

From: Board Secretary
Sent: Monday, August 28, 2017 8:41 AM
To: VTA Board of Directors
Subject: From VTA: August 25, 2017 Media Clips



VTA Daily News Coverage for Friday, August 25, 2017

1. [Gas Leak Shuts Down VTA Service \(NBC Bay Area\)](#)
2. [Pilot program aims to drive seniors around the West Valley \(Mercury News\)](#)
3. [Town Hall Meeting In San Jose To Discuss Google Mega-Campus \(CBS 5\)](#)
4. [Driver says to Bay Area newcomers — stay away \(Mercury News\)](#)

[Gas Leak Shuts Down VTA Service \(NBC Bay Area\)](#)

(Link to video)

[Pilot program aims to drive seniors around the West Valley \(Mercury News\)](#)

West Valley residents age 55 and older can hitch a RYDE with a pilot program set to begin in September.

Reach Your Destination Easily, or RYDE, will offer rides to medical appointments, errands and other activities around the West Valley. The program is a partnership of cities, Santa Clara County, Santa Clara Valley Transportation Authority, West Valley Community Services and the Saratoga Area Senior Coordinating Council,

Transportation “is a pretty common request,” said Tina Wong-Erling, senior services supervisor for the city Campbell. “A caseworker told me there are several requests a week, especially for free or very low income fee-based programs.”

Wong-Erling said when recent changes were made to Valley Transportation Authority programs, routes and schedules, some seniors were left without ways to get to doctor’s appointments, grocery stores and other destinations.

“Based on the public feedback received during VTA’s NEXT Network public engagement campaign, VTA wanted to explore ways to provide services to seniors that would meet their day-to-day needs,” said VTA spokesperson Linh Hoang.

According to Josh Selo, executive director of West Valley Community Services, the pilot program will begin in the middle of September. The plan is to first reach out to senior and adult centers within the West Valley cities.

Selo said the pilot program is set to end on June 30, 2018.

West Valley Community Services will coordinate the program and schedule rides for Campbell and Cupertino residents, while the Saratoga Area Senior Coordinating Council will oversee rides for residents of Saratoga, Los Gatos and Monte Sereno.

Riders must be 55 or older, residents of one of the five participating cities, able to walk—with a cane or walker—and not be in need of emergency medical attention at the time of the ride.

According to program draft plan, paid and volunteer drivers will transport riders in their own vehicles to locations within a 62-square-mile radius, which includes certain parts of San Jose, though San Jose residents will not be eligible to receive rides. Drivers will receive training.

Rides can be scheduled by contacting the West Valley Community Services or Saratoga Area Senior Coordinating Council. Ride requests must be made 36 hours in advance.

Riders will be billed once a month. Rides will cost up to \$9 for up to four miles, \$13 for up to eight miles, and \$18 for more than eight miles. Low-income to extremely low-income seniors will be able to ride for a discounted price.

Funding for Reach Your Destination Easily comes from each participating West Valley city, VTA and the county. At an Aug. 15 meeting, the Campbell City Council voted to contribute \$16,000 to the program.

Contributions are based on senior populations. Cupertino has agreed to contribute \$22,000, Saratoga \$19,000, Los Gatos \$17,000 and Monte Sereno \$8,000, according to the Campbell staff report. The county and VTA have agreed to give \$84,000 each to the pilot program.

According to the draft plan, ride sharing companies such as Uber, Lyft or Tagsi will also be contracted by the program to provide rides.

[Back to Top](#)

[Town Hall Meeting In San Jose To Discuss Google Mega-Campus \(CBS 5\)](#)

SAN JOSE (CBS SF) — A community town hall meeting took place Thursday evening regarding a proposed 6 million-square-foot Google mega-campus near the Diridon station in San Jose.

The South Bay Labor Council hosted the meeting at the Mexican Heritage Plaza at 1700 Alum Rock Ave. San Jose Vice Mayor Magdalena Carrasco was among the attendees, organizers said.

The meeting was billed as an opportunity for residents to voice their thoughts on the effects the proposed major project will have on affordable housing, access to quality jobs and education.

The City Council voted in June to begin exclusive talks with Google on the project, which is expected to bring up to 15,000-20,000 more jobs to the city.

The labor union said the meeting would feature “learn-ins,” breakout sessions and a larger discussion of what the community’s vision of the project will be.

The meeting was the first opportunity for residents to voice their concerns on the project. The labor union said this should be the first of several meetings to bring together the community and share its vision of the project with the mayor, City Council and Google.

Google, the world’s largest online search engine and one of the largest tech companies in the world, is currently based in Mountain View. San Jose Mayor Sam Liccardo announced in June that the city was in discussions with the web giant to bring the proposed campus downtown.

The Diridon station connects the Silicon Valley with the majority of the Bay Area. It’s the region’s major travel hub, hosting rail service from Caltrain, Amtrak, the Altamont Corridor Express, light-rail service from the Santa Clara Valley Transportation Authority and bus service from the VTA, Santa Cruz Metropolitan Transit District and Monterey-Salinas Transit.

It is also a planned future stop for California’s high-speed rail line and Phase Two of BART’s Silicon Valley extension.

City officials said in June that the proposed mixed-use campus would accommodate the thousands of new jobs, along with a public plaza, paseos, retail shops and a public greenbelt/park along Los Gatos Creek.

[Back to Top](#)

[Driver says to Bay Area newcomers — stay away \(Mercury News\)](#)

Q Back in the 80’s, I saw a bumper sticker on several vehicles that I fervently wish would come back now in this era of insane road congestion, ridiculous apartment rental prices coupled with rabid building of ugly blocky new buildings taking away our free space and further encroaching on my patience.

The bumper sticker was as follows:

“WELCOME TO CALIFORNIA. NOW GO HOME!

Thanks for letting me vent. Sigh.

Christine Koury

Belmont

A Geez, 1984 is when a pregnant Mrs. Roadshow, our golden retriever Ginger and I crammed

into our tiny Civic and drove from Iowa to our new home in San Jose.

Nearly 40 years later, we consider it one of our best moves ever.

But venting is good. High rental and home prices are very bad. New construction means more jobs which is good. Terrible congestion is great for Mr. Roadshow, the ocean is a short jaunt away and it's 80 degrees today under blue skies. Four out of six, not bad. Beats a blizzard in Iowa.

Q How about a bumper sticker which says "DANGER I DRIVE LIKE YOU DO?"

Jeff M.

A That would get attention.

Q Mr. Roadshow: I'll keep this short and to the point. You ou said that Curtner Avenue striping between Booksin and Bascom would begin Aug, 7. It's weeks past that and still no stripes. I think they forgot about us.

I almost had a head-on collision because of the ambiguity of the lanes. Someone is going to be seriously hurt because the city is allowing the contractor to lag.

Please help with this important safety issue.

Victor Brancati

San Jose

A Oh come on. It can't be that bad.

Q I've seen several near misses at Union and Curtner where drivers don't realize that the outside lanes in each direction are turning lanes, and drivers are trying to go straight in all 3 lanes ... Please work your magic.

Rebecca Knapp, Steve Wright, Debbie Bretschneider and so many more cursing on Curtner

A OK, it has been really bad. Emil-the-City-Magic-Man says striping was delayed because the road layout needed to be re-examined. Final striping will be complete after Labor Day. "We have not forgotten about the residents and apologize," he said.

Q Doubt I will get a response, since our city officials are in the back pocket of the anti-car bicycle coalition.

If cities are serious about reducing traffic deaths, why is enforcement only against cars? Jay walking is epidemic to the point pedestrians militantly walk into moving cars and giving screams or worse if honked it.

Jason Lehman

San Francisco

A Not always. The CHP issued 33 tickets Tuesday split between drivers, bicyclists and pedestrians on Middlefield Road in Redwood City.

[Back to Top](#)

From: Board Secretary
Sent: Monday, August 28, 2017 12:05 PM
To: VTA Board of Directors
Subject: From VTA: August 28, 2017 Media Clips



VTA Daily News Coverage for Monday, August 28, 2017

1. [Commuters urged to ditch their cars on 'Spare the Air' day Monday \(Mercury News\)](#)
2. [Measure B lawsuit blocks \\$1.5B for San Jose BART extension, other transportation projects \(Silicon Valley Business Journal\)](#)
3. [Downtown San Jose braces for BART construction amid bevy of new development \(Silicon Valley Business Journal\)](#)
4. [BART Through Downtown SJ \(KCBS Radio\)](#)
5. [How lawmakers want to spend \\$3 toll increase for Bay Area bridges \(Santa Cruz Sentinel\)](#)
6. [Congressman denounces Bay Area toll hike for transit \(San Francisco Chronicle\)](#)
7. [Riders sharing bikes to get from point A to point B now easier in Silicon Valley \(Mercury News\)](#)

Commuters urged to ditch their cars on 'Spare the Air' day Monday (Mercury News)

Bay Area residents are encouraged to limit their driving Monday as a "Spare the Air" alert continues for the second consecutive day.

The Bay Area Air Quality Management District issued the warning because smog — ground level ozone pollution — is expected to be at unhealthy levels.

The air is particularly harmful to young children, seniors and people with respiratory and heart problems.

Exhaust from gas-powered vehicles accounts for more than half of the air pollution in the San Francisco Bay Area, according to the agency, which is asking the public to drive less.

People are urged to change their commute by carpooling, taking public transit, biking or even walking to work.

For more information, including learning how employers can help by offering commuting benefits, go to www.commuterbenefits.511.org.

[Back to Top](#)

[Measure B lawsuit blocks \\$1.5B for San Jose BART extension, other transportation projects](#) (Silicon Valley Business Journal)

Still waiting for that pothole in your street to be fixed?

Despite more than seven of every 10 Santa Clara County voters approving Measure B last November to raise the sales tax to pay for more than \$6 billion in transportation improvements — including fixing the plague of potholes spreading throughout the county — you’re going to have to wait awhile.

Perhaps years, according to Valley Transportation Authority board chair [Jeannie Bruins](#), who is also on the Los Altos City Council, reacting to the appeal of a lawsuit challenging Measure B.

“Time spent on this legal battle could extend into years, adding to the cost of implementing these needed projects,” she said Friday in a [blog post](#) published by the VTA, which is responsible for spending most of the tax money.

Pothole repair was just the easiest part of spending the Measure B funds and perhaps the most immediately satisfying for most people.

But the lawsuit, [Cheriel Jensen](#) v. Santa Clara Transportation Authority, et al, blocks all spending including the \$1.5 billion for [BART’s extension to downtown San Jose](#), \$1.14 billion Caltrain improvements and many other projects.

The Silicon Valley Business Journal could not reach Jensen or her attorney late Friday for comment, including the grounds for the suit.

However, the [Mercury News published a letter](#) from Jensen on Oct. 27, 12 days before the election in which Measure B was approved, opposing the measure because she alleged the VTA would use the money to convert carpool lanes to toll lanes on the 101 and 85 freeways.

People began paying the half-cent Measure B sales tax in April even though Jensen’s lawsuit was filed in January. A judge dismissed the suit July 19 and VTA was preparing to begin spending the funds, which it had put into an escrow account, when it was notified Friday that Jensen filed an appeal of the dismissal.

Jensen’s LinkedIn page describes her as a retired county planner and summarizes her objectives as “to leave a habitable planet for the people who come after, to leave as much beauty and livability behind as I can.”

She has made news at least since 1995 when, two years after retirement following a year-long medical leave, she [filed suit against the county](#) and two pest control services for damages she said were owed because of 10 years' exposure to pesticides in her workplace.

Nearly all her complaints in that suit were dismissed in a series of appeals and it could not be determined immediately what the eventual disposition of her sole surviving complaint was.

Three years ago she filled out a [speaker card](#) at the county Board of Supervisors' budget hearing to present a petition asking that funding for pesticide fogging to protect against the West Nile virus be dropped.

A year later, in 2015, she and a nonprofit, Healthier Alternatives to Pesticides, sued the county to halt the pesticide fogging. Both of her claims were dismissed without a trial, according to a [story in the Mercury News](#).

[Back to Top](#)

[Downtown San Jose braces for BART construction amid bevy of new development \(Silicon Valley Business Journal\)](#)

This medicine is going to taste bad, but it will make you feel better.

That was the message the Valley Transportation Authority's board got Friday as it discussed the upcoming [BART](#) construction project through downtown San Jose.

The VTA board's study session was called so it could learn as much as possible about subway construction issues, especially the choice between single- or twin-bore tunnels, before it holds a joint meeting next month with [BART's](#) board to hash them out.

But what became apparent as the meeting proceeded was a realization that Phase II of [BART's](#) San Jose extension is part of a perfect storm of construction that will envelop downtown for much of the next 10 years. The project will be the largest single infrastructure development in Santa Clara County as it proceeds toward its planned 2026 completion.

"This is such major construction, all at a time that things are about to really pop in downtown San Jose with all of the companies that might be coming in, all of the high-rise construction, all the excitement that's happening," said County Supervisor [Ken Yeager](#), a member of the board.

"How does that all work with perhaps informing people of what is going to be coming? And how do you combine all the new construction with all the construction that's happening here with all the homes and businesses that already exist? How's that for a question?"

It's a big question considering the major headache building VTA's light rail was in the late 1980s or its bus rapid lanes on Alum Rock Avenue were just in the last couple of years.

For all the long-term progress downtown that [BART's](#) tunnel beneath Santa Clara Street is supposed to help spark, what will the short-term impact of building it be? Major parts of downtown's main drag could be out of service during a five-year period, depending on resolution of the tunneling issue.

And [BART's](#) construction is to occur at the same time a major transportation terminal will be built where tiny Diridon Station now stands, a high-speed rail line will be built on a north-south axis through the city, Caltrain is finally electrified and [Google](#) will be working on as much as 8 million square feet of office space in the same area.

"This effort will be like no other we have seen," [Nuria Fernandez](#), VTA's CEO and general manager said. "It's not just one building going up on one plot of land in downtown San Jose. We're talking about five miles of underground construction but with a lot of surface activity and then about a mile in Santa Clara with above-grade construction activity for a period of five-plus years."

VTA plans to open a downtown project office to make it easier for businesses and residents to get help and information.

"It's going to be very different from what we've done in the past, given all our lessons learned from the different levels of construction activities that have been performed in the last five years," Fernandez said. "We believe you will be pleased with the plan and we just have to put that plan in motion and tweak it as we learn."

San Jose City Councilmember Raul Peralez, whose district includes Santa Clara Street from where [BART](#) will enter a five-mile tunnel near the Five Wounds Catholic Church in the east to where it will stop at Diridon on the west, said that won't be enough.

He suggested making VTA's office bigger with city staff, his office and the other entities that will be managing their projects all in one place.

"We're talking about people speaking different languages," he said. "We're talking about people that maybe have not really been engaged the entire process because they're not as in touch. ... Some of these individuals, even as much as we're trying to engage them and keep them informed, are on hold. Some of these businesses will turn over."

Fernandez said a special plan is being put together for business and property owners.

"The strategy is going to be much more comprehensive than what we've had in the past given the areas that we're going to be impacting," she said. "We want to make sure that the businesses that are there and the opportunities for businesses there to continue to thrive — that we not have an experience like 28 years ago (during light rail construction)."

It's clear that building a single-bore subway tunnel beneath Santa Clara rather than the twin-bore tunnels used for other [BART](#) subways could help ease downtown's pain. That kind of tunnel causes much less surface disruption.

Many of the board's questions on that issue seemed calculated to ease doubts about the safety of a different type of subway operation than most Americans are used to in advance of the Sept. 22 study session to be held jointly with [BART's](#) board.

But while VTA is building the subway, [BART](#) will ultimately operate the trains and it has concerns of its own.

To stay on schedule for federal environmental clearance next March, the two boards must come to an agreement and VTA needs to adopt a tunnel plan as well as finalize station details for the downtown station somewhere between City Hall and light rail's Santa Clara Street crossing and at Diridon Station by Oct. 5.

[Back to Top](#)

[BART Through Downtown SJ](#) (KCBS Radio)

(link to audio)

[How lawmakers want to spend \\$3 toll increase for Bay Area bridges](#) (Santa Cruz Sentinel)

Voters in all nine Bay Area counties will be asked, likely next year, to approve a bridge toll increase of up to \$3 on every bridge spanning the bay, except the Golden Gate.

But what would commuters get for paying as much as \$9 at the toll booth?

Plenty, if lawmakers' vision becomes reality. Among other projects, the list includes:

- Longer BART trains with brand new cars and (hopefully) more breathing room.
- Electrified Caltrain vehicles rolling into downtown San Francisco.
- BART extending into San Jose's Diridon station.
- A new rail link connecting Redwood and Union cities.
- More ferries cutting across bay waters.
- More rapid bus routes zipping through the East Bay.
- Express lanes speeding the commute along the region's most congested freeways.
- Interchange improvements to reopen notorious bottlenecks.

At least, that is what's in the plan now. The bill authorizing the ballot measure, SB 595, must first be approved by the state Legislature and is still subject to change as it makes its way to the governor's desk. It allows the Metropolitan Transportation Commission (MTC), the Bay Area's

regional transportation planning agency, to decide whether to ask voters for a \$1, \$2 or \$3 toll increase, or whether to phase in those increases over time.

Each dollar is estimated to generate roughly \$127 million annually, or about \$4.2 billion over a 25-year period — if the tolls are raised by \$3.

GROWING PAINS

The money is critical for addressing what state Sen. Jim Beall, D-San Jose, calls the Bay Area's growing pains: booming jobs and housing growth throughout the region. The transit-heavy proposal focuses on getting people out of cars and into buses, trains and ferries, said Beall, who introduced the bill earlier this year.

And, although the money, while significant, won't completely fund any one project on the proposed list, Beall said it will help Bay Area cities and transportation agencies win competitive state and federal grants, which favor projects with significant local contributions.

"It's to make sure the bridges and the roads don't continue to become so congested that we can't continue to function," he said. "The result will be a better Bay Area for quality of life and a better economy for the Bay Area."

A recent poll of Bay Area voters found that 74 percent would be willing to pay higher bridge tolls, if that money is invested in "big regional projects" to ease traffic and improve mass transit. But, when asked to fork over gradually increasing tolls that rise by \$3 by 2022, only 56 percent said they would "probably" or "definitely" be willing to pay the extra fee.

And, on a recent weekday afternoon in downtown Oakland, most people balked at the sticker shock of an \$8 or \$9 bridge toll, even while they grudgingly acknowledged the traffic choking the region's major transportation corridors. Oakland resident Kathy McCurdy said she is already planning to leave the Bay Area once she retires in a few years. It's just too expensive to live here now, she said.

