plan, utilizing the business resource study conducted for property and business owners in the station areas, to promote access to businesses during construction. This plan may include any combination of enhanced signage, marketing assistance, technical business support, and cross-promotional efforts to encourage customers to shop at businesses during construction.
- m. Time requirements for notification to the relevant stakeholders of scheduled utility outages per VTA PCOPP.

5. Construction Transportation Management Plan (CTMP). VTA will develop and implement the CTMP in coordination with CITY to identify location-specific circulation and access within and around the construction areas for all modes, including automobiles, trucks and construction vehicles, bicycles, pedestrians, and public transportation. The CTMP will be organized according to all the major PROJECT elements along the PROJECT alignment and will be tailored to address the site-specific circumstances and sequencing of construction at each major project site. The CTMP must be incorporated into all Contract Documents of all construction and design-build contracts through which the PROJECT will be implemented. The CTMP must include but are not limited to the requirements listed below, which are the primary CTMP requirements for the PROJECT.

- a. A sequencing schedule depicting the proposed location and timing of construction activities on a routine basis for the duration of each project.
- b. Proposed phasing of construction, anticipated lane and street closures, detours, temporary signals, and street reconfiguration, including duration and signage requirements.
- c. Identification of truck haul routes.
- d. Identification of construction staging areas.
- e. A special event mitigation plan to minimize access and circulation construction impacts (e.g. parades and marathons).
- f. Dust control requirements.
- g. Required permits.
- h. Traffic Control Plans (TCPs). Following completion of the CTMP, VTA will develop individual TCPs for specific design elements at each major project site and throughout the duration of construction. The TCPs must comply with all applicable local and state laws and standards and will address all modes of transportation. The TCPs must be approved by CITY prior to construction of the specific design element, which approval will not be unreasonably withheld. The TCPs must include:
 - i. Alternative access routes (where practicable) and wayfinding signage for all detours affecting roadway users, including vehicular traffic, trucks and construction vehicles, bicyclists, and pedestrians.
 - ii. Early and advanced changeable message signage of potential construction delays for all roadway users that encourage them to choose alternate routes.
 - iii. Requirements to provide safe travel routes for pedestrians and bicyclists within and through construction areas or provide detour routes.
 - iv. A plan that has been coordinated with and approved by VTA and other transit providers that ensures that any necessary re-routing of bus routes and temporary relocation of bus stops during construction is done in a way to minimize impacts on bus riders.

- v. Early and advanced signage informing transit riders of potential transit delays so that they may plan trips accordingly.
 - vi. Requirements for VTA's contractors to notify CITY and VTA outreach personnel regarding lane and road closures that would affect both off-street and on-street parking.
 - vii. Maps of all public off-street and on-street parking that will be (a) removed during construction and (b) still available during construction.
 - viii. Schedule of removal and restoration of each parking area.
 - ix. Designated areas for construction worker parking.
6. Emergency Services Coordination Plan (ESCP). VTA will coordinate with CITY fire and police services to develop the ESCP to minimize the effect of construction activities on local emergency service routes and response times. The ESCP will be incorporated into the Contract Documents of all construction and design-build contracts through which the PROJECT will be implemented. VTA will:
- a. Inform the CITY fire and police departments of the construction schedule and potential lane and road closures.
 - b. Coordinate with the CITY fire and police departments on the detour routes.
 - c. Provide (i) road signage for detours and (ii) manual traffic control on detour routes as necessary.
- G. The provisions of this Section 6 apply only to the PROJECT and do not apply to or in any way affect other VTA projects in the City of Santa Clara or other agreements between the Parties unrelated to the PROJECT.

SECTION 7. CITY INFRASTRUCTURE

- A. As part of the construction of the PROJECT, certain CITY Infrastructure will be required to be modified, relocated, and/or removed. VTA will coordinate any such effort with CITY and acknowledges and agrees that all cost associated with the modification, relocation, and/or removal of CITY Infrastructure will be at VTA's sole cost. Any modification, relocation, and/or removal of CITY Infrastructure is subject to CITY's prior written

approval, which must not be unreasonably withheld, and any necessary agreements or applicable encroachment permits or fees.

B. Construction Standards: Prior to the development of any Plans and Specifications affecting CITY Infrastructure, CITY will provide VTA with all the necessary standards and regulations for modification, relocation, and/or removal of CITY Infrastructure.