"Bridge tolls are part of that," McCurdy said. "I just feel like you're damned if you do, damned if you don't."

AFTER 7 P.M.

South San Francisco resident Luis Melendez drives into Oakland every day. He usually waits to cross the Bay Bridge until after 7 p.m., when the price of the toll drops from \$6 to \$4. If the toll increased by another \$3, that'd be a big financial hit, he said. The toll for the other Bay Area bridges that would be affected by an increase is currently \$5 at all times.

Melendez would rather see some of the major employers in the Bay Area pitch in to pay for some of the infrastructure upgrades, or enter into public-private partnerships, since they're part of the problem.

Some elected officials in the East Bay are pushing back on the plan, saying the money, as it's currently allocated, isn't distributed fairly to residents in Alameda and Contra Costa counties, who collectively pay 49 percent of all tolls but will only see roughly 39 percent of the funds allocated to projects in their counties.

Alameda County Supervisor Scott Haggerty, who sits on the MTC, is fighting to ensure that certain projects, such as improved freight movement in and out of the Port of Oakland, are included in the measure, along with more money for capital projects at AC Transit and funding for interchange improvements at State Route 84 and Interstate 680, he said. Officials from AC Transit and both the Contra Costa and Alameda County transportation authorities echoed his concerns with other projects they'd like to fund.

"These are very important projects we want to see funded that are not funded," Haggerty said.

COMMUTE CHANGES

But Los Altos Councilwoman Jeannie Bruins said it's no longer possible for residents to think only about their county of residence. The unequal concentration of jobs and housing in the Bay Area is changing the way people commute, with more people crossing county lines to get from home to work and back, she said.

More than 64,000 Alameda County residents, for instance, commute to work in Santa Clara County, according to the MTC.

"(This bill) is about facing our increased job growth and our increased population growth and the disparity between jobs and housing," Bruins said. "It's about addressing the challenges of the Bay Area as a whole."

And there's room for change in the bill, Beall said. Legislators chose the initial mix of projects based on the region's transportation plan and the project's ability to ease congestion in any given area, he said. Those changes will likely be finalized soon after the Legislature gets back from its summer recess on Monday.

"The projects you see there are based on a regional transportation plan, and they are all based on the impact they have on traffic congestion and the impact on bridge traffic and easing bottlenecks," he said. "It's not enough money to do everything ... and we're not going to please everybody."

[Back to Top](#)

[Congressman denounces Bay Area toll hike for transit \(San Francisco Chronicle\)](#)

East Bay Rep. **Mark DeSaulnier** has been back home and getting an earful about the situation in Washington — but it was the proposed ballot measure to raise tolls on the state’s Bay Area bridges to help fund transit projects that got his blood boiling.

“This is clear example of ‘You scratch my back, and I’ll scratch yours’ politics,” said DeSaulnier, D-Concord.

The measure — which would raise tolls by \$2 to \$3 — is being put together by a collection of Bay Area legislators. It’s expected to generate about \$125 million for a slew of road and mass transit improvements throughout the nine-county region.

“It’s all about getting money for projects in people’s districts rather than doing what really needs to be done, which is a second Bay Bridge crossing,” DeSaulnier said. “And they want the middle- and working-class people to pay for it.”

DeSaulnier is not alone. State Sen. **Steve Glazer**, D-Orinda, is raising questions about how the money would be spent, as is Assemblywoman **Catharine Baker**, R-San Ramon.

Other East Bay officials, whose constituents would pay the bulk of the toll increase, have said they’ll support the measure only if more projects are added to the goody list in Alameda and Contra Costa counties.

The measure’s author, state Sen. **Jim Beall**, D-San Jose, has said the measure would help ease traffic jams throughout the Bay Area. Spreading the money around, he said, is just the nature of winning voter approval.

[Back to Top](#)

[Riders sharing bikes to get from point A to point B now easier in Silicon Valley](#) (Mercury News)

No car, no problem.

In Silicon Valley, there are plenty of apps for getting around. Between ride-hailing services such as Uber and Lyft and on-demand car-sharing companies like Zipcar, gone are the days of the haggard hitchhiker left stranded along the side of the road with his thumb sticking out awkwardly. But while there are more options than ever now to get from point A to point B, the Bay Area’s notorious traffic congestion and elusive parking spaces have rendered car ownership nearly pointless for many.

Mario Ramirez, 30, doesn’t own a car but that’s never hindered his mobility in San Francisco, where he calls the Mission District home and works in human resources. His preferred modes of transport in the city include BART, public buses and his own two feet, depending on distance.

Since July, he's added one more to his fleet: the Ford GoBike, a regional public bicycle sharing system offered in San Francisco and other cities along the Caltrain corridor.

The system went by a name that may sound more familiar: Bay Area Bike Share. Though he previously shunned bike sharing as inconvenient, Ramirez says he now finds himself using the Ford GoBike up to three times a week to run errands.

"It's a lot easier than waiting for a bus," he said. "I really like the service; I just can't wait for them to finish it out, and hopefully, there will be more stations once they'll be done with it."

That's the plan, according to Dani Simons, the director of communication in external affairs at Motivate, a New York City-based company that owns and operates the Ford GoBike program along with Citi Bike in New York and other bike sharing systems in several cities across the country.

Motivate is adding 7,000 bikes to its GoBike fleet in the Bay Area. In San Jose, docking stations can be found at 25 locations throughout downtown as well as on the outskirts, and several more locations are planned for next year. By the end of this year, there will be 1,000 bicycles in San Jose alone, according to Simons.

"San Jose is one of the largest cities in the U.S.," Simons said. "It has a really fantastic downtown, it has a good mix of commercial and residential uses and has great transit downtown, and so I think it has a lot of aspects in terms of places that have good potential for having a successful bike share program."

Randi Perry, a 30-year-old Campbell resident and city of San Jose analyst, recently took a bike to the Diridon Station where she jumped aboard Caltrain and rode up to a San Francisco Giants game. She's only used the Ford GoBike a few times, she said, but her experience has been nothing but positive.

"It's been simple, easy," she said. "It's great that they have an app, and I can connect it to my Clipper card. I can walk outside my office and grab a bike. It's all been very positive."

Jean-Marie White, 46, director of engineering at Netflix, has been a longtime user of the program. He said he signed up for the annual pass and uses the GoBike several times a week, mainly to get around downtown San Jose.

"I live about one mile from downtown," he said. "I usually walk, but the bikes allow me to extend my reach a little bit. I find that Ford GoBikes are incredibly flexible from that standpoint; it's like freedom, you don't have to worry about locking your own bike in downtown."

Ramirez, Perry and White all have their own bicycles but prefer using the GoBike for safety and convenience.

"It's just a lot more hassle having to babysit my own bike or having to worry about someone stealing a wheel, which has happened to me, too," Ramirez said.

He lamented that the program has become somewhat of a “political issue,” with some people in his neighborhood protesting the presence of docking stations and others vandalizing the bikes.

“It’s becoming this gentrification fight,” he said. “I think a lot of that is people aren’t informed about what the program is. It’s unfortunate. I just think it’s a program for everyone, not just for people who can afford it.”

How it works

So what is the GoBike and how does it work? The program requires riders to first sign up online or through its mobile app. They can walk up to any docking station, pay for either a single ride (\$3), day pass (\$9.95) or annual membership (\$149) and take a bicycle out for 30- or 45-minute intervals. The bikes can be returned to any GoBike docking station.

The bicycles are custom-made and designed to withstand the wear and tear of being ridden multiple times a day in an urban environment, Simons said. They come equipped with sturdy tires and gears, fenders and adjustable seat posts.

Riders are responsible for the bicycles and are subject to a standard \$1,200 fee if they lose the bikes or fail to return them, Simons said. But there is an option to return faulty bikes at no charge to the rider. And riders won’t be held liable if their bicycle is stolen and a police report filed, Simons added.

The program was established in August 2013 as Bay Area Bike Share with 700 bicycles in 70 stations, 16 of those stations in San Jose and the others in San Francisco, Mountain View, Palo Alto and Redwood City. It was publicly funded through government grants and operated by a private company named Alta Bicycle Share, under management of the Bay Area Air Quality Management District in partnership with the Metropolitan Transportation Commission.

Alta was later acquired by Motivate, which then rebranded the program as a private system that would operate at no cost to local cities, said Ryan Smith, bikeshare coordinator for San Jose. After signing on Ford as a sponsor, and later Alaska Airlines, Motivate launched the new program this past June as Ford GoBike. It went live in San Jose in mid-July.

“This, as it was a public system, was intended as a pilot program to see how it would work and be sustainable in the long term,” Smith said. “Motivate offered to continue the same idea, but pay using a private sponsorship model, what they thought was going to be a sustainable program in the Bay Area.”

Simons said the Ford partnership “means that the program is available to the region at no cost to taxpayers.” Revenue from the fees goes first toward covering Motivate’s operating expenses, which, according to Simons, can include anything from bike repairs to renting bike storage warehouses.

The rest of the funds go to the MTC to distribute to cities that host the program. Smith said San Jose hasn't yet received any money from the program, but it's too early for that. In the future, the city is looking to reinvest the revenue into transportation programs or bike lane improvements and enhancements, Smith said. But, it's unclear how much money the city will reap from the program, and that's OK, he said.

"We're not really looking at it as something that will bring revenue to the city," he said. "We're more looking at it as a great opportunity to have bike share in San Jose and to offer alternative ways for people to get around the city."

Ford's role

And then there's the Ford component. Some wonder why an established car company is backing a bike sharing initiative. One answer is that car ownership among young city residents is on the decline and car manufacturers are taking heed. General Motors, Ford and BMW are among companies adjusting their business model to reach a new customer base: the folks moving to cities and no longer buying their cars.

Alan Hall, Ford's technology communications manager, said the company is rebranding its mission in recognition of rapid urbanization and the shift toward digital services, both of which are dramatically impacting the auto industry. As a result, Ford has created a Smart Mobility subsidiary to focus on developing and investing in solutions to help counter the challenges its customers face while simultaneously strengthening its business model, Hall said.

"We saw that as Ford Motor Company, our DNA really was about providing accessible transportation, so it was built around this personal ownership model," he said. "Ford Smart Mobility was focused on a new growing model, which was shared access. A lot of people are moving into cities, and we don't offer a product that fits their needs, so that's where we saw two opportunities. One is to help solve these growing trends, and it's also a new business opportunity."

He said the automaker has a dedicated team that meets with city leaders in an effort to come up with customized solutions to issues such as smog, traffic or accessibility. Ford chose the Bay Area to pilot its initiatives partly because the company already has a lab in Palo Alto and partly because of the region's progressive approaches to improving mobility.

To that end, the company agreed to invest not only in Motivate's bike share system, but also the commuter shuttle service Chariot, which it recently acquired and offers in San Francisco, with plans to eventually expand to other cities. The service can take as many as 14 passengers from their home to work during commute hours.

"What we've determined is you can take up to 10 personally owned vehicles off the road per Chariot van, so you're increasing the carrying capacity in the van as well as serving customers who previously didn't have access to transportation and commuting options," Hall said.

Sven Beiker, a lecturer in management at the Stanford Business School and managing director of Silicon Valley Mobility, a consulting firm in Palo Alto, pointed out it's not just Ford that has jumped on the "mobility services" bandwagon; many automakers are heading in that direction. He views it as an experimentation phase for automakers to see what sticks as they try to supplement their traditional product offerings.

"Every car company is trying to figure out what do consumers want regarding their mobility, and the car companies do understand that it's going to be a mix. Yes, you will sell cars, but consumers want to be mobile much more than they want to own an automobile. In the future it might be you own a car, you're stuck. If you have more options, then you're happy."

Publicity may be another factor in Ford's decision to sponsor the program, Beiker theorized. Slapping its signage on bicycles conveys the message that the company is innovative and sustainable. He compared it to the decals automakers place on racing cars at competitive sporting events such as Formula One or Nascar.

"The bicycle is not the same as an automobile, but still it's about demand and how you meet that demand more efficiently," Beiker said.

The GoBike program is a good start, he said, albeit with much room for improvement. But, it does what it aims to do well: offer a supplemental option for urbanites to get from one point to another efficiently, in addition to the Chariots and Ubers and Lyfts.

"Sometimes it might be faster to take a bike than Uber," he said.

The Ford GoBike program offers a one-time \$5 annual membership rate for low-income residents who qualify. To learn more, visit fordgobike.com/pricing/bikeshareforall. Motivate also offers a program that allows riders to purchase helmets at a discounted price online or at local bike shops.

To learn more about GoBike, visit fordgobike.com.

[Back to Top](#)

[While some resent GoBike, these people say the bike-sharing program is changing their lives \(San Francisco Chronicle\)](#)

GoBike quickly got a bad rap in the Bay Area.

Reports of vandalism popped up [in the news](#) in recent weeks and some longtime residents are begrudging the bike-sharing program, saying it's geared to rich newcomers who are working in tech, buying luxury condos and pushing out longtime residents.

"We're letting corporations do whatever the hell they want, while the everyday folk don't count," Roberto Hernandez, a lifelong resident of the Mission district, told the [Guardian](#) for an

Aug. 21 article on how GoBike has become a symbol of gentrification. "When you look at the transportation privileges that have been provided for these techies, and when you now look at these bikes, it's not for Juan. It ain't for Pablo ... The feeling of people in this community is like we don't exist."

But while some might disdain the cycling system, others are using the bikes and saying they're improving their daily lives.

Take San Francisco resident Leslie, who shared in an email with SFGATE that he's "absolutely thrilled" with the program. He asked to not use his last name in this article for fear of retaliation from people who resent GoBike.

"I've been able to get rid of my car (which has freed up a parking space for other neighbors to use)," he wrote. "I recall reading on Nextdoor that other folks have also been able to give up their cars, thanks to the bikes. One person particularly made me smile, as they said they had already lost something like 2 or 3 pounds in weight and were hoping to lose another 10 — or something like that!"

He added: "I've not weighed myself yet, but perhaps I should get on the scales! I must admit, the cycling makes me feel better than I have in a while! Plus I don't have to worry about thieves stealing my own bike or stealing bits from my bike."

Edith Harbaugh of SF is another GoBike fan who uses the program to get around the city to meetings. "It's easier, cheaper and more fun than taking taxis," says Harbaugh, the CEO of Oakland-based software company LaunchDarkly.

The Ford-sponsored GoBike program allows users to ride its sky blue-colored bikes among 200 docking stations located in SF, Oakland, Berkeley, Emeryville and San Jose. Users can pay \$3 for a one-way trip, \$10 for a day pass or \$150 for a year of unlimited use.

The program was introduced on June 28 and in its first eight weeks, 6,000 people signed up and 100,000 trips were logged.

"The stories have skewed to talk about this new thing that a small number of people are having a strong reaction to, but what hasn't been reported is the thousands of members who are using the bikes," says Paolo Cosulich-Schwartz, a spokesperson for Motivate, the company running GoBike. "This is a transportation project and program that will help people get around. It's affordable. It keeps cars off the road and improves air quality and really impacts the quality of people's daily lives."

The system will expand to more than 500 stations through 2018, and SF resident and GoBike member Scott Halstead says the widespread availability makes one-way trips possible. He recently hopped on a bike to go to a Giants game and then took Muni home.

"I got to the game in 22 minutes," he says. "That's faster than any other form of transportation I could have taken."

He also used GoBike to ride from the south side of the city to Civic Center for a meeting.

"I left the bike there because I needed to pick up my kids and take Muni home," he says. "The beauty is the one way. Knowing there's a place you can drop it off."

Halstead says he's never had an issue with arriving at a docking station that's full and he uses the app to make sure there's plenty of room to park a bike at his destination before leaving.

"I was a little bit nervous the first time," he says. "I checked before I left and there were plenty of spaces. I've never had trouble. The same thing works on pickup. If I'm at my house and I want to go to a meeting, I want to make sure there's a bike available."

And then there's SF local Hilary Schiraldi, who used GoBike on a whim when she missed the bus one August evening after her workday as a librarian at UC Berkeley.

Schiraldi was in a rush to get home to meet some out-of-town visitors for dinner and decided to download the app and plug in her credit card number. Three minutes later, she unlocked a bike from a docking station near the Haas Business School Library and was zipping downhill to the Downtown Berkeley BART station, where she parked the bike at another GoBike station.

"It saved me time and it was super fun," says Schiraldi, who now uses GoBikes in her commute between SF and Berkeley about four times a week. "I probably sound like a super shill for them, but I love it."

[Back to Top](#)

Conserve paper. Think before you print.

From: Board Secretary
Sent: Wednesday, August 30, 2017 4:25 PM
To: VTA Board of Directors
Subject: From VTA: August 30, 2017 Media Clips



VTA Daily News Coverage for Wednesday, August 30, 2017

1. [Free shuttles renewed for another year \(Mountain View Voice\)](#)
2. [17 Apple engineers jump to Menlo Park self-driving car startup \(Silicon Valley Business Journal\)](#)
3. [San Jose unanimously approves massive Museum Place project with labor agreement \(Silicon Valley Business Journal\)](#)

[Free shuttles renewed for another year \(Mountain View Voice\)](#)

Google pledges to fund community transit service through 2018

Mountain View's free community shuttles will continue navigating the city's streets for a little while longer. In recent letter sent to the city, Google officials announced the company would fund the shuttle program through the end of 2018.

Launched in 2014, the shuttle program was provided by Google to help mitigate traffic congestion around town. The program was originally meant to last two years, but the company has continued to keep it running.

The shuttle service had a slow start in Mountain View, and early on it appeared that not many residents knew about the free transit option. Word has apparently been getting out about the program more recently -- just last year, total ridership reportedly increased by 60 percent.

The shuttles are equipped with free wi-fi and cushy seats. Nearly all riders (98 percent) say they would recommend the service to others, according to Google.

Google officials declined to say exactly how much the shuttle service costs. A map with more information, including live updates of shuttle locations can be found at mvcommunityshuttle.com.

[Back to Top](#)

[17 Apple engineers jump to Menlo Park self-driving car startup \(Silicon Valley Business Journal\)](#)

Self-driving car startup [Zoox](#) Inc. has reportedly hired 17 engineers who have left [Apple Inc.](#) after the iPhone maker [downshifted its own autonomous vehicle development program](#).

Bloomberg [cited unnamed sources](#) on Wednesday who said the engineers who joined the Menlo Park startup specialize in designing elements present in both traditional and autonomous vehicles, such as braking and suspension systems.

The defectors weren't identified but many of them reportedly joined Apple from Detroit carmakers and suppliers. Bloomberg said they were hired in recent months as they found themselves increasingly sidelined at Apple.

CEO Tim Cook said in June that Apple (NASDAQ:AAPL) is now focusing on developing autonomous driving systems — ["the mother of all AI projects"](#) — that could be licensed to carmakers. The New York Times reported last week Apple is [testing a self-driving employee shuttle bus](#) that would run on a Cupertino-Palo Alto loop.

[Zoox](#) has raised more than \$250 million in funding from investors who include Draper Fisher Jurvetson and Lux Capital who have valued it at more than \$1 billion.

Earlier this year, [it hired](#) Mark Rosekind, the former administrator of the [National Highway Traffic Safety Administration](#) as its chief safety innovation officer, and Ferrari veteran Corrado Lanzone to lead manufacturing.

[Back to Top](#)

[San Jose unanimously approves massive Museum Place project with labor agreement \(Silicon Valley Business Journal\)](#)

In this image, the tower is seen from Almaden looking down Park, a key gateway for those... [more](#)

The San Jose City Council on Tuesday unanimously approved Insight Realty Co.'s massive Museum Place development, which is slated to rise in the city's downtown.

Insight Realty plans to demolish the city-owned Parkside Hall and add a 60,475-square-foot expansion to the Tech Museum and a new 25-story mixed-use tower.

The 1.4 million-square-foot development will be divided up between the museum expansion, 263,676-square feet of office space, 306 residential units, 184 hotel rooms and 21,074-square feet of retail.

The development will also include new public art and space for about 900 cars with the help of valet services and mechanical storage devices, according to city documents.

"It's exciting to see the project evolve since we submitted the [request for proposals] together," [Bob Staedler](#), a longtime land-use consultant, said after the vote. "In a way, downtown is catching up to the vision of Museum Place with all the excitement of the Google development. It is another milestone project for downtown."

Staedler is a principal at Silicon Valley Synergy who was part of the team that put together the original Museum Place proposal.

The project has also been hailed by city officials as a major boon for San Jose.

"This is the most mixed-use project that has happened in downtown San Jose, or I would say anywhere in the Bay Area, maybe outside of San Francisco," Kim Walesh, deputy city manager and director of economic development said in an interview about the project last month after the project was [unanimously approved by the Planning Commission](#).

The project was buoyed even more Tuesday because of a full project labor agreement Insight Realty was able to strike with local labor unions ahead of the vote. The hotel portion of the development, which will be operated by luxury chain Kimpton Hotel, will also be staffed with union labor.

Many union leaders and workers showed up Tuesday to throw their support behind the project during the public testimony portion of the meeting. Among them, [Josue Garcia](#), CEO of the Santa Clara and San Benito Counties Building and Construction Trades Council, who said the group was "eager to lend our full support for the project," before praising Insight Realty executives for being willing to negotiate the labor agreement.

Museum Place will move forward with check-ins and required approvals for changes to the amount of office, retail or hotel rooms, per an adopted 13-point memo authored and signed by Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco and council members Raul Peralez and Johnny Khamis.

The memo also directs Insight to "take all necessary measures to preserve the public use and operation of The Tech and the Civic Auditorium during construction of the project."

City Council members Tuesday approved the project swiftly Tuesday after offering unanimous praise for the project.

Peralez commended Insight Realty's Managing Director [Dennis Randall](#) for his work within the community and with labor groups ahead of the vote.

"You went out and engaged with the community and our labor representatives," he told Randall. "You built rapport and were able to come to agreement. I know it was not easy but the project, I believe, is still a tremendous project."

From: Board Secretary
Sent: Thursday, August 31, 2017 4:48 PM
To: VTA Board of Directors
Subject: From VTA: August 31, 2017 Media Clips



VTA Daily News Coverage for Thursday, August 31, 2017

1. [State Supreme Court has made it easier to raise taxes, or did it? \(Calmatters.org\)](#)
2. [Caltrain solicits public input on bike storage options \(San Francisco Examiner\)](#)

[State Supreme Court has made it easier to raise taxes, or did it? \(Calmatters.org\)](#)

The state Supreme Court this week issued a much-anticipated ruling that will make it much easier for local tax increases to be enacted.

Or maybe not.

The [5-2 decision](#), upholding an appellate court ruling, was that the taxing constraints on local governments in the state constitution don't apply to voter-generated ballot measures that raise taxes.

It was immediately interpreted by anti-tax and pro-tax forces as allowing initiatives for "special taxes" – those for specific purposes – to be approved by voters via simple majorities, rather than the two-thirds margins required for special taxes proposed by governments themselves.

"It's pretty devastating," said Jon Coupal, president of the Howard Jarvis Taxpayers Association. "It will incentivize collusion between local governments and special interest groups to create special tax increases."

Coupal says an effort will be mounted to overturn the decision via a constitutional amendment.

"It's hard to overstate how important this ruling is," Scott Wiener, a Democratic state senator from San Francisco, said in a statement. "Communities will now have a much easier time funding schools, transportation and other critical needs."

A [provision of the state constitution](#), enacted in 1996 via [Proposition 218](#), says that local governments may raise taxes – usually sales or parcel taxes – for general purposes with simple majority approval of voters, but special taxes, require two-thirds approval.

Monday’s ruling, stemming from a dispute over licensing and taxing marijuana sales in Upland, a small city in San Bernardino County, declares that the provision doesn’t apply to initiatives, drawing a bright legal line between governments and their voters.

“Multiple provisions of the state constitution explicitly constrain the power of local governments to raise taxes,” Justice Mariano-Florentino Cuéllar wrote for the court’s majority. “But we will not lightly apply such restrictions on local governments to voter initiatives,” citing a previous declaration that the initiatives process is “one of the most precious rights of our democratic process.”

The court’s two dissenters disagreed, saying that voters are, in fact, part of their governments and, therefore, the constitution’s provisions apply to them as well.

The two-thirds vote requirement for special taxes has mostly affected single-purpose governments such as school districts and mass transit agencies, while cities have tended to seek general purpose tax increases due to their lower voting requirements.

In theory, therefore, with this week’s ruling, pro-tax forces, such as public employee unions, could sponsor ballot measures to raise special taxes without triggering the two-thirds vote requirement.

Some doubtless will try that route, but since the decision didn’t explicitly refer to the vote requirement, additional litigation would surely result.

Aside from the complex legal facets, the decision should be seen as one of equity. There’s no particular reason why the voting requirements for general and special taxes should be different at the local level, or why local tax measures should face hurdles that are not imposed on state tax measures.

While the Legislature must muster two-thirds votes of its own members to raise any kind of taxes, statewide initiatives for higher taxes – even very narrow ones for specific purposes such as cigarette taxes – have never required more than simple majority voter approval.

What’s good for the state goose should also apply to the local gander.

[Back to Top](#)

[Caltrain solicits public input on bike storage options](#) **(San Francisco Examiner)**

To the relief of the many cycling commuters who travel by train every day, Caltrain’s new electric trains will feature more bike storage.

The agency is asking for public input on which style of train storage to use — but, in a twist, so far riders seem to prefer the option that would store fewer bikes.

About 67 percent of Caltrain riders polled so far have chosen a “hybrid” option of storing bikes, versus a proposal called the “stacked” option, according to Caltrain.

Caltrain on Aug. 8 first floated a poll on design for its \$1.98 billion electrification project. The redesign of the trains, however, offered an opportunity to cyclists who depend on Caltrain everyday to see capacity grow on the trains for bike storage.

One of two options shown to riders in the poll was a stacking option that would allow 72 bikes to be stored per train. By contrast, the “hybrid” option stores bikes in a slant along the side of the train and would only store 68 bikes per train set. That’s less capacity, and would also accommodate fewer types of bikes — but, bikes may be easier to access under the hybrid option.

In an early peek at Caltrain’s poll online, courtesy of the agency, it seems most riders prefer the hybrid option.

“We definitely have been surprised people have been more interested in that [lower capacity option], according to the poll,” Emma Shales, policy manager of the Silicon Valley Bicycle Coalition, said. “But,” she added, “who knows? There’s still a few more days” left to the poll.

The poll ends Friday at midnight. To vote head to www.calmodtrains.com.

[Back to Top](#)

Conserve paper. Think before you print.

From: Board Secretary

Sent: Friday, September 01, 2017 12:39 PM

To: VTA Board of Directors

Subject: VTA Information: September 7, 2017 Board of Directors Regular Meeting Agenda Packet

VTA Board of Directors:

You may now access your VTA Board of Directors Agenda Packet for the **September 7, 2017, Regular Meeting** on our website [here](#).

Please note the Board Meeting will begin at 5:30 PM and will be held in the Board of Supervisors' Chambers, County Government Center, 70 West Hedding Street, San Jose.

We would like to thank you for your support of VTA's Sustainability Program to **"GO GREEN"** by subscribing electronically to the packets.

Office of the Board Secretary
Santa Clara Valley Transportation Authority
3331 North First Street, Building B
San Jose, CA 95134-1927
Phone [408-321-5680](tel:408-321-5680)



Conserve paper. Think before you print.

From: Board Secretary

Sent: Friday, September 01, 2017 5:21 PM

To: VTA Board of Directors

Subject: Addendum to the September 7, 2017, VTA Board of Directors Agenda

VTA Board of Directors,

Please find attached the following Addendum to the September 7, 2017, VTA Board of Directors Agenda:

- **8.1.B.X - INFORMATION ITEM** - Receive an update on the Silicon Valley Rapid Transit (SVRT) Operations and Maintenance Agreement. (Verbal Report)

Please click on the **updated** link [here](#) to view the updated Agenda packet on the VTA website.

Also attached for your reference is the VTA/BART Comprehensive Agreement.

Thank you.

VTA Office of the Board Secretary

Santa Clara Valley Transportation Authority

(408) 321-5680

Conserve paper. Think before you print.



BOARD OF DIRECTORS MEETING

Thursday, September 7, 2017

5:30 p.m.

Board of Supervisors' Chambers
County Government Center
70 West Hedding Street
San Jose, California

ADDENDUM TO AGENDA

- 8.1.B.X.** INFORMATION ITEM - Receive an update on the Silicon Valley Rapid Transit (SVRT) Operations and Maintenance Agreement. (Verbal Report)

RECEIVED
SVRT PDCC

DEC 09 2005

P0501-PW-05-0632

11-19-01

COMPREHENSIVE AGREEMENT

COPY

BETWEEN THE

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
(VTA)

AND THE

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
(BART)

IN CONNECTION WITH THE PROPOSED
SANTA CLARA COUNTY BART EXTENSION

B0512F033

TABLE OF CONTENTS

Y400 RECITALS 1

I. DEFINITIONS 3

II. PROJECT VISION AND GOVERNANCE 7

III. PROJECT COSTS AND FUNDING 10

IV. ONGOING OPERATING, MAINTENANCE AND CAPITAL
COSTS AND FUNDING 18

V. THE ENVIRONMENTAL PROCESS 32

VI. PROJECT IMPLEMENTATION, TESTING & STARTUP 36

VII. OPERATIONS AND MAINTENANCE 50

VIII. ACQUISITION, OWNERSHIP, AND CONTROL 52

IX. ALIGNMENT, STATIONS, LAND USE, AND DEVELOPMENT ... 57

X. DISPUTE RESOLUTION 63

XI. LIABILITY, INDEMNIFICATION AND INSURANCE 64

XII. TERMINATION 66

XIII. GENERAL PROVISIONS 69

This is a Comprehensive Agreement (“Agreement”) between the Santa Clara Valley Transportation Authority (“VTA”) and the San Francisco Bay Area Rapid Transit District (“BART”) (collectively, the “Parties”). This Agreement shall be effective as of November 19th, 2001 (the “Effective Date”).

RECITALS

- A. On November 7, 2000, the voters of Santa Clara County approved Measure A, a countywide measure to authorize a one-half cent sales tax as a special tax to become effective on April 1, 2006. Pursuant to the provisions of Measure A, the sales tax is to be used by VTA for specified transit improvement projects listed on the ballot. One of the proposed specified projects is the extension of BART from Fremont through Milpitas and Downtown San Jose to Santa Clara (the “SVRT Project”).
- B. On September 15, 1992, the BART Board of Directors certified the Warm Springs Extension Project Final Environmental Impact Report dated November 1991, and adopted a project consisting of a 5.4 mile, two station extension, with stations at Irvington and Warm Springs (the “1992 Project”). The 1992 Project has not been built.
- C. On November 7, 2000, the voters of Alameda County approved Measure B, a countywide measure to authorize a one-half cent sales tax as a special tax for transportation improvements to become effective April 1, 2002. One of the proposed improvements is a revised Warm Springs Extension Project (the “WSX Project”), consisting of a 5.4 mile, one-station extension.
- D. BART is in the process of reviewing, updating and supplementing, as necessary, the previously certified Environmental Impact Report, based on both changes to the approved project and changes in the study area since the original document was published and the project approved.
- E. The proposed SVRT Project would be an extension of the BART system connecting to BART’s Warm Springs Station.

- F. The WSX Project is a stand alone project, consisting of an extension of BART's tracks south from Fremont to a point just north of the Alameda/Santa Clara County line, with a station to be located at Warm Springs in the city of Fremont.
- G. The parties acknowledge that action by the BART Board of Directors will be necessary to commit BART to a definite course of action in connection with the SVRT Project, thereby rendering BART a "Responsible Agency" under the California Environmental Quality Act ("CEQA"), and further that BART possesses areas of expertise in connection with the BART system, thereby rendering it a potential "Cooperating Agency" under National Environmental Policy Act ("NEPA").
- H. VTA and BART acknowledge that the proposed SVRT Project must be planned, designed and constructed under the auspices of a joint BART/VTA policy body.
- I. VTA and BART acknowledge that implementation of any regional agreement(s) which include(s) a BART extension to Santa Clara County must be contingent on completion of this Comprehensive Agreement.
- J. The Parties agree that this Comprehensive Agreement is contingent on the selection of BART as the "preferred mode" in the Major Investment Study ("MIS") and as the "preferred alternative" in the Alternatives Analysis ("AA"), studies currently being conducted by VTA.
- K. VTA and BART acknowledge that only certain provisions of this Agreement can be implemented prior to VTA's obtaining full funding. In the event that full funding is secured, the remaining provisions of this Agreement may be acted upon.
- L. VTA and BART acknowledge that the work performed under this Agreement shall be in conformance with all applicable Federal and/or State grant conditions and all applicable laws.

AGREEMENT

NOW, THEREFORE, BART and VTA, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

SECTION I. DEFINITIONS

The following definitions relate to such terms found in the entire Agreement, including, without limitation, all Exhibits hereto.

- A. "AFC" The automatic fare collection system utilized on the BART Core System.
- B. "AATC" Advanced automatic train control technology.
- C. "BART" See "District."
- D. "BART Core System" or "Core System." The heavy rail regional transit system operated by BART, including the 95-mile, thirty-nine station system currently in operation and the 8.7-mile, four station SFO Extension, together with all equipment and facilities in the counties of Alameda, Contra Costa, San Francisco and San Mateo, and as it may be expanded in said counties in the future.
- E. "BART Design and Construction Standards" The standards and criteria used by BART in the design and construction of the BART system, including but not limited to the current BART Design Criteria; BART Standard Specifications; BART Standard Plans and Details; BART Facilities Safety Criteria; and BART System Safety Program Plan.
- F. "BART Operational Standard and Practices" The standards and practices used by BART in the operation of the BART Core System, including but not limited to the current BART Operating Rules and Procedures; BART Operational Performance Objectives; and BART Operational Performance Standards, together with applicable rules and regulations of the California Public Utilities Commission and applicable industry standards.
- G. "BART Project Director" The individual designated from time to time by the BART General Manager as project director for the SVRT Project.
- H. "BART Revenue Vehicle Consultant Selection Panel" The selection panel convened by BART to select the railcar supplier for the SVRT Project.
- I. "BART Standards" The BART Design and Construction Standards, the BART Operational Standards and Practices, and the BART System Standards.

- J. "BART Standard Commercial Contract Terms and Conditions" The standard contract terms and conditions generally found in BART commercial contracts.
- K. "BART System Standards" The applicable rules, regulations procedures and practices related to any aspect of BART operations, including safety, that are usually and customarily utilized by BART in its day-to-day operations, including applicable rules and regulations of the California Public Utilities Commission and applicable industry standards.
- L. "BART's Areas of Expertise" The design, construction, operation, maintenance and safety of the BART system, and thresholds of significance and mitigation measures for environmental impacts of such activities as they relate to the SVRT Project.
- M. "CAPRA" The capital reserve account established by VTA in accordance with the Full Funding Grant Agreement ("FFGA") for the SVRT Project.
- N. "CEQA" The California Environmental Quality Act, Public Resources Code Section 21000, *et seq.*
- O. "Change Review Board" The board convened by VTA during the construction phase of the SVRT Project to review construction change orders.
- P. "CIP" BART's ten-year Capital Improvement Program.
- Q. "County" Santa Clara County.
- R. "CPI" The Consumer Price Index.
- S. "CPUC" The California Public Utilities Commission.
- T. "DAS" The data acquisition system utilized on the BART Core System.
- U. "Design Drawings and Specifications" The pre-bid plans and specifications for the design and construction of the SVRT Project, reviewed and/or approved by the Parties, as supplemented and modified from time to time in accordance with this Agreement.
- V. "District" or "BART" The San Francisco Bay Area Rapid Transit District, its employees, agents, consultants, and contractors.
- W. "DSS" The designation sign system utilized on the BART Core System.
- X. "EIR" The Environmental Impact Report for the SVRT Project.
- Y. "EIS" The Environmental Impact Statement for the SVRT Project.

- Z. "EIS/EIR Planning Horizon" The planning horizon for the SVRT Project employed in the EIS/EIR.
- AA. "FTA" The United States Department of Transportation, Federal Transit Administration.
- BB. "FFGA" The Full Funding Grant Agreement issued for the SVRT Project by the FTA or its successor in interest.
- CC. "Hazardous Materials" Means any substance or material that is described as a toxic or hazardous substance, waste or material, or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws; including, without limitation, aerially-deposited lead or other lead, asbestos, petroleum (including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum products, and polychlorinated bipenyls. As used herein, "Environmental Laws" means all current federal, state and local laws, ordinances, rules and regulations in any way relating to or regulating issues focused on human health or safety and industrial hygiene and pertaining to the protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater.
- DD. "LPA" The locally preferred alternative for the SVRT Project which will be selected during the EIS/EIR phase.
- EE. "MIS/AA" The Major Investment Study/Alternatives Analysis for the SVRT Project.
- FF. "MMRP" The Mitigation Monitoring and Reporting Plan for the SVRT Project..
- GG. "NEPA" The National Environmental Policy Act, 42 U.S. Code section 4321, et seq.
- HH. "OCIP" The VTA Owner Controlled Insurance Plan.
- II. "Parties" VTA and BART.
- JJ. "Plans and Specifications" The drawings, documents, plans, specifications, general and special conditions, and related design and construction documents for the SVRT Project prepared pursuant to any construction contract, reviewed and/or

approved by the Parties, as supplemented and modified from time to time in accordance with this Agreement.