C. CITY Review of PROJECT Plans and Specifications:

1. During each major milestone of PROJECT design development (e.g., preliminary engineering and final engineering), VTA will provide CITY with Plans and Specifications showing work to be performed on or directly affecting CITY Infrastructure for CITY's review and approval, which approval must not be unreasonably withheld; provided, however, that CITY approval is required only for elements of the PROJECT (i) located within City of Santa Clara city limits, (ii) affecting CITY Infrastructure, and (iii) affecting other facilities and appurtenances to be built and conveyed to CITY. VTA will coordinate with CITY for the design development schedule for CITY Infrastructure to provide CITY sufficient time to mobilize personnel for design review. VTA will meet with CITY every other week (or pursuant to a frequency as mutually agreed upon between CITY and VTA) to ensure CITY receives updates regarding submittals and reviews of Plans and Specifications.
2. VTA will conduct comment resolution meetings to address CITY comments and reach a satisfactory resolution.
3. Following VTA's approval of its contractor's baseline construction schedule, VTA will provide CITY with a construction schedule regarding CITY Infrastructure. VTA will also provide periodic construction progress schedules as they are developed for CITY's review. To the extent reasonably practicable, VTA will keep CITY informed of any delays in the construction schedule, changes to the construction schedule, significant milestones and deliverables for the PROJECT, and any changes in the scope of the PROJECT.

D. Permits: Subject to the provisions of this Agreement and unless as further defined in future cooperative agreements, VTA or its contractors will obtain all necessary encroachment permits for the modification, relocation, and/or removal of CITY Infrastructure in accordance with the City of Santa Clara Municipal Code, policies, and procedures. VTA or its contractors will be responsible for full payment of applicable fees charged by CITY for such permits and related inspection services.

E. Construction Impacts to CITY Infrastructure Other Than Streets:

VTA is responsible for the repair, relocation, replacement, or removal of CITY Infrastructure (other than CITY streets) affected by construction of the PROJECT, as required under the terms set forth in the applicable construction encroachment permit.

VTA, in consultation with CITY, shall perform a pre-construction survey, including photographs or video recordings of all CITY Infrastructures which will be affected by construction of the PROJECT. VTA shall provide CITY with a written survey of, along with photographs and video recordings of, all CITY Infrastructure which may be repaired, relocated, replaced, removed, or otherwise impacted by the PROJECT.

F. Construction Impacts to CITY Streets:

VTA shall be responsible for the repair, reconstruction, and/or repaving of CITY streets affected by the construction of the PROJECT. These requirements will be further defined in future cooperative agreements between the parties prior to the issuance by VTA of the contract documents in the Final RFP for each of its contracts so that VTA may include the appropriate requirements within the contract documents.

G. Betterments:

VTA and CITY acknowledge that there may be improvements requested of VTA or its contractors by CITY that may constitute a “betterment” as that term is commonly understood in the architectural, engineering, and construction industries. VTA and CITY

will negotiate in good faith a further cooperative agreement(s) to define “betterment” in the context of the PROJECT and to allocate financial responsibility for betterments.

H. Construction Management and Inspection:

1. VTA, at its sole cost, shall perform all construction management, inspection, and testing services necessary to ensure that all modifications, relocations, and/or removals of CITY Infrastructure are performed in accordance with the Contract Documents and Standard Specifications. These construction management, inspection, and testing services shall not replace any required CITY construction management, inspection, and testing services unless mutually agreed to (in writing) by both the CITY and VTA. VTA shall provide test results and construction documentation to CITY prior to VTA’s acceptance of any such work to enable CITY to review the adequacy of such work during construction and to permit timely acceptance of the completed work. Any completed work on CITY Infrastructure must be approved pursuant to Section 7(I) below.
2. VTA will pay CITY all applicable inspection fees charged by CITY for any inspection oversight services and testing services necessary to ensure that all modifications, relocations, and/or removals of CITY Infrastructure are performed in accordance to the encroachment permits and unless as further defined differently in future cooperative agreements between the parties. CITY retains the right and duty to exercise control over the employment, compensation, and discharge of its personnel. CITY must coordinate all inspections and/or testing by CITY personnel with VTA. Nothing in this Section 7(H)(2) renders VTA an employer or joint employer of any CITY personnel receiving payment for services performed under this Section 7(H)(2).