- KK. "Policy Advisory Board" The joint VTA/BART policy body under whose auspices the SVRT Project will be planned, designed and constructed.
- LL. "Project" See SVRT Project.
- MM. "Project Implementation Team" The joint VTA/BART implementation team for design, construction, testing and start-up for the Project.
- NN. "Related Projects" Projects in the SVRT Corridor as to which coordination with SVRT Project will be necessary or desirable, including but not limited to, the WSX and Fremont Grade Separation Projects.
- OO. "SCADA" The train control, communications systems, supervisory control and data acquisition utilized on the BART Core System.
- PP. "SCEP" The program of investments developed by BART's system capacity study ("SCS").
- QQ. "SCS" BART's system capacity study.
- RR. "Subsidy" The subsidy paid by VTA to BART for SVRT Extension operating, maintenance and capital costs.
- SS. "SVRT" The proposed Silicon Valley Rapid Transit Project.
- TT. "SVRT Extension" The completed SVRT Project.
- UU. "SVRT Project" or "Project" The proposed SVRT Project, consisting of a sixteen-mile/seven station extension of BART's tracks south from Warm Springs through Milpitas and Downtown San Jose with a terminus station in Santa Clara.
- VV. "SVRT Project Implementation Plan" To be developed by VTA and BART, the Project Implementation Plan will include lead roles and responsibilities for design, procurement, construction, safety certification and start-up of the SVRT Project, together with a contract packaging strategy and overall Project schedule.
- WW. "SVRT Project Testing and Rail Activation Plan" The testing and rail activation plan developed for the SVRT Project.
- XX. "SVRT Ridership" All trips on BART with an origin or destination on the SVRT Extension, as determined by BART.

YY. "TAC" The technical advisory committee for the MIS/AA and EIS/EIR phases of the Project.

ZZ. "TCRP" The Traffic Congestion Relief Program.

AAA. "TDA Funds" Funds derived from the 0.25 cent of the retail sales tax collected statewide pursuant to the Mills-Alquist-Deddeh Act (California Public Utilities Code sections 99200, et seq.), referred to herein as the "Transportation Development Act," including funds identified in Articles 4 and 4.5 thereof.

BBB. "UPRR" The Union Pacific Railroad.

CCC. "VTA" The Santa Clara Valley Transportation Authority.

DDD. "VTA Project Director" The individual designated from time to time by VTA as project director for the SVRT Project.

GGG. "VTA Standard Commercial Contract Terms and Conditions" The standard terms and conditions generally included in VTA commercial contracts.

HHH. "VTA Standard Specifications" The standard construction details, drawings, general and special conditions, and construction methods usually and customarily utilized by VTA for public works projects.

III. "WSX Project" The Warm Springs Extension Project, consisting of a 5.4 mile, one-station extension of BART's tracks south from Fremont, with a station at Warm Springs.

SECTION II. PROJECT VISION AND GOVERNANCE

A. INTRODUCTION

This section focuses on the manner in which the Parties will work together in planning, designing, constructing, operating, and maintaining the SVRT Project. At the outset, VTA and BART agree that safety, customer service, and convenience must be the primary focus of all planning, design, construction and operation decisions in connection with the SVRT Project.

B. GENERAL AGREEMENTS

1. Regional Vision

Over the years, BART has built and expanded its system primarily for the benefit of the residents of the three counties within the district – Alameda,

Contra Costa and San Francisco – using significant revenues received from taxpayers within the district. Similarly, VTA has built and expanded its bus and light rail systems primarily for the benefit of the residents of its service area, also utilizing significant revenues generated from the taxpayers of Santa Clara County. The two systems have been connected through an express bus link in the city of Fremont.

In recent years, travel patterns in the San Francisco Bay Area Region have substantially changed because of the huge increase in jobs in Silicon Valley and a related increase in housing in the East Bay. The resulting jobs/housing imbalance within the region has driven an increase in commutes into Santa Clara County from the BART counties and especially from Southern Alameda County. At the same time, travel from Santa Clara County into the three BART counties has also increased. This overall growth in travel demand has created a serious need for expanding the region's transportation network to better serve all the residents and businesses of the Bay Area, and requires that VTA and BART strengthen and expand its partnership.

As partners, VTA and BART will work cooperatively and share their resources to bring a BART extension to San Jose/Santa Clara to fruition in the most expeditious and cost-effective manner possible for the people of the Bay Area.

The intent is to provide an extension of the BART system into Santa Clara County and to provide BART service to the people of Santa Clara County in a fashion that for the customer mirrors in every aspect service provided in the BART District.

BART brings to this partnership an established 95 mile, 39 station regional rail system that efficiently and effectively serves residents and employers

in four Bay Area counties. BART District residents provided the financial resources to build the original BART system and also provide the financial resources to operate the system through their payments of general sales taxes and property taxes. In addition, BART brings a wealth of knowledge and expertise in the design, construction and operation of BART technology.

VTA brings to this partnership the financial resources to build, operate and maintain a 16 mile, 7 station BART extension to San Jose/Santa Clara. VTA also brings project management and other technical skills to enable the project to be constructed efficiently. Further, VTA brings its bus and light rail systems, which will be critical to the distribution of BART county residents to their jobs in Silicon Valley.

As a result, VTA and BART will work together to plan, design, construct, operate and maintain, at VTA's sole responsibility, an extension of the BART system between Warm Springs and San Jose/Santa Clara. This project will tie VTA's system and Santa Clara County residents into the BART system and the three BART counties. It will also provide a significant stimulus for the continued economic growth and development of Silicon Valley. In summary, the extension will benefit commuters and residents of the entire Bay Area.

This partnership will greatly improve the quality of life in the Bay Area by increasing the opportunities to use the region's transit systems for commuting from home to job sites and for other travel needs. As a result of an extension of BART to San Jose/Santa Clara, not only will Santa Clara County residents have access to BART, but also Alameda and Contra Costa residents who work in Silicon Valley will be able to use their existing BART system for their commute trips.

2. SVRT Project Policy Advisory Board

VTA and BART agree that the SVRT Project will be planned, designed and constructed under the auspices of a joint VTA/BART policy body (the "Policy Advisory Board"). The Policy Advisory Board will be composed of ten members. VTA will chair and BART will be the vice-chair the Policy Advisory Board. For VTA, the Policy Advisory Board will consist of five members as follows: two VTA Board members and a combination of three members representing Santa Clara County and/or the Cities of Santa Clara, Milpitas and San Jose. For BART, the Policy Advisory Board will consist of five members as follows: three BART Board members, one member representing Alameda County and one member representing an Alameda County City. The Policy Advisory Board will cease to exist upon commencement of revenue service on the SVRT Extension.

3. Joint VTA/BART Board Workshops/Meetings

VTA and BART agree that joint informational VTA/BART Board Workshop/Meeting(s) will be held at least once annually during design and construction of the SVRT Project.

SECTION III. PROJECT COSTS AND FUNDING

A. INTRODUCTION

This section of the Agreement focuses on the manner in which SVRT Project costs are defined and funded. The section addresses types of investments, allocation of financial responsibility and funding.

B. GENERAL AGREEMENTS

1. The Parties agree that VTA will have full financial responsibility for SVRT Project costs. Full financial responsibility means responsibility for funding Total Project Costs, as described below in Section III.C, and for bearing all financial risks associated with such funding responsibility.

2. BART will assume no responsibility for any of the following potential financial risks: 1) shortfalls in annual federal appropriations or any other revenue source, 2) cost overruns and ineligible project costs, 3) escalation, contingency and financing costs 4) any capital reserve account or CAPRA, whether or not required by any funding agency as an additional contingency, and/or 5) any other funding problem associated with the SVRT Project.

C. TOTAL PROJECT COSTS

Total Project Costs will include all investments necessary to operate the SVRT Project as an integral part of the BART Core System and in a manner consistent with BART Standards. BART and VTA agree that Total Project Costs for the SVRT Project will include the following categories of costs.

1. SVRT Project

This category of Total Project Costs includes those investments located geographically south of the WSX Project necessary to operate the SVRT Project as an integral part of the BART system and in a manner consistent with BART Standards. Such investments will be designed and constructed on the basis of ridership projections for the planning horizon year included in the Final EIS/EIR (the "EIS/EIR Planning Horizon"). Examples of such investments include but are not limited to stations, trackway, revenue vehicles, control systems and all other investments south of the WSX Project necessary to provide service to BART Standards.

2. Modifications to the BART Core System Necessary for Operation of the SVRT Project

- a. This category of Total Project Costs includes all investments in the BART Core System facilities and equipment necessary to support, maintain or otherwise render functional those investments described in Section III.C.1, above. Such investments will be designed and constructed on the basis of ridership projections

included in the Final EIS/EIR for a ten (10) year planning horizon following the commencement of revenue service. Examples of such investments include but are not limited to expansion of BART's central control facility and Data Acquisition System ("DAS"), and changes to destination signs to reflect the SVRT Project destinations. Further examples include but are not limited to any modifications or upgrades to existing BART facilities or equipment required by government rules and regulations and industry standards because of the new construction or new scope or magnitude of operations caused by SVRT Project.

- b. Cost estimates for investments described in this Section III.C.2 are currently included in the in the project cost estimate for the BART alternative that is identified in the Major Investment Study/Alternatives Analysis (the "MIS/AA") currently being conducted by VTA. In consultation with VTA, these estimates will be refined by BART and mutually agreed to with VTA during the EIS/EIR process on the basis of the ridership projections developed during the EIS/EIR, and the resulting revised cost estimates will be included in the EIS/EIR project cost estimate.

3. Modifications to the BART Core System Necessary to Mitigate Resulting Impacts of the SVRT Project

- a. This category of Total Project Costs includes costs for investments in BART Core System facilities and equipment needed to accommodate anticipated BART Core System ridership increases resulting from the SVRT Extension. This category of investments is in addition to the investments described in Section III.C.2, above. Examples of such investments include but are not limited to additional Core System fare gates, stairways, and parking spaces. Such investments will be designed and constructed on the basis of ridership projections for a ten (10) year planning horizon following the commencement of revenue service.

b. Cost estimates for investments described in this Section III.C.3 are currently included in the project cost estimate for the BART alternative that is identified in the MIS/AA. In consultation with VTA, these estimates will be refined by BART and mutually agreed to with VTA during the EIS/EIR process on the basis of the ridership projections developed during the EIS/EIR, and the resulting revised cost estimates will be included in the EIS/EIR project cost estimate. The process used to refine the identification of such investments and the associated cost estimates will be as follows:

- (1.) BART is currently engaged in a systematic study of needs for passenger-carrying capacity expansion, called the System Capacity Study (the "SCS"). The SCS is developing a program of investments and cost estimates, the System Capacity Expansion Program (the "SCEP"), necessary to maintain BART Standards, in anticipation of future ridership growth on the BART Core System, irrespective of the SVRT Project.
- (2.) Using the analytical tools developed for the SCS, the passenger handling capabilities of the functional components of the BART Core System with and without the ridership expected when SVRT Extension is in operation will be compared to determine if BART Standards can be maintained with the existing facilities with SVRT Extension riders. Following this comparison, if the anticipated influx of new SVRT Extension riders is expected to degrade service quality below BART Standards, those investments that are considered necessary to maintain BART Standards will be defined and their costs estimated. The system components analyzed will include but not be limited to: stations, vertical circulation, fare

- equipment, access facilities, revenue vehicles, and maintenance facilities.
- (3.) The schedule for the work described in Section III.C.3.b(2) will be mutually agreed to by BART and VTA.
 - (4.) The assumptions (e.g., ridership, miles and hours operated) for the work described in Section III.C.3.b(2) will be consistent with the related assumptions for the SVRT Project in the EIS/EIR.
 - (5.) BART costs for the work described in Section III.C.3.b.(2) will be reimbursed in accordance with Section III.F.2
- c. VTA will not be responsible for duplicating or financing SCEP investments scheduled to be implemented prior to or within the EIS/EIR Planning Horizon, subject to the exceptions listed below:
- (1.) If enlargement of the scope of a SCEP project is required to provide or support SVRT Extension service as agreed upon by both BART and VTA, the costs of such scope changes shall be borne by VTA.
 - (2.) If a SCEP project provides or supports more service capacity than will be required for the BART Core System during the EIS/EIR Planning Horizon, and if any of the projects identified in Section III.C.3.b. (2) above can be wholly or partially satisfied by the excess capacity provided by a SCEP project, VTA will contribute to the cost of such SCEP investment. VTA's contribution will be in proportion to the total project use required by the SVRT Extension service.
- d. If during the BART SCS, a Core System capacity need is identified which can be addressed through a SVRT Project component that provides more service capacity than will be required for the SVRT Project, then BART will contribute to the cost of the SVRT Project

component. BART's contribution will be in proportion to the total project use required by the BART Core System service.

D. FUNDING OF PROJECT COSTS

1. Preliminary Funding Plans - A preliminary funding plan for the proposed SVRT Project Total Project Cost (in 2001 dollars) is hereby attached as Exhibit A and incorporated by reference as if fully set forth herein. A preliminary funding plan for the WSX Project (in 2001 dollars) is also included in Exhibit A. These funding plans reflect the Parties' plans regarding funding sources under their control and expectations at the time this Agreement is executed regarding other funding sources.
2. Traffic Congestion Relief Program ("TCRP") funding – As part of the state TCRP approved by the State of California Legislature in 2000, a BART extension from Fremont to San Jose was designated to receive \$725 million. BART and VTA agree that \$111,432,500 of this amount will be used to fund the WSX Project and that the balance will be used to fund the SVRT Project. The Parties may also agree in the future that some portion of the share of TCRP funds designated in this Agreement for the SVRT Project may be loaned to the WSX Project upon a guarantee of repayment by BART and/or other funding agencies. Such loan, if agreed to, will be the subject of a separate agreement.
3. Federal New Starts funding - BART and VTA agree that the BART to SFO Extension remains the highest and first priority for federal New Starts funding for the region until the full appropriation of \$750 million is achieved. The SVRT Project will in no way compete for federal New Starts funding with the SFO Extension.

E. ONGOING PROCESS TO ASSURE FULL FUNDING OF THE SVRT PROJECT

1. Approval of the LPA, Acceptance of the Final EIS/EIR and Approval of Project

As described in Section V, the Environmental Process, the BART Board of Directors will decide whether to approve the LPA and subsequently whether to accept the Final EIS/EIR and approve the SVRT Project. These milestones will be considered BART checkpoints for satisfactory inclusion and description of the full SVRT Project scope of work to be delivered and associated project budget for Total Project Costs and funding plan to the mid-point of construction. Subsequent to project approval, VTA will inform BART of any proposed changes to the SVRT Project scope, description, budget for Total Project Costs, and/or funding plan to the mid-point of construction. BART and VTA must agree to any such changes.

2. Financial Agreements, Plans, Applications, Reports and Related Documents

- a. BART and VTA will agree in writing on the SVRT Project description, scope, budget and funding plan to be included in the Full Funding Grant Agreement (the "FFGA") and any subsequent amendments to the FFGA. BART will receive copies of applications for the FFGA and any subsequent amendments prior to the submittal of such documents to FTA.
- b. In addition to the documents identified in Section III.E.2.a. above, BART will receive copies before submission of all grant applications, agreements and amendments thereto for any federal and non-federal funds, and of draft and final financial plans and financial reports prepared by VTA for any funding or oversight agency.
- c. BART will receive copies, within two days of receipt by VTA, of any draft or final oversight or audit reports produced by the FTA's Project Management Oversight Consultant (PMOC), Financial Management Oversight Consultant (FMOC), or any other review and oversight agency or entity. BART may, at its discretion, review and comment on such reports to VTA or FTA.

F. FINANCIAL ARRANGEMENTS

1. Procurements

The Parties have agreed that it will be cost effective to do joint SVRT Project/WSX Project procurements for rolling stock and automatic fare collection equipment and that BART will be the contracting agency.

Financial arrangements for such procurements will be as follows:

- a. VTA will be responsible on a pro rata share basis for all costs associated with the SVRT Project.
- b. BART will be responsible on a pro rata share basis for all costs associated with the WSX Project.
- c. Liabilities and costs resulting from any legal claim, action, or proceeding in connection with either procurement will be shared on a pro rata basis.

2. VTA Reimbursement of BART Costs

- a. As part of the Total Project Costs for the SVRT Project as described in Section III.C. above, VTA agrees that it will reimburse BART for all direct costs and fringes for staff, for consultant costs, and for any other direct costs incurred in support of the SVRT Project during the planning, environmental, design, right of way acquisition, construction, training, testing and pre-revenue operations phases of the SVRT Project.
- b. BART and VTA will mutually agree in writing on a scope and budget for BART staff and consultant costs as needed prior to various phases of Project implementation (e.g., start of the environmental process, preliminary engineering etc.) BART will submit a draft scope and budget to VTA at least thirty (30) calendar days in advance of the Environmental Process and at least ninety (90) calendar days in advance of each subsequent phase. Should BART and VTA be unable to reach agreement on a budget, the matter will be resolved in accordance with the terms set forth in Section X, Dispute Resolution, of this Agreement. Should

unforeseen circumstances arise after the budget is agreed upon, resulting in either BART or VTA forecasting a need for a budget modification, the requesting Party will immediately notify the other of the need for a budget modification. Both Parties will then meet and agree upon a revised budget. Should BART and VTA be unable to reach agreement on a revised budget, the matter will be resolved in accordance with the terms set forth in Section X, Dispute Resolution, of this Agreement.

- c. BART will invoice VTA and VTA will pay BART, on a monthly basis. Reimbursement will include direct costs and fringes for staff, for consultant costs, and for any other costs incurred. VTA will pay such invoice within ninety (90) days of receipt.

3. Modification of BART Standards

In the event modifications of BART Standards necessitate SVRT Project design modifications following the start of design for the SVRT Project, BART and VTA will mutually agree on such proposed design modifications as well as the appropriate cost responsibility. The cost of non-discretionary modifications, including those required by applicable laws, statute, rules or regulations, will be the responsibility of VTA.