I. Completion and Acceptance:

Upon completion of construction, reconstruction, enlargement, expansion, or relocation of any CITY Infrastructure, VTA will notify CITY of such completion. Within a timeframe to be defined in future cooperative agreements, CITY must (i) complete its inspection of the CITY Infrastructure associated with the completed work and (ii) in writing, either

confirm acceptance of the CITY Infrastructure or notify VTA of an observed deficiency in the CITY Infrastructure (“Initial Notice”). If CITY determines the CITY Infrastructure (including any work performed pursuant to a change order) was performed in accordance with the CITY-approved Plans and Specifications and in accordance with Standard Specifications, CITY must confirm acceptance of such City Infrastructure. If CITY determines there is deficiency, CITY must provide VTA a detailed description of such deficiency, along with supporting documentation, within a timeframe to be defined in future cooperative agreements. Thereafter, VTA will investigate and correct the claimed deficiency to CITY’s reasonable satisfaction prior to CITY acceptance. CITY will become responsible for all aspects of such CITY Infrastructure upon acceptance thereof, with the exception of any claims of warranty as set forth below in Section 13.

J. As-Built Drawings:

Upon completion of work by VTA on CITY Infrastructure and acceptance of such work by CITY, VTA shall provide to CITY, after completion of each construction contract, electronic files compatible with the latest version of AutoCAD and a full size PDF set of as-built drawings and any parts, operations, and maintenance manuals that are available for CITY Infrastructure showing the completed work in place. Such as-built drawings must be in an electronic format with a level of detail as mutually agreed upon by both Parties.

SECTION 8. TRAFFIC MAINTENANCE AND DETOURS

- A. VTA is responsible for maintaining all traffic detours during construction of the PROJECT with approval of the TCP(s) by CITY. The TCP(s), which include traffic control, lane closure, and detour plans, must be submitted to CITY for approval prior to commencement of any phase of construction requiring either traffic control or detour(s), which approval must not be unreasonably withheld by CITY. The traffic control, lane closure, and detour plans will specify (i) the length of time that portions of CITY streets will be closed, (ii) the proposed detours, and (iii) other information as may be required by applicable local and state laws.
- B. Although certain CITY streets may be partially closed out of necessity for some period during construction of the PROJECT, VTA shall, to the extent reasonably practicable, take

all appropriate actions to ensure safe operations of the work and the continuance of service of all CITY streets and related CITY Infrastructure in service within the limits of the PROJECT.

1. CITY reserves the right to stop the work if (i) VTA fails to comply with the TCPs prepared hereunder or (ii) VTA performs the work in a manner that CITY reasonably believes compromises the health and safety of the public.
 2. Notwithstanding the foregoing Section 8(B)(1), CITY must (i) first consult with VTA prior to stopping any work to attempt in good faith to resolve the issue without stopping the work and (ii) identify with particularity the (a) alleged failure to comply with the TCPs or (b) work that CITY reasonably believes to compromise the health and safety of the public.
 3. Upon VTA receiving notice from CITY of the (i) alleged TCP non-compliance (non-compliance citation) or (ii) work that is allegedly compromising public health and safety, VTA will take all reasonable steps to cure the behavior at issue within a period of time as mutually agreed between VTA and CITY.
 4. Deviation of the provisions of this Section 8(B) may be permitted in bona fide emergency situations as determined by VTA and CITY.
- C. In its Contract Documents for PROJECT-related construction and design-build contracts, VTA will require its contractor(s) to submit traffic plans showing haul routes, designated areas for construction worker parking, temporary closures, and the method of traffic maintenance and staging to CITY for prior approval before any construction commences. VTA will also require its contractor(s) to provide CITY with three (3) working days' notice prior to submitting traffic plans. CITY must approve or disapprove the plans in a timeframe to be defined in future cooperative agreements.
- D. In its Contract Documents for PROJECT-related construction and design-build contracts, VTA will, prior to the temporary closure to traffic of all or part of any street, sidewalk, or other public access, require that its contractor(s) provide notice of such closure to CITY within a timeframe to be defined in future cooperative agreements. Deviation may be permitted in emergency situations as mutually agreed upon by CITY and VTA.
- E. In advanced timeframe, to be defined in future cooperative agreements, prior to the temporary closure to traffic of all or part of any street, sidewalk, or other public access,

VTA will initiate electronic public notification of such closure via media outlets and provide closure information flyers to all residents, schools, and businesses within a radius as reasonably specified by the City of any such closure. To the extent reasonably practicable, VTA shall provide advance copies of such notices to CITY.