SECTION IV. ONGOING OPERATING, MAINTENANCE AND CAPITAL COSTS AND FUNDING

A. INTRODUCTION

This section of the Agreement is concerned with ongoing operating, maintenance, and capital costs and funding for the SVRT Extension, once it becomes operational.

B. GENERAL AGREEMENTS

1. The Parties agree that the ongoing operating, maintenance and capital costs caused by operation of the SVRT Extension, both those that occur within and/or outside Santa Clara County, are the financial responsibility of VTA.

2. It is the intention of both Parties to establish a system that will provide stable, reliable ongoing funding for future ongoing operating, maintenance and capital expenses.
3. Operation of the SVRT Extension and its impacts on the BART Core System will complement to some extent the existing system by creating a reverse commute. SVRT Extension ridership will also occur in the commute direction on the BART Core System. It is the intention of the Parties that operation of the SVRT Extension will not degrade the operation of the BART Core System nor cause deterioration of the District's ability to maintain BART Standards.
4. Ridership and other causal factors on the BART Core System and on the SVRT Extension may be used as a basis for apportioning responsibility for future operating or capital costs. Actual ridership will be determined based on BART's DAS as expanded to include the SVRT Extension.

C. OPERATING AND MAINTENANCE COSTS

Operating and maintenance costs for the SVRT Extension for which VTA is financially responsible will include the costs of operating and maintaining the SVRT Extension as an integral part of the BART system consistent with BART service requirements and standards as set forth in Section VII.C. of this Agreement. More specifically, these costs will include the following:

1. Direct Costs

VTA will bear responsibility for the operating and maintenance costs directly attributable to the operation of the SVRT Extension.

2. Fixed Overhead Costs

VTA will also bear responsibility for a fully allocated share of BART's fixed overhead costs. VTA acknowledges that such costs are necessary to general operation of the system, the District and, ultimately, the provision of SVRT Extension service. BART acknowledges VTA's concern that not all fixed costs initially may be allocable and VTA acknowledges BART's concern that some costs initially assumed to be fixed may over

time prove to be direct costs. BART and VTA will mutually work to review Fixed Overhead Costs periodically to insure that such costs are appropriately categorized.

3. Calculating Operating & Maintenance Costs

Once the SVRT Extension commences revenue service, a process and model described below in Section IV.F. and in Exhibit B, attached hereto and incorporated by reference as if fully set forth herein, will be used annually to determine the amount of VTA's financial responsibility for each of the costs described above.

4. Additional Operating & Maintenance Costs

Should VTA request BART to maintain performance standards on the SVRT Extension which are higher than BART Core System performance standards, such higher service standards and associated costs and revenues will be mutually agreed to in writing by the Parties in subsequent agreements.

D. CAPITAL COSTS

The Parties agree that VTA will bear financial responsibility for the ongoing cost of capital investments for the SVRT Extension and a proportional share of the cost of capital investments for the BART Core System. The purpose of these investments is to keep the SVRT Extension and the BART Core System operating to BART's Operational Standards and Practices.

1. More specifically, capital investments VTA is financially responsible for will include investments that respond to items such as:

- a. Ridership Increases on the BART Core System or SVRT Extension – Modifications, replacements, additions or improvements to increase or expand the passenger carrying or handling capacity of the SVRT Extension or the impacts of the SVRT Extension on the BART Core System. Examples include but are not limited to additional fare gates, stairways and/or revenue vehicles. Ridership attributed to the SVRT Extension will

be monitored on an annual basis to identify any necessary investments.

- b. Regulatory Changes – Modifications and replacements necessitated by changes in government or industry regulations or standards. Examples include but are not limited to changes in station signage to respond to new ADA requirements or modifications to maintenance facilities to respond to new OSHA requirements.
- c. Technology Improvements or Changes – Modifications and/or replacements determined to be necessary or economically prudent to respond to improved or changing technology. Examples include but are not limited to new train control systems or equipment or conversion of fare gates to accept new types of payment (e.g., proximity cards).
- d. Rehabilitation, Renovation, and Replacement – Investments to rehabilitate, restore, or replace facilities and equipment which are aging, worn, or destroyed through use. Examples include but are not limited to replacement of revenue vehicles which have exceeded their useful life, replacement of worn fare collection equipment, or major repairs to a maintenance facility. This provision regarding aging and wear due to use will not apply for three (3) years following commencement of revenue service on the SVRT Extension nor to items which the Parties mutually agree were not in a state of good repair at the time revenue service commences on the SVRT Extension.

This category of expenses will also include investments to restore or replace facilities or equipment which are lost, destroyed or damaged by accidents, acts of God, or criminal acts. In such instances the first three (3) year limitation on VTA's financial responsibility will not apply. In instances of accidents or criminal acts caused by neither BART nor VTA, BART will make every

reasonable legal effort to identify those responsible for the damage and compel them to pay for the repairs or replacements to restore the damaged equipment or facilities to their previous condition.

2. The cost of ongoing capital investments will be borne by VTA in proportion to the use, or change in use, of the facility, equipment and/or system by the SVRT Extension. The proportion of facility, equipment, and/or system usage will be determined with reference to the most appropriate measure or measures of use for the particular type of facility, equipment, or system. For example, an upgrade or replacement of BART's automated fare collection ("AFC") and DAS would likely be allocated on the basis of ridership. Track work would likely be allocated on the basis of car miles.
 - a. For large investments, the proportion of financial responsibility will be determined by the proportion of SVRT Extension use, or change in use, of the facility or equipment from the commencement of revenue service on the SVRT Extension and extending over the projected useful life of the investment. As used herein, large investments are those costing \$5,000,000 or more escalated annually at the regional CPI growth rate from the effective date of this Agreement.
 - b. For small investments, the proportion of financial responsibility will be determined by the proportion of SVRT Extension use, or change in use, of the facility or equipment during the most recent year for which statistics are available prior to the time the investment is made. As used herein, small investments are those costing less than \$5,000,000 escalated annually at the regional CPI growth rate from the effective date of this Agreement. The Parties recognize that in some instances VTA's proportionate share may be so small as to be considered de minimus, in which case the Parties will meet and discuss appropriate resolution of the responsibility.

- c. For investments affecting an entire facility (i.e., a station or maintenance building) a single proportion of use for the overall facility will be developed and applied to all small investments within the facility.
3. Specific determination of the need for and the magnitude, cost and funding of capital investments under this Agreement will be made as follows:
 - a. Starting in the year revenue service commences on the SVRT Extension and on an annual basis thereafter, BART will develop a ten year Capital Improvement Program (“CIP”) for the SVRT Extension. The SVRT Extension CIP will be developed as part of BART’s overall BART CIP process and will be prepared in the same manner as the CIP is developed for the overall system. BART will consult with VTA staff in the development of the CIP for the SVRT Extension.
 - b. Pursuant to the CIP, BART and VTA will jointly develop an annual capital investment financial plan describing the scope, schedule, budget and funding plan for all capital investments to be initiated and/or continued within the next year. The BART and VTA General Managers will agree to the annual capital investment financial plan in writing.
 - c. Cost estimates for capital projects in the CIP and annual capital investment financial plans will be developed to the same level of detail as estimates BART typically develops for BART Core System capital projects. Project costs will include direct costs and fringes, and other additives (e.g., capital overhead allocations in accordance with the OMB Circular A-87 at the time cost estimates are developed) on a basis consistent with other BART projects associated with the BART Core System. Overhead allocations on capital projects will not duplicate overhead allocations included in the overhead component of operating and maintenance costs.

- d. BART will establish priorities and schedules for implementation and coordination of all ongoing capital work on the SVRT Extension and the BART Core System.
4. VTA will have no financial responsibility for seismic upgrade on the BART Core System resulting from changes in seismic standards or design and construction practices which occur prior to the commencement of revenue service on the SVRT Extension. VTA will be supportive of BART's efforts to obtain regional, state, and/or federal funds for such purposes.
5. VTA's future responsibility for ongoing capital costs of extensions of the BART service area will be defined in subsequent agreements pertaining specifically to such extensions.

E. ANNUAL SOURCES OF REVENUE FOR OPERATING, MAINTENANCE, AND CAPITAL COSTS

The Parties agree that the annual sources of revenue described below will be credited by BART toward VTA's SVRT Extension ongoing operating, maintenance and capital financial responsibilities under Sections IV.C. and D above. The revenues will be credited by BART first to VTA's SVRT Extension operating and maintenance cost responsibilities, second to VTA's SVRT Extension capital reserve accounts, and then distributed to VTA all as more fully described in Section IV.F. of this Agreement.

1. Dedicated Revenue

- a. VTA will advance to BART for SVRT Extension operating, maintenance and capital costs as described in Sections IV.C. and D. of this Agreement a subsidy in the amount of \$12 million per quarter (\$48 million annually) in Fiscal Year 01/02 dollars. Such amount (the "Subsidy") will be adjusted quarterly from December 31, 2001 at a rate equal to the growth rate of all taxable sales in Santa Clara County for the most recent quarter for which taxable sales data is available versus the same quarter of the prior year.

VTA will remit the full amount of the adjusted quarterly payments to BART on the first day of the BART fiscal quarter in which BART service commences on the SVRT Extension. After that first quarterly payment, VTA will remit to BART the full amount of all subsequent quarterly payments on the first day of each BART fiscal quarter. Such adjusted payments will continue for the duration of this Agreement.

- b. VTA will dedicate to BART in payment of the Subsidy a revenue stream from new or existing ongoing tax source (s) sufficient to cover the Subsidy as adjusted and described in Section IV.E.1.a. All documents pertaining to said dedication must be transmitted to BART at least thirty (30) days before their scheduled approval date by VTA, and must be approved in advance by BART. Said dedication must be fully effective prior to commencement of revenue service, or no later than January 1, 2009.
- c. In the event VTA does not fulfill its obligations as set forth in Section IV.E.1.b above on or before January 1, 2009, the automatic dedication of Transportation Development Act ("TDA") Funds described in Section IV.E.1.d) shall be implemented immediately and automatically without any further action by VTA's Board of Directors.
- d. Within six (6) months of approving this Agreement, VTA's Board of Directors will dedicate to BART VTA's TDA Funds in the amount of the Subsidy described in Section IV.E.1.c. and will take all necessary steps to execute such dedication, such that it may be implemented immediately and automatically without further action by VTA's Board of Directors. All documents pertaining to said dedication must be mutually agreed to by both Parties and must be transmitted to BART at least thirty (30) calendar days before their scheduled approval date by VTA. The dedication of TDA funds

described in this Section IV.E.1.d will terminate if VTA satisfies the conditions in Section IV.E.1.b.

2. Fare Revenues

- a. Basic Fare Revenues - The responsibility and authority to establish fares for the SVRT Extension will reside exclusively with BART. Such fares for the SVRT Extension will be consistent with those in effect on the BART Core System. Net fare revenue will be calculated as base fares paid by passengers using the SVRT Extension stations for entry and/or exit* as determined by BART's DAS, net of discounts and deductions taken. If possible, within the capabilities and limitations of DAS, BART will calculate discounts and deductions specifically for SVRT Extension basic fares. If not possible within said capabilities and limitations, discounts and deductions will be based on the systemwide average. All SVRT Extension basic fare revenues will be collected and accounted for and credited by BART, according to the process described in Section IV.F.
- b. Fare Surcharges and Premium Fares – At the request of VTA, BART will establish such fares at any of the stations on the SVRT Extension. Such fares will be collected, accounted for and credited by BART according to the process described in Section IV.F.

3. Ancillary Revenues

- a. Concession, Fiber Optic and Advertising Revenues – VTA may enter into agreements with vendors of goods and services on the SVRT Extension or into franchises for advertising in accordance with Section VIII.A.2.b.(2) of this Agreement. Alternatively, BART and VTA may jointly determine that in some instances it may be more beneficial for BART to enter into certain agreements

* In negotiating this Agreement the Parties agreed that BART Core System riders who would be diverted from Core System stations to SVRT Extension stations upon the commencement of revenue service on the SVRT Extension will not be deducted from the total number of passengers using the SVRT Extension

and franchises for both the SVRT Extension and the BART Core System. Revenues from concession and fiber optic agreements and franchises will be allocated proportionately to the SVRT Extension and the BART Core System on the basis of the most appropriate measure as agreed to by the Parties. All agreements and franchises described herein will provide for net revenues attributed to the SVRT Extension to be remitted directly to BART and will be accounted for and credited by BART according to the process described in Section IV.F.

- b. Parking Revenues – Parking revenues from parking facilities on the SVRT Extension will be collected by BART or its agents and accounted for and credited by BART according to the process described in Section IV.F.
- c. Parking Fines – All parking fines will be collected by BART or its agents at SVRT Extension stations and at parking facilities on the BART Core System for which VTA has paid a proportionate share of initial capital costs. Such fines will be accounted for and credited by BART according to the process described in Section IV.F.
- d. Other – Any investments on the BART Core System for which VTA has paid a proportional share of initial capital costs which generate ancillary revenue (e.g., parking) will be collected, accounted for, and credited by BART according to the process described in Section IV.F.

stations for entry and/or exit. At the same time, the Parties also agreed that BART will have no financial responsibility for any ongoing capital investments south of the WSX Project.

F. PROCESS FOR ALLOCATING ANNUAL REVENUES FOR OPERATING, MAINTENANCE, AND CAPITAL COSTS

The process for allocating the annual revenues under Section IV.E. to the operating, maintenance, and capital costs as described in Sections IV.C. and D. will be as follows:

1. On an annual basis, within sixty (60) days after BART's audited financial statements are approved by BART's Board of Directors, BART will calculate for the previous fiscal year the amount of SVRT Extension annual revenues received as described in Section IV.E. and will also calculate the amount of such revenues to be credited toward SVRT Extension operating and maintenance costs for the previous fiscal year. SVRT Extension operating and maintenance costs will be calculated using the BART Operating and Maintenance (O&M) Cost Model as developed by Manuel Padron and Associates, or a similar model mutually agreed upon by BART and VTA, collectively referred to herein as the "Model". The process for using the Model to calculate operating and maintenance costs is described in Exhibit B. If BART and VTA differ on the service level inputs described in Step 2 of Exhibit B, they will mutually agree on an independent consultant to help resolve their differences.
2. The balance of revenues for the fiscal year, over and above revenue used to cover operations and maintenance costs, will be allocated to an interest bearing, segregated capital reserve fund. Starting with the first year of operation, the minimum capital reserve fund allocation will be 5% of the operating and maintenance costs, as determined in accordance with Section IV.F.1.above. The minimum capital reserve fund allocation will increase annually by an amount equal to 1% of the operating and maintenance cost to a level, not to exceed 20% of the operating and maintenance cost as shown in Exhibit C, attached hereto and incorporated by reference as if fully set forth herein. The maximum capital reserve fund allocation in any year will be 30% with the exception of circumstances as described in Section IV.F.5. below.

3. The capital reserve fund and all interest accruing to that fund will be used as a source of funding for ongoing capital costs under this Agreement. The CIP and annual capital investment financial plan as described in Section III. above will be used to determine the amounts from the capital reserve fund to be used for particular capital projects.
4. If revenues less operating and maintenance allocations in any fiscal year are insufficient to cover the required minimum capital contributions as described in Section IV.F.2. and Exhibit C, BART will invoice VTA and VTA will remit the balance of funds needed to meet these commitments within sixty (60) days of being invoiced by BART.
5. If revenues less operating and maintenance allocations and capital reserve fund allocations in any fiscal year are more than the required maximum of 30% capital reserve fund allocation as determined in Exhibit C, BART will remit the excess revenues to VTA within sixty (60) days of such determination or, at VTA's option such excess revenues may be carried forward to cover VTA's capital reserve fund allocations in future years. However, during the first fifteen 15 years of SVRT Extension operation, VTA will not receive revenues in excess of the required maximum 30% capital reserve fund allocations unless mutually agreed levels of revenue vehicles, shop capacity, and AFC equipment have been provided by VTA to support actual and projected ridership levels for the next five (5) year period. Such revenues will be allocated to an interest bearing, segregated excess capital reserve fund. The excess capital reserve fund will be used to fund investments in additional revenue vehicles, shop capacity, and AFC equipment. The excess capital reserve fund will be held until such time that sufficient funds for mutually agreed levels of revenue vehicles, shop, and AFC capacity have been committed.
6. Within sixty (60) days of BART Board of Directors' approval of BART audited financial statements, BART will supply VTA with a report on a) all revenues received under Section IV.E., b) allocations made to operating and maintenance costs, the capital reserve fund, and the excess

capital reserve fund, c) earnings on the capital reserve and excess capital reserve funds, and d) funds drawn from the capital reserve fund and the excess capital reserve fund in the previous fiscal year.

7. VTA and BART will mutually agree on the method of determining when or if superfunding of the capital reserve exists and the appropriate remedies.

G. JOINT DEVELOPMENT REVENUES

1. VTA will be entitled to all joint development revenues from stations on the SVRT Extension net of any operating and capital expenses directly related to such development that may be incurred by BART.
2. BART will be entitled to all joint development revenues from stations in the BART District. VTA will not be charged for any capital expenses BART may incur in support of such development.

H. ADDITIONAL SOURCES OF FUNDING FOR CAPITAL COSTS

It is the Parties expectation that the capital reserve and excess capital reserve funds alone will not be sufficient to cover all capital costs of the SVRT Extension. The Parties agree that VTA will meet its remaining responsibility for SVRT Extension ongoing capital costs as described in Section IV.D. herein by obtaining or allocating grants, formula funds, or other funding from private, local, regional, state, and federal sources.

1. Formula funds, including but not limited to, Section 5307 Fixed Guideway, and Section 5309 Urbanized Area formula funds which VTA and/or Santa Clara County receive(s) because of the operation of the SVRT Extension in Santa Clara County will be allocated to, and used to meet VTA's financial responsibilities for ongoing capital costs.

I. FUTURE EXTRAORDINARY EVENTS

1. The Parties agree that VTA will have financial responsibility to contribute funds to resolve future Extraordinary Events. As used herein an

“Extraordinary Event” consists of a) a major, unforeseen, unplanned, future event affecting the BART system; b) an event that would necessitate the expenditure of \$5,000,000 or more, escalated at the annually regional CPI growth rate from the effective date of this Agreement to restore or preserve the full operating capability of the BART system; and c) an event that satisfies the requirements of Section IV.I.4.