SECTION 9. PAYMENT TERMS

The Parties acknowledge that CITY will incur costs arising from its work in support of the PROJECT. These costs will be reimbursed by VTA to CITY.

- A. In the event that CITY and VTA mutually agree to utilize CITY staff to perform any review, design, or construction work related to the PROJECT, such work and any reimbursement will be governed by a separate agreement for such work.
- B. All payments made under each separate agreement must comply with all applicable Federal and State funding guidelines and will be subject to audit pursuant to the terms set forth in Section 18, below.
- C. Reimbursements under this provision will be strictly limited to costs directly arising from PROJECT-related tasks performed by CITY staff, as required in this Agreement and any subsequent cooperative agreement(s) executed under this Agreement.

SECTION 10. DESIGNEES OF THE PARTIES

CITY contact person for all matters related to this Agreement will be the CITY's City Manager and Director of Public Works or their designees. VTA's contact person for all matters related to this Agreement will be VTA's General Manager and Chief BART Program Delivery Officer or their designees.

SECTION 11. CONTRACT DOCUMENTS INDEMNITY

(SECTIONS BELOW REQUIRE FURTHER REVIEW BY SANTA CLARA CITY ATTORNEY)

For any construction or design-build work performed on the PROJECT and within the City of Santa Clara's limits, VTA will require in its Contract Documents that all of the PROJECT's contractors, to the extent allowed by law, defend, indemnify and hold harmless the CITY and its officers and employees against any liability arising out of any acts or omissions of each such

contractor relating to the PROJECT and that all such contractors include the CITY, its elective and appointed officers, employees, and agents as additional insured in any insurance policies obtained by them, at no cost to CITY. VTA shall also require all contractors working on any construction or design-build contract for the PROJECT to name CITY as an additional insured on all policies of insurance for such contracts. Such insurance must, at a minimum, comply with City's insurance requirements.

For any work performed on the PROJECT by CITY, CITY will require in its Contract Documents that CITY's contractors, to the extent allowed by law, defend, indemnify and hold harmless VTA and its directors, officers, and employees against any liability arising out of any acts or omissions of each such contractor relating to the PROJECT and that all such contractors include VTA, its directors, officers, employees and agents as additional insured in any insurance policies obtained by them, at no cost to VTA. CITY shall also require all contractors working on any construction or design-build contract for the PROJECT to name VTA and BART as additional insured on all policies of insurance for such contracts. Such insurance must, at a minimum, comply with VTA's insurance requirements.

SECTION 12. INDEMNIFICATION

Neither VTA, BART, nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to CITY's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction associated with the Agreement. In addition, pursuant to Government Code §895.4, CITY will fully indemnify and hold VTA and BART harmless from any liability imposed for injury (as defined by Government Code §810.8) arising out of or relating to CITY's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

Neither CITY nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to VTA's or BART's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction associated with the Agreement. In addition, pursuant to Government Code §895.4, VTA will fully indemnify and hold CITY harmless from any liability imposed for injury (as defined by Government Code §810.8)

arising out of or relating to VTA's or BART's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction delegated to VTA under this Agreement.

SECTION 13. WARRANTIES

For any construction or design-build work performed on the PROJECT and within the City of Santa Clara's limits, VTA will require warranties from its contractors for work performed and for all contractor-installed equipment and materials supplied. VTA will also require that such contractors provide a warranty covering any items of CITY Infrastructure in accordance with City of Santa Clara Standard Specifications for Public Works Construction Section 9.1, "Warranty and Guaranty", as may be amended from time to time. VTA acceptance of all construction work performed for each construction contract associated with the PROJECT and for all contractor-installed equipment and materials supplied in connection with CITY Infrastructure for each construction contract will be conditioned upon CITY acceptance of such work, equipment, and materials for such construction contract as described in Section 7. Upon written request by CITY, VTA will pursue all reasonable remedies under those warranty provisions for correction of any defects in materials and/or workmanship discovered within the warranty period. VTA will commence correction of such defects in the work performed for CITY within a timeframe of written notification to VTA by CITY to be defined in future cooperative agreements, so long as the notification is within the warranty period.