2. Restoration or preservation of full SVRT Extension operating capability within Santa Clara County shall be entirely and exclusively the financial responsibility of VTA.
3. Because restoration of portions of the BART system located outside Santa Clara County may be necessary to provide service to passengers utilizing the SVRT Extension, Santa Clara County may be determined to have some financial responsibility to assist with restoration of BART system operating capability outside Santa Clara County. The portion of financial responsibility to be borne by VTA for restoration or preservation of some portion of the BART system located outside Santa Clara County will be in proportion to the use of the facility, equipment, or system by the SVRT Extension. The proportion of facility, equipment and/or system usage will be determined with reference to the most appropriate measure or measures for the particular type of facility, equipment, and/or system. For example, a replacement of BART’s AFC and DAS would likely be allocated on the basis of ridership. Track work would likely be allocated on the basis of car miles.
4. The occurrence of an extraordinary event must be determined and declared by a declaration of emergency by the President of the United States or the Governor of the State of California or by the Boards of Directors of BART and VTA acting jointly. In the event of a disagreement regarding the occurrence of an extraordinary event, the matter will be resolved in accordance with the terms set forth in Section X, Dispute Resolution of this Agreement.

5. Once the occurrence of an extraordinary event is determined and declared and the share of VTA's financial responsibility determined, VTA will identify a funding source which can be drawn upon within ninety (90) days of the occurrence of the event. In the interim period, BART will have the right to fund expenses from either of the capital reserve funds as described above. If such resources are used, VTA will have responsibility for replenishing the reserves in the same time frame as BART would typically replenish such reserves following such an event.

J. PERIODIC REASSESSMENT

1. VTA and BART acknowledge that potential impacts, costs and benefits cannot be conclusively ascertained until actual operating experience is realized. After five (5) years of revenue service, either party can seek reassessment and adjustment of this section of the Agreement. Such reassessment can occur in the absence of renegotiating the entire Agreement.
2. Once either party gives notice of a desire to reassess, the Parties agree to meet and negotiate.
3. If the Parties mutually agree to adjustments, this section of the Agreement will be amended in writing accordingly.
4. If the Parties cannot agree, the matter will be resolved in accordance with the terms set forth in Section X, Dispute Resolution, of this Agreement.

SECTION V. THE ENVIRONMENTAL PROCESS

A. INTRODUCTION

VTA is conducting a Major Investment Study/Alternatives Analysis ("MIS/AA") for the Silicon Valley Rapid Transit Corridor in cooperation with BART and other members of a Technical Advisory Committee ("TAC") that has been established for the study. At the conclusion of the MIS/AA phase, VTA will identify a Preferred Investment Strategy and approve a preferred mode for the Corridor.

The MIS/AA phase will be followed by the preparation of an Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”).

B. THE SVRT PROJECT EIS/EIR PROCEDURES

1. In the event that BART is selected as the preferred mode for the SVRT corridor in the MIS/AA phase, BART and VTA recognize the importance of proceeding in partnership throughout the EIS/EIR phase. During the EIS/EIR phase, the project purpose, goals, objectives and evaluation criteria will be reaffirmed; alignment and station options will be evaluated; alternatives will be analyzed; and a locally preferred alternative (“LPA”) will be selected.
2. The EIS/EIR will be developed in accordance with the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act (“NEPA”). VTA will be the “Lead Agency” and BART will be a “Responsible Agency” under CEQA during the EIS/EIR phase. The Federal Transit Administration (“FTA”) will be the “Lead Agency” under NEPA. FTA may elect to designate BART as a “Cooperating Agency” under NEPA during the EIS/EIR phase. Based on BART’s role as a Responsible Agency, a potential Cooperating Agency and the eventual operator of the SVRT Extension, BART and VTA agree that, during the EIS/EIR phase, the Parties will proceed as follows:
 - a. As part of the scoping process, VTA will consult/meet with BART regarding the scope and content of the environmental information and documents.
 - b. BART will provide technical support in areas of its expertise related to the design, construction, operation, maintenance and safety of the BART system, and thresholds of significance and mitigation measures for environmental impacts of such activities (collectively, “BART’s Areas of Expertise”). In the event that any litigation is initiated by any person alleging any inadequate analysis of an environmental impact related to BART’s Areas of

Expertise, VTA will indemnify and hold BART harmless from any liabilities, costs and expenses (including attorney's fees) incurred in such litigation.

- c. VTA, in consultation with BART, will design and construct the SVRT Project under the EIS/EIR process to meet BART Standards in effect at the time of issuance of the NEPA Notice of Intent and CEQA Notice of Preparation.
- d. BART will designate a liaison to coordinate with VTA's designated Project Manager for the EIS/EIR. VTA's designated Project Manager and BART's designated liaison will hold monthly coordination meetings during preparation of the EIS/EIR to review issues related to BART's Areas of Expertise.
- e. BART staff will have the opportunity to review and comment upon *drafts of project deliverables related to BART's Areas of Expertise*, as well as all other deliverables that are presented to the TAC. BART will provide comments no later than fifteen (15) business days after the date of receipt by BART.
- f. In the event that the FTA designates BART as a Cooperating Agency under NEPA, BART staff also will have the opportunity to review and comment on the Administrative Draft EIS/EIR and the Administrative Draft of the Final EIS/EIR. BART will provide comments no less than twenty (20) business days after the date of receipt by BART.
- g. VTA will track and document all comments received and notify BART staff in writing of all BART comments that are not accepted within twenty (20) business days after the date of receipt by VTA.
- h. In the event that BART's designated liaison and VTA's Project Manager cannot resolve project scope, content and budget issues related to BART's Areas of Expertise, then said issues would be referred for resolution in accordance with Section X, Dispute Resolution, of this Agreement.

- i. BART and VTA General Managers will agree in writing to the scope, content and budget of the project as it relates to BART's Areas of Expertise at least thirty (30) calendar days prior to the following:
 - (1) Approval of the LPA by the VTA and BART Boards.
 - (2) Transmittal of the Administrative Draft EIS/EIR to FTA and BART.
 - (3) Transmittal of the Administrative Draft of the Final EIS/EIR to FTA and BART.

In the event that comments on the Administrative Draft documents change the scope, content and budget of the SVRT Project, BART and VTA General Managers will reaffirm their agreement prior to the release of the Draft and Final EIS/EIR documents to the public. At least ten (10) business days prior to said agreement of BART and VTA General Managers, the relevant documents shall be provided to BART for review.
- j. In accordance with Section II.B.3 of this Agreement, BART and VTA will hold Joint Board Workshops throughout the development of the EIS/EIR. This includes, but may not be limited to, a Joint Board Workshop concerning selection of the proposed LPA, after which both Boards will approve selection of the LPA.
- k. As the Lead Agency under CEQA, VTA will be asking the VTA Board of Directors to certify the Final EIR and approve a project.
- l. BART, as a Responsible Agency under CEQA, a potential Cooperating Agency under NEPA and the operating agency of the proposed project, will present the Final EIR to the BART Board of Directors for decisions on whether to accept the Final EIR and approve the project.

C. THE WSX PROJECT SUPPLEMENTAL EIR PROCEDURES

The Supplemental EIR for the WSX Project will be developed in accordance with CEQA. BART will be the "Lead Agency" under CEQA for the WSX Project. In developing the Supplemental EIR for the WSX Project, BART agrees that it will consult with VTA on issues relating to the SVRT Project EIS/EIR.

SECTION VI. PROJECT IMPLEMENTATION, TESTING AND START-UP

A. INTRODUCTION

This section focuses on the manner in which the SVRT Project will be planned, designed and constructed. The section will also address issues related to procurement of systems and equipment. At the outset, BART and VTA agree that safety, customer service and convenience must be the primary focus of all planning, design and construction decisions in connection with the SVRT Project.

B. GENERAL AGREEMENTS

1. SVRT Project Implementation Team

- a. The Parties recognize that VTA is the primary funding source and that, as such, VTA has final authority over any and all expenditures. The Parties also recognize that BART must have final design approval on all items affecting operations, maintenance and safety of the BART operation. It is BART's and VTA's intent and desire to enter into a positive partnership in design and construction. BART and VTA agree that both agencies will be full and active partners in all decision-making processes in connection with the SVRT Project. VTA also agrees that BART will be integrated into a joint SVRT Project implementation team for design, construction, testing and start-up for the project. VTA acknowledges that it anticipates that BART staff and BART consultant staff will be co-located with VTA staff to work as part of an integrated team to the extent possible, however, some BART staff and consultants will provide project support from other

locations. BART and VTA agree that they will each designate a Project Director who will be responsible for meeting BART and VTA design and construction obligations as part of this Agreement. In the event that the BART and VTA designated Project Directors are unable to resolve project implementation issue(s), said issues will be referred to the respective BART and VTA executive management. In the event that BART and VTA are unable to reach consensus regarding any said issue(s), the matter will be resolved in accordance with the terms set forth in Section X, *Dispute Resolution*.

- b. BART and VTA agree that each Party will invite the other to all meetings where the other Party's interests are being discussed.
- c. VTA also agrees that BART will participate in the selection of consultants and contractors engaged by VTA to work on the SVRT Project.

2. BART Standards

BART and VTA agree that all planning, design and construction of the SVRT Project must adhere to all applicable BART Standards as follows:

- a. The SVRT Project will be designed to BART Standards in effect at the time of award of the first SVRT design contract. BART will provide BART Standards to VTA on a timely basis in order to avoid delays in project design development.
- b. The SVRT Project will also be designed to the BART and California Public Utilities Commission ("CPUC") safety standards in effect at the time of award of the first SVRT design contract.
- c. BART will provide VTA and the SVRT design team with safety related manuals and procedures to help facilitate the development of safe designs with the ultimate goal of safety certification for the SVRT Project.
- d. VTA will utilize an Owner Controlled Insurance Plan ("OCIP") to provide general liability, workers compensation and builders risk

insurance during construction. VTA will use its construction manual and safety procedures throughout the SVRT Project construction phase.

3. SVRT Design Development and Project Team Review of Plans

- a. BART and VTA acknowledge that both Parties, as part of the SVRT Project Team, will prepare interim Plans and Specifications for the SVRT Project. Typically a series of design submittals will be scheduled at 35%, 65%, 95% and bid package completion. The Parties agree that said interim Plans and Specifications submittals will be forwarded to each other for review and comment pending preparation of the final Plans and Specifications. Each Party agrees to provide the other with design review comments no later than thirty (30) days after the date of issue.
- b. It is the Parties' intent that problems be identified as early as possible.
- c. Each Party also agrees to a process that tracks all review comments and dispositions of each comment at the time of the next submittal. The intent of this review process is to assure the Parties that final bid packages meet the appropriate BART design criteria and standards before an advertisement for public bid. Therefore, both the BART and the VTA Project Director will sign-off each final bid package before advertisement.
- d. BART agrees it will not withhold approval on any basis other than unacceptable operational, maintenance or safety impacts or deviations from BART Standards and practices. If, at the time of final bid package submittal, there are still outstanding design issues between BART and VTA, then these issues will be immediately referred to BART and VTA Executive Management for resolution within thirty (30) business days. In the event that BART and VTA are unable to reach consensus regarding said issue(s) within said thirty (30) business days, the matter will be resolved in accordance

with the terms set forth in Section X, Dispute Resolution, of this Agreement.

C. SVRT PROJECT IMPLEMENTATION PLAN AND PROCEDURES

1. SVRT Project Implementation Plan

- a. BART and VTA agree that both agencies will cooperate in developing an implementation plan for the Project (the "SVRT Project Implementation Plan").
- b. The Parties agree that said Project Implementation Plan will include lead roles and responsibilities for design, procurement, construction, safety certification and start-up.
- c. The Project Implementation Plan will also develop a contract packaging strategy and an overall Project Schedule. As the SVRT Project moves forward more detailed schedules for design, design reviews, bid advertisements and construction will be developed.

2. SVRT Procedures

- a. BART and VTA agree to utilize VTA's Standard Commercial Contract Terms and Conditions for all SVRT contracts advertised by VTA, and BART's Standard Commercial Contract Terms and Conditions for all BART advertised contracts.
- b. VTA agrees to provide BART with SVRT Project As-Built Drawings in a compatible electronic format for facilities, systems and equipment operated and maintained by BART.

D. SVRT PROJECT TESTING AND RAIL ACTIVATION PLAN

The SVRT Project represents a significant increase in BART track miles and stations in order to serve Santa Clara County. BART and VTA will plan service in such a manner as to minimize impacts on both the SVRT Extension and the BART Core System. BART will have a lead role during this phase of the SVRT Project and BART and VTA agree that they will develop a Project testing and rail activation plan (the "SVRT Project Testing and Rail Activation Plan") that covers the following items of work.

1. Testing

Following the construction phase of the SVRT Project, the Parties acknowledge that emphasis will shift to preparing for the opening of the SVRT Extension. As individual construction and installation contracts are completed, tested and accepted on an individual basis, the process of integration testing and pre-revenue operations will begin. BART and VTA agree that BART will lead integration testing and rail activation tasks with the full support of VTA. BART and VTA agree that the SVRT Project Testing and Rail Activation Plan will identify a key milestone when BART will have exclusive control of the SVRT Project right of way during at least the final six (6) months before revenue service. During this time BART will perform training, testing and related functions necessary to ensure a smooth and seamless connection with the BART Core System.

2. Pre-Revenue Operations

- a. BART and VTA acknowledge that the pre-revenue operations phase will follow the successful integrated testing phase. During this phase, pre-revenue tests will be run and training will be conducted on the fully operational SVRT Project.
- b. Details concerning training, simulated revenue service, and emergency drills will be developed as part of the SVRT Project Testing and Rail Activation Plan.
- c. The SVRT Project Testing and Rail Activation Plan will also establish the necessary tasks and responsibilities leading up to Safety Certification, Final Acceptance Certification and Notice of Intent to Operate.

E. PROJECT DESIGN, CONSTRUCTION AND PROCUREMENT

BART and VTA agree that the Parties respective roles and responsibilities (See Table I) in connection with SVRT Project design, construction and procurement are as follows:

1. Rolling Stock (Revenue Vehicles)

- a. BART will be responsible for all contract and technical aspects of revenue vehicle development, including but not limited to

specification, procurement, design, integration, manufacture, delivery, testing, acceptance and operation.

- b. BART and VTA agree that the number and type of revenue vehicles and spare parts required for the SVRT Project will be jointly agreed upon by BART and VTA, based on the SVRT Extension projected service plan, projected ridership and projected requirements for spares and maintenance.
- c. BART will be responsible for developing and adhering to the provisions of a Fleet Management Plan.
- d. VTA will participate on a revenue vehicle consultant selection panel (the "BART Revenue Vehicle Consultant Selection Panel") and will be involved in the review and approval of the car specifications and car supplier selection utilizing a negotiated procurement process.

2. BART Systems

- a. The Parties agree that BART will assume the lead technical role in the design and integration of BART Systems for the SVRT Project. BART agrees that VTA staff and/or designees shall be involved in this process from conceptual design through delivery, installation, and acceptance.
- b. The Parties agree that the scope of design and integration of systems work will include design development and contract document preparation for train control, communications systems, supervisory control and data acquisition ("SCADA"), AFC, DAS and station computers. These SVRT Project system elements will be designed to be compatible with, but will not exceed the capability of BART Core System elements unless shown to be cost effective, consistent with adopted future strategies, and mutually agreeable.
- c. The Parties agree that VTA will be responsible for contract execution and contract management of all systems contracts

necessary to support the SVRT Project, with the exceptions listed in Table 1. Summary of Scope Elements and BART/VTA Responsibilities and the restrictions and conditions set forth in Section V.E.2.d., below.

- d. The Parties agree that certain restrictions or conditions may be imposed on VTA procurements and/or contract management, including but not limited to the following:
- (1.) Train Control
 - (a.) While recognizing that BART has responsibility for selection of the train control system for the SVRT Project, the Parties agree that VTA will be involved in the selection process.
 - (b.) BART is currently sponsoring a demonstration program involving Advanced Automatic Train Control ("AATC") technology. In the event that the demonstration program is successful, BART intends to use AATC technology for the SVRT Project/Extension.
 - (c.) BART may elect to sole source procurement of the AATC equipment.
 - (d.) BART will schedule a milestone consistent with the SVRT Project/Extension schedule for making its decision regarding the AATC technology.
 - (e.) In the event that BART decides to use technology other than AATC, it will develop design specifications for alternative train control procurement.
 - (f.) BART will have responsibility for developing the operational characteristics of the train control system, including but not limited to minimum headways, reverse running capabilities and

maintenance access. As a courtesy, VTA staff or their designees will be involved in the process.

(2.) **Communications**

- (a.) The radio system employed on the SVRT Project/Extension will be an extension of BART's trunk radio system.
- (b.) BART will obtain any and all licenses necessary for operating BART radio frequencies within Santa Clara County, including any licenses necessary to facilitate changing other agencies' frequencies for BART use.
- (c.) All radio equipment procured for the SVRT Project must match existing BART Core System equipment.
- (d.) BART will provide design interfaces for the SVRT Extension station subsystems, emergency telephones and public address systems; VTA will be responsible for specific design of said systems.
- (e.) SVRT Extension operations and administrative networks will be consistent with the networks approved for the BART Core System.
- (f.) SVRT Extension operations and administrative networks must have back-up service capabilities other than through primary cable paths.
- (g.) BART will design SCADA for the SVRT Project to be consistent with SCADA for the BART Core System.
- (h.) All SCADA equipment procured for the SVRT Extension must be designated matching products to equipment on the BART Core System.

- (i.) BART will be responsible for designing the central switch for the SVRT Project and for providing telephone system architecture to the line and station designers. All such equipment will be designated matching products to products on the BART Core System.
- (3.) Traction Power
- (a.) Traction power design for the SVRT Project will be consistent with, but not exceed, traction power design for the BART Core System, including but not limited to two 34.5kV subtransmission cables in parallel, substations that convert the 34.5 kV ac into 1,000 Vdc, and a contact rail system.
 - (b.) Train performance data for the SVRT Project will be based upon the most restrictive revenue vehicles in operation on the BART Core System at the time of SVRT Project design.
 - (c.) Electric power supply sources will be spaced along the SVRT Project at agreed upon locations, based upon current BART Standards, to provide adequate redundancy in the event of single supply feed outages.
 - (d.) BART will be responsible for negotiating any and all service agreement(s) for traction power for the SVRT Project, and with VTA concurrence, may include station and ancillary facilities power requirements within power agreement(s).
- (4.) Automatic Fare Collection Equipment
- (a.) AFC equipment for the SVRT Project will be compatible with existing AFC equipment on the BART Core System. BART reserves the right to

require that the SVRT Project/Extension match BART Core System AFC equipment and to procure said equipment through a sole source procurement.