SECTION 14. RESOLUTION OF DISPUTES

- A. Either Party may give the other Party written notice of any dispute (each a "Dispute"). The notice must state in detail the basis of the Dispute.
- B. During the course of construction of any construction or design-build contract subject to this Master Agreement, VTA's Chief BART Program Delivery Officer or the CITY's Public Works Director may designate a Dispute as an "Urgent Dispute." In the event of an Urgent Dispute, VTA's Chief BART Program Delivery Officer and the CITY's Public Works Director (or such other person having sufficient technical knowledge and experience as the Public Works Director may designate) must confer within 5 working days after delivery of the notice specified in Section 14(A). If the Parties are unable to

resolve the Urgent Dispute during that conference, the Parties must meet within 10 working days of the conference with a mutually acceptable neutral third party. If the Parties are unable to resolve the Urgent Dispute with the assistance of the neutral third party, then either Party may invoke the provisions of Section 14(D).

- C. For all Disputes other than Urgent Disputes, the following procedures apply:
1. Within ten (10) working days after delivery of the notice specified in Section 14(A), the CITY's Director of Public Works and VTA's Chief BART Program Delivery Officer shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange information and to attempt in good faith to promptly resolve the dispute ("Initial Discussions").
 2. If the matter has not been resolved within twenty (20) working days after the commencement of the Initial Discussions, either Party may, after providing written notice to the other Party, initiate a mediation to resolve the Dispute. The Parties must mutually agree on the mediator. Except as otherwise provided herein, neither Party may initiate litigation of a Dispute (other than an Urgent Dispute) until at least one mediation has been conducted.
 3. California Evidence Code sections 1115 et seq. relating to mediation, and sections 1152 and 1154 regarding the inadmissibility of certain evidence will apply to any mediation between the Parties.
- D. Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy or commence litigation if that Party believes in good faith that such injunction, provisional judicial remedy, or litigation is necessary to prevent or mitigate (i) irreparable damage, (ii) a loss of or injury to life or property, or (iii) the disruption of essential public services.
- E. Each Party is required to continue to perform its obligations under this Agreement or any subsequent cooperative agreement pending final resolution of any Dispute arising out of or relating to this Agreement or any subsequent cooperative agreement.

SECTION 15. TERMINATION

The Parties may terminate the Agreement upon mutual written consent. Additionally, either Party may terminate this Agreement with sixty (60) days written notice to the other Party. In the event that any Party terminates this Agreement prior to the expiration of the Agreement, VTA, at its sole discretion, may either (i) complete all construction of CITY Infrastructure that is actively under construction to the satisfaction of the City, if any, or (ii) restore CITY Infrastructure to its original condition to the satisfaction of the City. “Actively under construction”, as used in this Section 15, means that (i) a notice to proceed has been issued by VTA for construction and (ii) VTA has actually commenced construction of CITY Infrastructure.

SECTION 16. NOTICES

All notices required hereunder may be given by personal delivery, US Mail, or courier service (e.g. FedEx). Notices will be effective upon receipt at the following addresses:

To VTA by U.S. Mail:

Santa Clara Valley Transportation Authority
2099 Gateway Place, 7th Floor
San Jose, CA 95110
Attention: Chief BART Program Delivery Officer
Phone: 408-321-5623

To CITY by U.S. Mail:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Director, Department of Public Works
Phone: 408-615-3000

SECTION 17. PARTIES NOT CO-VENTURERS

Nothing in this Agreement is intended to nor does it establish the Parties as partners, co-venturers, or principal and agent with one another.

SECTION 18. FURTHER ASSURANCES, TIME PERIODS, AND RECORDS

- A. Each Party shall execute and deliver to the other all such additional instruments or documents as may be necessary to carry out this Agreement or to assure and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement, subject to appropriate approvals of each Party's governing body.
- B. Should unforeseen circumstances occur, VTA and CITY shall negotiate in good faith to reach agreement on any amendment(s) that may be necessary to fully effectuate the Parties' respective intentions in entering into this Agreement.
- C. The Parties must establish and maintain records pertaining to the fiscal activities of this Agreement and any related cooperative agreement, which records must show the actual time devoted and the costs incurred by the Parties with respect to any work performed under this Agreement. The accounting systems of the Parties must conform to generally accepted accounting principles, and all records must provide a breakdown of total costs charged pursuant to this Agreement, including properly executed payrolls, time records, invoices, and vouchers. Upon written request, each Party shall, at a mutually convenient time, permit the other Party to inspect, examine, re-examine, and copy the books, records, accounts, and any and all data relevant to this Agreement for the purpose of auditing and verifying statements, invoices, or bills submitted by the Party pursuant to this Agreement, and shall provide such assistance to the other Party as may be reasonably required in the course of such inspection.
- D. The Parties reserve the right to examine and re-examine such books, records, payrolls, accounts, and data during the ten-year period after final payment under this Agreement and until all pending matters are closed, and the Parties must not dispose of said books, records, payrolls, accounts, and data in any manner whatsoever for a period to be defined in future cooperative agreements after the final payment under this Agreement or until all pending matters are closed, whichever is later.