- (b.) The number of AFC devices at each station will be based upon the ridership predicted for each station for at least 10 years after initial opening, as provided in the EIS/EIR. Each SVRT Project station will be designed to allow for the trouble-free addition of AFC equipment in the future.
- (c.) BART will take the lead in designing and implementing all DAS interfaces for the AFC equipment.
- (d.) BART will be responsible for all contract and technical aspects of AFC procurement, including but not limited to specification, procurement, design, integration, manufacture, delivery, testing, acceptance and operation.

(5.) Station Computers

BART will be responsible for designing all SVRT Project station computers necessary for the various station subsystems, including but not limited to AFC, DAS, designation sign system ("DSS"), station agent terminal, and other subsystems necessary for station operations. SVRT Project station computers may or may not reside within said stations. BART will determine the ultimate location of SVRT Project station computers in appropriate time frame so as not to impede design.

3. SVRT Project/Extension Facilities Planning, Design and Construction

- a. VTA will be responsible for the design, construction, and contract management, technical development and

implementation of all necessary facilities and systemwide elements associated with the SVRT Project. Said facilities will include, but not be limited to all line sections, grade separation structures, tunnels, stations, parking lots and wayside facilities. Said systemwide elements will include, but not be limited to, trackwork (including running rail, ties, fasteners, contact rail, etc.) station agents' booths, station control systems, elevators and escalators.

- b. During the construction phase of the SVRT Project, VTA will convene a board to review construction change orders (the "Change Review Board"). BART's Project Director will be a member of VTA's Change Review Board. BART will have the opportunity to review and comment on construction change orders that significantly modify the project scope and have an impact on operations and maintenance. In the event that BART and VTA are unable to reach consensus regarding any said changes, the matter will be resolved in accordance with the terms set forth in Section X, Dispute Resolution, of this Agreement.
- c. BART will provide VTA with a general design and procurement requirements list for the SVRT Extension Maintenance Facility, including but not limited to yard layouts, shop requirements, part storage, training rooms, cash handling rooms, non-revenue vehicles and other maintenance support facilities and equipment. Said facilities and equipment will include all items necessary to operate and maintain the SVRT Extension in accordance with BART Standards, as well as with BART's current practices at the time of design. As part of the design development process, BART will review design submittals. Both the VTA and BART Project Director will sign-off on

the final bid package(s) prior to advertisement. VTA reserves the option of using a design-build contracting strategy for the maintenance facility, which would require BART design requirements as part of the design-build documents. If VTA utilizes a design-build approach, BART will review design submittals prepared by the selected contractor.

- d. BART must approve any design build procurement documents before advertisement.
- e. VTA may utilize the design-build approach for SVRT station design and construction. If VTA utilizes a design-build approach, BART will review design submittals prepared by the selected contractor.

4. BART Core System Modifications

- a. In consultation with VTA, BART will take the lead in assessing all impacts to the BART Core System resulting from the SVRT Project implementation. Said BART Core System modifications will be segregated into two categories as follows: (1) those modifications necessary to begin revenue service of the SVRT Extension; and (2) those modifications related to future ridership demand resulting from the SVRT Extension. In consultation with VTA, BART will be responsible for determining and implementing all modifications agreed upon by VTA and BART.
- b. Modifications necessary to begin SVRT Extension revenue service will be based on ridership projections included in the FEIS/FEIR for a ten (10) year planning horizon following the start of SVRT Extension revenue service. These modifications will include, but are not limited to the following;

- (1.) Modifications to the existing Operations Central Control facility or its relocation.
 - (2.) Systems modifications, e.g., traction power and data acquisition.
 - (3.) *Upgrading the central computers and communications systems, e.g., destination signage, to a level determined specifically resulting from SVRT extension.*
 - (4.) Station modifications, e.g., AFC equipment, vertical circulation and associated architectural modifications and parking.
- c. Modifications related to future ridership demand resulting from the SVRT Extension will be related to a more mature system beyond the ten (10) year planning horizon from commencement of SVRT Extension revenue service. These modifications will be determined at a later date and funded as described in Section IV., Ongoing Operation, Maintenance and Capital Costs and Funding, of this Agreement. Ridership demand attributed to the SVRT Project/Extension will be monitored on an annual basis in order to identify any necessary modifications to the BART Core System.

5. BART Operational Software

The Parties agree that BART will be responsible for all software development, coding, testing, integration and procurement for all train control and monitoring systems, SCADA, communications systems, and network management systems.

Table 1. Summary of Scope Elements and BART/VTA Responsibilities

Item Description	Contracting Agency	Technical Agency
Rolling Stock (Revenue Vehicles)	BART	BART
Systems:		
Train Control	VTA	BART
Communications Systems including cable network, SCADA, Trunk Radio, telephone and all station related communications sub-systems	VTA	BART
Traction Power	VTA	BART
Automatic Fare Collection including DAS, Smart Card and bank interfaces	BART	BART
Station Computers	VTA	BART
Facilities and Systemwide Elements (Line, Track Stations, etc)	VTA	VTA
Maintenance Facilities	VTA	BART
Training Facilities	VTA	VTA
Cash Handling Facility	VTA	VTA
Support Facilities	VTA	VTA
Non-Revenue Vehicles and Equipment	VTA	VTA
BART Core System Impacts and Modifications	BART	BART
BART Operational Software	BART	BART

SECTION VII. OPERATIONS AND MAINTENANCE

A. INTRODUCTION

This section focuses on the manner in which the fully constructed SVRT Project will be operated and maintained. The proposed SVRT Project represents a significant increase in BART track miles and stations in order to serve Santa Clara County, which increase will greatly impact the existing BART Core System. BART and VTA will plan service in such a manner as to minimize negative impacts on both the SVRT Extension and on the BART Core System.

B. GENERAL AGREEMENTS

1. BART and VTA agree that BART will operate and maintain the SVRT Extension.
2. BART and VTA agree that the SVRT Project will be operated and maintained at standards in keeping with standards found on the BART Core System.
3. BART and VTA agree that all SVRT Extension stations and trains will be operated and maintained in a manner and with an identity consistent with the BART Core System. The Parties also agree that the SVRT Extension will reflect its BART identity in, among other things, signage, logos and other insignias.
4. Upon commencement of revenue service of the SVRT Extension, BART and VTA agree that each Party will designate staff liaison to meet to address ongoing issues. The Parties agree that said staff liaison will meet on a monthly basis initially and, thereafter, will meet on a regular basis, as agreed by the Parties.

C. OPERATIONS AND MAINTENANCE

BART and VTA agree that operations and maintenance of the SVRT Extension will be consistent with operations and maintenance on the BART Core System. The Parties agree that BART will operate the SVRT Extension as an integral part of the existing BART Core System. In addition, BART and VTA agree that the

SVRT Extension will meet all BART service requirements and standards as established, from time to time, by the BART Board as follows:

1. Service Principles

The initial establishment and any subsequent modification of service levels will be determined by mutual agreement of BART and VTA.

Principles to be considered in establishing the service plan will include the following:

- a. BART hours of operations at the time SRVT Extension service commences.
- b. Minimization of BART Core System route structure variations.
- c. Minimization of disruption to existing BART Core System passengers.
- d. Maintenance of BART Core System track and signaling.
- e. Route Headways: Route headways will generally be consistent with route headways on the BART Core System.
- f. Load Factors: Load factors during peak and non-peak service will generally be consistent with load factors on the BART Core System.
- g. Santa Clara County Ridership: The goal will be for Santa Clara County patrons to have no more than one transfer on BART in order to reach their final BART destination.
- h. In the event that VTA desires additional services than those provided in this Section VII.C.1, said services would be subject to a separate agreement between the Parties.

2. Performance Standards

BART will maintain at least the same performance standards for the SVRT Extension as it does for the rest of the BART Core System. BART will provide quarterly reports to VTA in connection with car equipment, wayside equipment, elevator and escalator equipment, automatic fare collection equipment, on-time performance, customer ridership and

complaints. Said reports will be in the same format as the reports that are presented to the BART Board of Directors for the BART Core System.

3. Maintenance Standards

Maintenance standards for all SVRT Extension systems and tracks will be consistent with the standards followed on the BART Core System, including applicable CPUC requirements.

4. Track Scheduling

Track scheduling for maintenance, renovation and repairs on the SVRT Extension will be determined by BART Operations, and will be based on the needs of BART Core System service and time availability.

5. Reporting

BART acknowledges that VTA intends to report the SVRT Extension data in its National Transit Data Base Report, State Controller's Report and any appropriate federal, state or regional report. BART will collect and provide the data at mutually agreeable times.

SECTION VIII. ACQUISITION, OWNERSHIP AND CONTROL

A. REAL PROPERTY

1. Acquisition

a. Silicon Valley Rapid Transit Project

BART and VTA agree that VTA will be responsible for acquiring all real property necessary for the construction, operations and maintenance of the SVRT Project/Extension.

b. Warm Springs Extension Project

(1.) BART and VTA agree that BART will be responsible for acquiring all real property necessary for the construction, operations and maintenance of the Warm Springs Extension project (the "WSX Project").

(2.) In the event that VTA acquires Union Pacific Railroad ("UPRR") property along what will become the WSX

Project alignment, VTA agrees to give BART the right of first refusal to purchase said property at fair market value.

- (3.) VTA also agrees that it will make its best efforts to ensure that any UPRR property acquisitions for which VTA is responsible will be carried out on a schedule and in a manner which meets the needs of both the WSX Project and the Fremont Grade Separation Project.

2. Access, Use and Control

a. Operating Control

- (1.) BART and VTA agree that BART will be the sole operator of the SVRT Extension as long as this agreement remains in force.
- (2.) VTA agrees that BART, as operator of the SVRT Extension will have exclusive control of all access and use of all real property acquired for the SVRT Extension identified as necessary for operations and maintenance.
- (3.) VTA agrees to convey to BART an exclusive operating easement in the SVRT Extension in the form of attached Exhibit "D" as long as BART operates this extension.

b. Third Party Agreements

- (1.) Operations and Maintenance
For purposes of all SVRT Extension operations and maintenance, BART and VTA agree that BART will be responsible for issuing all third party agreements, contracts, permits, licenses and/or rights of entry onto, across, under or over all properties comprising the SVRT Extension.
- (2.) Other Third Party Agreements
 - (a.) BART and VTA agree that the Parties will notify each other of any third party agreements, contracts, licenses, permits and rights of entry with other entities in connection with the SVRT Extension. At

a minimum, no less than sixty (60) calendar days prior to execution, proper written notification shall be made by one party to the other. Notification shall include a detailed description of the intended third party agreement. The notified Party shall have fifteen (15) business days from receipt of said notice to respond and/or raise any issues or concerns in writing.

- (b.) Immediately thereafter, BART and VTA will provide copies of said third party agreements, contracts, licenses, permits and rights of entry to the other Party for review and concurrence.
- (c.) In the event that BART and VTA are unable to reach consensus regarding any said agreements, licenses, permits and rights of entry, the matter will be resolved in accordance with the terms set forth in Section X, Dispute Resolution, of this Agreement.
- (d.) VTA also agrees that BART will be designated on all said third party agreements, permits, licenses and/or rights of entry as VTA's agent for on-site supervision of all such activities.

c. **Property Rights**

- (1.) The Parties acknowledge that, from time to time, VTA may choose to grant easements, enter into long-term leases, sell property rights, including air rights, or otherwise dispose of real property purchased in connection with the SVRT Project.
- (2.) In order to protect BART system operations, maintenance, accessibility, integrity, safety and security, VTA agrees to notify BART sixty (60) calendar days prior to execution of any proposed alienation of said property rights. At a

minimum, no less than sixty (60) calendar days prior to execution, proper written notification shall be made by VTA. Notification shall include a detailed description of the subject property rights. BART shall have fifteen (15) business days from receipt of said notice to respond and/or raise any issues or concerns in writing.

- (3.) In the event that BART and VTA are unable to reach consensus regarding any proposed alienation of said property rights, the matter will be resolved in accordance with the terms set forth in Section X, Dispute Resolution, of this Agreement.

B. FACILITIES AND EQUIPMENT

1. Acquisition

- a. BART and VTA agree that VTA will be responsible for acquiring all of the facilities and equipment necessary for the construction, operations and maintenance of the SVRT Project/Extension, except as otherwise agreed upon in writing by the Parties.
- b. With regard to agreed upon BART Core System modifications, facilities and equipment required to address impacts of the SVRT Extension on the BART Core System, BART and VTA agree that BART will be responsible for carrying out the purchase of all said modifications, facilities and equipment.

2. Ownership

- a. **Silicon Valley Rapid Transit Project**
The Parties agree that VTA will own all of the improvements, facilities and equipment purchased for the SVRT Project including but not limited to all railcars.
- b. **BART Core System**
BART and VTA agree that BART will own all BART Core System improvements, facilities and equipment funded by VTA in

connection with the SVRT Extension to address impacts of the SVRT Extension on the BART Core System.

3. Access, Use and Control

a. Operating Control

- (1.) BART and VTA agree that BART will be solely responsible for operations and maintenance of all facilities and equipment for the SVRT Extension for the duration of this Agreement.
- (2.) The Parties agree that BART, as operator of the SVRT Extension, will have exclusive use and control of all facilities and equipment acquired for the SVRT Extension.
- (3.) VTA agrees that BART has the authority to use moveable equipment anywhere within the system to meet the needs of daily service and maintenance operations.
- (4.) Within operational constraints, BART agrees that it will make every attempt to use railcars purchased and owned by VTA primarily on BART lines serving Santa Clara County.
- (5.) VTA agrees to convey to BART adequate property rights in all SVRT Extension facilities and equipment sufficient to enable BART to operate and maintain said facilities and equipment.

b. Modifications to Facilities and Equipment

- (1.) BART and VTA agree that BART has the authority to modify all SVRT Extension facilities and equipment, including but not limited to railcars, to maintain said facilities and equipment in conformance with BART operating needs and system standards.
- (2.) In the event that permanent modifications to any VTA-owned facilities or equipment are made, BART agrees that it will give prior notification and provide as-built plans showing said modifications to VTA.

- c. **Purchase of Additional Facilities and Equipment**
BART and VTA agree that BART has the authority to purchase additional facilities and equipment and/or replace equipment used on the SVRT Extension consistent with purchase and replacement cycles followed on the BART Core System.

C. SYSTEM SOFTWARE

1. BART and VTA agree that BART will be responsible for carrying out the purchase of all systems software for the SVRT Extension.
2. BART and VTA agree that BART will retain ownership and will have exclusive control of all systems software and associated licenses in connection with the SVRT Extension.

SECTION IX. ALIGNMENT, STATIONS, LAND USE, AND DEVELOPMENT

A. INTRODUCTION

This section focuses on four key issues that impact ridership, revenue and operations, as well as the environment for patrons and surrounding communities: alignment, stations, land use and development.

B. GENERAL AGREEMENTS

1. Transit-oriented land use around rail stations is essential to maximizing ridership and revenue, strengthening the financial health of both BART and VTA, and realizing the full value of the public's investment in the SVRT Project.
2. Integrating transportation and land use will be an on-going, mutual effort involving coordination with local and regional jurisdictions.
3. Each agency has a vital interest in ensuring that the issues of alignment and stations, land use, system access and development are addressed through the cooperative efforts of the two agencies and affected local jurisdictions.

4. This transportation and land use planning effort will embrace those philosophies designed to enhance ridership through use of effective station area planning and development, as referenced in the policies of both agencies and local jurisdictions.
5. To that end, when appropriate, transportation and land use policies related to the SVRT Project will involve both agencies, and both agencies will collaboratively work together to enhance development opportunities.

C. ALIGNMENT AND STATIONS

1. Respective Roles of BART and VTA

- a. The alignment and station locations of the SVRT Project are fundamental to achieving the transportation and land use objectives of this agreement.
- b. BART and VTA will collaboratively participate in the selection of the SVRT Project alignment and station locations.
- c. BART and VTA will work with affected local jurisdictions to ensure that the alignment and stations locations enhance local development opportunities.

2. Environmental Process

- a. Determination of the alignment and station sites for the SVRT Project will occur primarily through the environmental process.
- b. The respective responsibilities of BART and VTA during this phase are set forth in Section V, The Environmental Process.

3. Principles for Determining Alignment and Stations

BART and VTA will adhere to the following principles in determining the SVRT Project alignment and station locations.

a. Alignment

- (1.) To the extent possible, the preferred alignment should maximize transit-supportive commercial and residential development opportunities around potential stations.

(2.) The preferred alignment should strive to minimize long-term negative impacts on established residential areas, particularly those with significant historical, aesthetic, or cultural value and/or with large economically disadvantaged populations.

b. Station Locations

(1.) Stations should be designed to serve both existing and potential transit-oriented activity generators.

(2.) At intersections with other transit lines, stations on the SVRT Project should be designed to provide convenient, direct connections between systems.

D. LAND USE

1. Transit-Oriented Development

a. The SVRT Project would be a key link to closing a 20-mile gap in the San Francisco Bay Area's rail network and connecting the region's four largest cities.

b. The SVRT Project has the potential to strengthen the transit network and foster transit-supportive land use patterns on a regional scale.

c. Instituting transit-oriented development around the proposed SVRT Project stations could generate significantly higher ridership and substantially improve the operating efficiency through increased revenue.

d. Land around the proposed SVRT Project stations could accommodate many new dwelling units and jobs, a significant amount of growth that might otherwise consume precious open space and tax the roadway network.

2. Federal and Regional Land Use Policies

a. Regional Impacts

(1.) Although zoning and land use decisions are ultimately executed at the local level, the SVRT Project will be a

component of a regional rail system and will have region-wide transportation and land use impacts.

- (2.) Obtaining federal and regional support for the proposed extension will require both BART and VTA to proactively coordinate transportation and land use, in partnership with local jurisdictions.

b. **Federal Policies**

- (1.) The FTA urges transit providers to be involved in regional and local land use planning decisions and evaluates candidate projects for New Starts funding, in part, based upon their commitment to transit-supportive land use.
- (2.) The FTA evaluation process currently includes the following factors: existing land use, such as station area development, pedestrian facilities, access for persons with disabilities, and parking supply; transit-supportive plans and policies, such as growth management, corridor policies, supportive zoning regulations, and tools to implement land use policies; and the performance and impacts of land use policies.

c. **Regional Policies**

The Metropolitan Transportation Commission's ("MTC's") Regional Transit Expansion Policy includes the importance of transit-oriented land use.

3. **Station Area Planning, Programs and Policies**

- a. Station area plans and supporting standards are useful tools to show how land use and urban design considerations can be applied to create livable communities and improve pedestrian/bicycle and transit circulation, while balancing the need for automobile/parking access to stations.