- E. The PROJECT financing includes significant federal and potential private funding. VTA may be subject to audits or requests for information from FTA (or other federal entities with jurisdiction over the PROJECT), and CITY must cooperate in furnishing any required information as part of any such audit or request.

SECTION 19. NON-LIABILITY OF OFFICIALS, EMPLOYEES, AND AGENTS

No director, member, official, employee or agent of CITY or VTA will be personally liable to any Party to this Agreement or any successor in interest in the event of any default or breach of this Agreement or for any amount which may become due on any obligation under the terms of this Agreement.

SECTION 20. HEADING AND TITLES

Any titles of the Sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any part of its provisions.

SECTION 21. APPLICABLE LAW

This Agreement will be interpreted under and pursuant to the laws of the State of California and applicable federal law, without regard to any choice-of-law or choice-of-venue principles that would lead to the application of the law other than that of the State of California or the United States federal system. The jurisdiction and venue of any dispute between the Parties to this Agreement will be the Superior Court of Santa Clara County, or if federal jurisdiction is appropriate, the United States District Court, Northern District of California, San José, California.

SECTION 22. SEVERABILITY

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions will continue in full force and effect.

SECTION 23. BINDING UPON SUCCESSORS

This Agreement will be binding upon and inure to the benefit of the transferees, successors and assigns of each of the Parties to it, except that there must be no transfer of any interest by any of the Parties to this Agreement except pursuant to the terms of the Agreement.

SECTION 24. REMEDIES NOT EXCLUSIVE

No right or remedy conferred upon or reserved to VTA or CITY under this Agreement is intended to be exclusive of any other right or remedy, except as expressly stated in this Agreement, and each and every right or remedy will be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited in this Agreement.

SECTION 25. FORCE MAJEURE

In addition to specific provisions of this Agreement, performance by either Party will not be deemed to be in default where delays or defaults are not reasonably foreseeable at the execution of this Agreement due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, quarantine restrictions, casualties, acts of God, acts of the public enemy, epidemic, government restrictions on priorities, freight embargoes, shortage of labor or materials, unusually inclement weather, lack of transportation, court order, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other Party within thirty (30) days from the commencement of the cause and such extension is not rejected in writing by the other Party within thirty (30) days of receipt of the notice. Time for performance under this Agreement may also be extended by mutual agreement, signed by both Parties.

SECTION 26. INTEGRATION

This Agreement represents the full, complete, and entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other communications, representations, proposals, understandings, or agreements, whether written or oral between the Parties hereto with respect to such subject matter. This Agreement may not be modified or

Amended, in whole or in part, except by in writing signed by an authorized officer or representative of each of the Parties hereto.

SECTION 27. NO PRECEDENT SET BY AGREEMENT

Except as otherwise provided herein, and as specifically stated elsewhere in this Agreement, the Parties agree not to use this Agreement to urge the establishment of any precedent, principle, or rule for other projects by VTA in the jurisdiction of CITY.

SECTION 28. APPROVALS BY LEGISLATIVE BODY

The parties acknowledge that the legislative bodies of the CITY and VTA may be required to implement some of the provisions of this Agreement.

Signatures of Parties on following page.

This Agreement is made and entered into as of the Effective Date.

SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY

By: _____
Nuria Fernandez
General Manager

Signature Date: _____

APPROVED AS TO FORM:

By: _____
J. Carlos Orellana
Deputy General Counsel

Signature Date: _____

CITY OF SANTA CLARA

By: _____
Deanna J. Santana
City Manager

Signature Date: _____

APPROVED AS TO FORM:

By: _____
Brian Doyle
City Attorney

Signature Date: _____

EXHIBIT A. GEOGRAPHICAL AREA OF SANTA CLARA STATION AND NEWHALL MAINTENANCE FACILITY