- b. The FTA is supportive of projects in which sponsors and local jurisdictions demonstrate a commitment to implementing transit-oriented land use through station area plans, policies and programs.
- c. Existing transit-supportive plans and policies will be used as a basis for land use planning efforts around the proposed SVRT Project stations.
- d. In conjunction with the preparation of the EIS/EIR and beyond, VTA, in cooperation with BART, will assist local jurisdictions in the development of station area plans, policies and programs.
- e. Station area plans will contain a station access component. Specific access mode targets and an access plan will be developed for each proposed SVRT Project station.
- f. Station area plans will be consistent with corridor-wide land use objectives. At a minimum, station area plans will cover the following topics: transit-oriented land uses; identification of development opportunities; minimum residential and commercial densities; bicycle, pedestrian and local transit access; parking; urban design elements such as pedestrian connections, building orientation to the station and surrounding streetscape and roadway configuration; and strategies for implementing potential development.
- g. In addition to station area plans, local jurisdictions will be encouraged to develop other innovative plans, programs, policies and standards to stimulate transit-oriented development and linkages to the proposed SVRT Project stations.

4. Outreach and Education

- a. A Transit-Oriented Development/Urban Design Sub-committee of the TAC has been established to coordinate land use planning efforts with affected local jurisdictions. Each local jurisdiction along the corridor, as well as BART, has two staff representatives on the sub-committee.

- b. VTA, in cooperation with BART and the affected local jurisdictions, will sponsor various community workshops to educate the public about the benefits of transit-oriented development and urban design.
- c. VTA will also continue to work with local jurisdictions to integrate transportation and land use through its Best Practices Program. This program finds innovative ways of promoting land uses that support more effective utilization of the transportation system and support the consistent application of these strategies to promote alternative transportation modes and smart growth.

E. DEVELOPMENT

1. Support for Development

The SVRT Project creates unique opportunities to build transit-oriented development, which can help boost transit ridership, generate revenue and enhance the station area environment by improving linkages between transit and local neighborhoods.

2. Development Principles

In the event that VTA pursues a transit-oriented development project in association with the SVRT Project, the following principles will be used as a guide:

- a. Provide easy and safe access to transit stations for pedestrians, bicyclists and other transit modes.
- b. Intensify land uses within walking distances of stations, while integrating these uses with the surrounding community.
- c. Diversify land uses in station areas to make the station a focus of activity and reduce reliance on the automobile.
- d. Apply good urban design to create safe, pedestrian-friendly environments that are integrated with surrounding neighborhoods

SECTION X. DISPUTE RESOLUTION

A. INTRODUCTION

If any dispute under this Agreement cannot be resolved by the Parties, upon the written request of either of the Parties, the matter will be dealt with in accordance with the procedures set forth in this Section X.

B. FIRST LEVEL

Each Party will designate staff to be the initial person(s) to discuss any apparent dispute or disagreement between the Parties and initiate this procedure. For BART, the First Level person, unless BART designates otherwise in writing, will be the BART Project Director. For VTA, the First Level person, unless VTA designates otherwise in writing, will be VTA Project Director. For any matter designated by the initiating Party as "urgent," the other Party will make its first response within twenty-four (24) hours, or within such other period as the First Level persons may agree. Unless a matter is designated "urgent" by the initiating Party, the other Party will respond within ten (10) business days, or within such other period as the First Level persons may agree.

C. SECOND LEVEL

Each Party will designate an individual to whom matters not resolved at the First Level will be referred. For BART, the Second Level person, unless BART designates otherwise in writing, will be the BART Executive Manager of Transit Systems Development. For VTA, the Second Level person, unless VTA designates otherwise in writing, will be the VTA Director of Rail Design and Construction. For any matter designated by the initiating Party as "urgent" the other Party will make its first response within twenty-four (24) hours, or within such other period as the Second Level persons may agree. Unless a matter is designated "urgent" by the initiating Party, the other Party will respond within five (5) business days, or within such other period as the Second Level persons may agree.

D. THIRD LEVEL

Each Party will designate an individual to whom matters not resolved at the Second Level will be referred. These designated Third Level persons will constitute the final internal level within BART and VTA for resolution of issues between the Parties. For BART, the Third Level person, unless BART designates otherwise in writing, will be the General Manager. For VTA, the Third Level person, unless VTA designates otherwise in writing, will be the General Manager. The initiating Third Level person will request a response from his or her counterpart, and that response will be made within ten (10) business days.

E. ALTERNATIVE DISPUTE RESOLUTION

If the dispute is not resolved at the Third Level, the General Manager of BART and the General Manager of VTA may agree to a method of non-binding, alternative dispute resolution, including, but not limited to, mediation or non-judicial arbitration

F. JUDICIAL REMEDIES

It is the intent of the Parties that litigation be avoided as a method of dispute resolution to the extent possible. However, nothing herein will foreclose or limit the ability of either Party to pursue judicial remedies.

XI. LIABILITY, INDEMNIFICATION AND INSURANCE

A. VTA INDEMNITY

VTA agrees that it will indemnify, defend and hold harmless BART and its directors, 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.

VTA also agrees that it will indemnify and hold harmless BART and its directors, officers, contractors, agents and employees from any liability arising from, or in any way related to, the presence of Hazardous Materials present in, on, under or around the property acquired for the SVRT

Project/Extension prior to the date BART commences revenue service on the SVRT Extension.

B. BART INDEMNITY

BART agrees that it will 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 BART under this Agreement or in conjunction with any obligation, responsibility or duty delegated to or assumed by BART under this Agreement.

BART also agrees that it will indemnify and hold harmless VTA and its officers, agents, contractors, and employees, from any liability arising from, or in any way related to, the release of Hazardous Materials by BART in, on, under or around the property acquired for the SVRT Project/Extension on or after the date BART commences revenue service on the SVRT Extension.

C. EXPENSES AND COSTS

The Parties agree that the indemnifying Party will bear all expenses and costs and will 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 Section XI.A or B above, including the costs of defense. Should a claim, action or proceeding of any nature be brought at any time against a Party entitled to indemnification pursuant to Section XI.A or B above for injury, death, damage or loss, the Party entitled to indemnification will promptly provide notice to the indemnifying Party of such claim, and will tender the defense of such claim to the indemnifying Party which will thereafter provide all such defense, indemnity and protections as are necessary under the provisions of this Agreement. The Party entitled to indemnification will 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 said indemnified Party with the consent of the other Party, which consent will not to be unreasonably withheld.*

D. ADDITIONAL INSURANCE AND INDEMNIFICATION

VTA agrees that it will name or cause to be named BART as an additional insured, indemnified party and/or loss payee (pertaining to VTA property) on 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 with which VTA has an agreement that involves or is related in any way to the SVRT Project/Extension. VTA also agrees that it will provide or cause to be provided to BART, copies of all applicable certificates, endorsements and agreements containing said *indemnity provisions.*

E. ENTIRE AGREEMENT REGARDING INDEMNITY

Pursuant to California Government Code Section 895.4, the foregoing Sections XI.A through D, above, constitute the entire agreement between the Parties hereto regarding indemnification for liabilities which may be incurred by either Party under this Agreement.

SECTION XII. TERMINATION

A. TERMINATION FOR CONVENIENCE

1. The Parties agree that either Party may terminate this Agreement, without cause, by giving written notice to the other Party at least twenty-four (24) months in advance of the last day of the non-terminating Party's fiscal year. VTA and BART agree that neither Party can provide said notice of termination for convenience until at least five (5) years after *commencement of revenue service on the SVRT Extension.*
2. Upon such termination for convenience, VTA and BART agree that BART service south of the Warm Springs Station will cease.

3. Also upon such termination for convenience, VTA and BART agree that the terminating Party shall be liable to the non-terminating Party for all costs actually incurred and attributable to the termination.

B. TERMINATION FOR CAUSE

1. The Parties agree that, if either Party should be in default of this Agreement and fail to remedy this default within sixty (60) business days after receipt from the other Party of written notice of such default, the non-defaulting Party may, in its discretion, terminate this Agreement.
2. The Parties further agree that, for purposes of this section, the term "default" includes, but is not limited to, the performance of work in material violation of the terms of this Agreement; abandonment of the property; material failure of either Party to perform the services or other required acts within the time specified in this Agreement or any extension thereof; refusal or failure to provide proper workmanship; and the performance of this Agreement in bad faith.
3. Upon such termination for cause, VTA and BART agree that BART service south of the Warm Springs Station will cease.
4. Also upon such termination for cause, the Parties agree that the non-defaulting Party shall be entitled to recover from the defaulting Party all associated damages and costs actually incurred and attributable to the termination.

C. FORCE MAJEURE TERMINATION

1. The Parties agree that either Party may terminate performance under this Agreement, in its discretion, for unforeseen causes beyond the control and without the fault or negligence of said Party, including acts of God, acts of the public enemy, governmental acts, fires and epidemics if such cause(s) irrevocably disrupt or render impossible the Party's performance hereunder (the "Termination Event"). An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the terminating Party to foresee or make preparation or defense for.

2. The Parties further agree that the Party seeking Force Majeure termination must provide written notice to the other Party at least twenty-four (24) months in advance of the last day of the non-terminating Party's fiscal year.
3. Upon such Force Majeure termination, VTA and BART agree that BART service south of the Warm Springs Station will cease.
4. Also upon such Force Majeure termination, the Parties agree that they will cooperate with each other to facilitate a smooth transition.

D. GENERAL AGREEMENTS

1. The Parties agree that all written notices under this Section XII must specify a date, not less than twenty-four (24) months from the date of the notice, on which the termination will become effective (the "Termination Date").
2. The Parties further agree that all sums owed by one Party to the other under this Section XII will be due and payable on the Termination Date.
3. As of the Termination Date, VTA and BART agree that VTA will assume full and exclusive responsibility and liability for SVRT Extension property, stations and facilities, with the exception of BART-owned property and equipment.
4. Also as of the Termination Date, VTA and BART agree that BART will, at VTA's request, execute, acknowledge, and deliver to VTA a quitclaim deed and/or any other instrument reasonably requested by VTA to evidence or otherwise effect the termination of BART's interest in the easement described in Section VIII., Acquisition, Ownership and Control, of this Agreement.
5. The Parties further agree that all provisions of this Agreement necessary to effectuate the intent of the Parties shall survive termination of performance under the Agreement. Examples of such provisions include, without limitation, the following: Section III, Project Costs and Funding; Section IV, Ongoing Operating, Maintenance and Capital Costs and

Funding; and provisions concerning as-built drawings, audit, Hazardous Materials, liability and indemnification, and compliance with laws.

SECTION XIII. GENERAL PROVISIONS

A. AMENDMENT OR MODIFICATION OF THE AGREEMENT

From time to time, by mutual agreement, the Parties may reopen, in whole or in part, elements of this Agreement. This Agreement may not be changed, modified or amended, in whole or in part, except in a writing signed by an authorized representative of each Party.

B. EFFECTIVE DATE AND TERM

This Agreement shall be effective as of the Effective Date and shall remain in full force and effect unless terminated in writing by the Parties in accordance with Section XII, *Termination*, of this Agreement.

C. FURTHER ASSURANCES

1. 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.
2. Should unforeseen circumstances occur, BART and VTA 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.

D. IMPLEMENTATION LETTERS

The Parties agree that VTA's General Manager and BART's General Manager may enter into implementation letters or side agreements for the purpose of implementing this Agreement. 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.

E. FORCE MAJEURE

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are 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 of performance under this Agreement may also be extended by mutual written agreement, signed by both Parties.

F. RECORDS AND AUDIT

1. VTA and BART agree to establish and maintain records pertaining to the fiscal activities of the SVRT Project and/or the SVRT Extension. The accounting systems of VTA and BART shall conform to generally accepted accounting principles. Upon written request, VTA and BART shall, at a mutually convenient time, permit the other Party to inspect, examine, re-examine, and copy VTA's and BART's 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 VTA and BART pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection.
2. VTA and BART reserve the right to examine and re-examine such books, records, accounts and data during the three (3) year period following any payment made under this Agreement and until all pending matters are closed, and VTA and BART shall in no event dispose of said books, records, accounts and data in any manner whatsoever for three (3) years

following any payment made under this Agreement or until all pending matters are closed, whichever is later.

3. Pursuant to California Government Code Section 8546.7, the Parties shall be subject to the examination and audit of the State Auditor, at the request of either VTA or BART or as part of any audit of VTA or BART by the State Auditor, for a period of three (3) years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

G. APPLICABLE LAW

This Agreement shall be interpreted under and pursuant to the laws of the State of California. The Parties agree that the jurisdiction and venue of any dispute between the Parties to this Agreement shall be either the Superior Court of Santa Clara County or Alameda County, as appropriate.

H. SUCCESSORS

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

I. 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 shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

J. HEADINGS AND TITLES

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

K. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS

P.O. Box 12688
Oakland, CA 94604-2688

Attention: General Manager
Telefax (510)-464-6009

With a copy to:

San Francisco Bay Area
Rapid Transit District
P.O. Box 12688
Oakland, CA 94604-2688

Attention: General Counsel

To BART by personal
or special delivery:

San Francisco Bay Area
Rapid Transit District
800 Madison Street
Oakland, CA 94604-2688

Attention: General Manager

With a copy to:

San Francisco Bay Area
Rapid Transit District
800 Madison Street
Oakland, CA 94604-2688

Attention: General Counsel

To VTA:

Santa Clara Valley Transportation Authority
3331 N. First Street, Bldg. B-2

San Jose, California 95134-1906

Attention: Board Secretary

With copies to: Santa Clara Valley Transportation Authority
Office of General Counsel
3331 N. First Street, Bldg. C-2
San Jose, California 95134-1906

Santa Clara Valley Transportation Authority
General Manager
3331 N. First Street, Bldg. B-2
San Jose, California 95134-1906

O. PARTIES IN INTEREST

Nothing in this Agreement, whether expressed or implied, is intended to (1) confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties to it in their respective successors and permitted assigns; (2) relieve or discharge the obligation or liability of any third party to a Party to this Agreement; nor (3) give any third persons any right of subrogation or action over and against any Party to this Agreement.

P. ASSIGNMENT

Neither Party shall assign, transfer or otherwise substitute its obligations under this Agreement without the written consent of the other Party.

Q. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but such counterparts together shall constitute one and the same instrument.

R. COMPLIANCE WITH LAWS

The Parties shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of federal, state or local government, or any agency

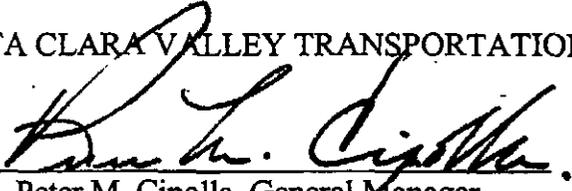
thereof, which relate to or in any manner affect the performance of this Agreement.

S. ENTIRE AGREEMENT

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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the Effective Date provided herein.

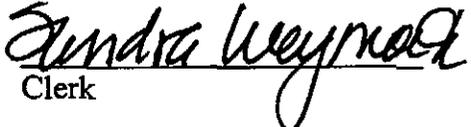
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: 
Peter M. Cipolla, General Manager

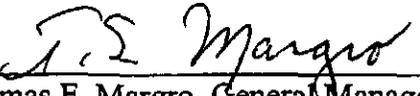
APPROVED AS TO FORM:


Suzanne Gifford, Counsel

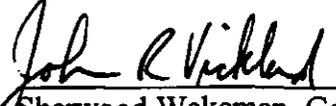
ATTEST:


Clerk

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: 
Thomas E. Margro, General Manager

APPROVED AS TO FORM:


For Sherwood Wakeman, General Counsel

ATTEST:

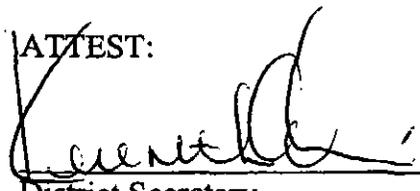

District Secretary

Exhibit A

VTA Funding Silicon Valley Rapid Transit Project

<u>Funding Source</u>	<u>Funding Amount (2001 \$ in millions)</u>
Santa Clara County 2000 Measure A	\$2,212
Santa Clara County 1996 Measure B	50
State TCRP	614
FTA New Starts	834
<hr/>	
Total	\$3,710

BART Funding

Warm Springs Project

<u>Funding Source</u>	<u>Funding Amount (2001 \$ in millions)</u>
Alameda County 2000 Measure B	\$193
Alameda County STIP	25
State ITIP	80
State TCRP	111
Regional Bridge Tolls	68
SamTrans	145
BART	12
<hr/>	
Total	\$634

Exhibit B

Calculation of Annual Operating & Maintenance Costs for the SVRT Extension

A cost model will be used to calculate the operating & maintenance costs attributable to the SVRT Extension each year. Currently, the cost model to be used is the "BART O&M Cost Model" developed by Manuel Padron & Associates with a supplemental process added to calculate fixed overhead costs, collectively referred to as the "Model". In the future, if both BART and VTA agree, the Model may be modified or a different cost model may be used.

Once the SVRT Extension commences revenue operations, at the beginning of the fiscal year, BART's Annual Budget will be input into the Model to provide an estimate of that fiscal year's operating and maintenance costs of the SVRT Extension. Each year, after the conclusion of the fiscal year, and BART's Board of Directors approval of the audited financial statements, the Model will be updated with actual results and the annual final calculation of operating and maintenance costs for the SVRT Extension will be produced.

The steps to run the Model to determine the operating and maintenance costs for the SVRT Extension will be as follows:

1. Net Rail Costs

Certain BART operating costs will be excluded from the fiscal year budget:

- ADA Paratransit*

- Feeder Bus Service
- Other Transfer Agreements
- Shuttle Expense

2. Direct Costs

The following methodology is based on the current "BART O&M Cost Model" :

- The Model will be run with inputs that produce the variable cost of the entire system including SVRT Extension service and ridership.
- The Model will then be run with inputs that produce variable cost of the system without SVRT Extension service and ridership.
- The net difference between the Model with SVRT Extension service and without SVRT Extension service is the direct operating and maintenance cost attributable to SVRT Extension.

3. Fixed Overhead Costs

Currently the "BART O&M Cost Model" does not calculate fixed overhead costs. It is anticipated that either the "BART O&M Cost Model" will be modified to include a calculation for fixed overhead or that a new model will be used that does calculate fixed overhead. If the "BART O&M Cost Model" is not modified to calculate fixed overhead, the fixed overhead will be calculated as follows:

- The system-wide variable cost including the SVRT Extension will be subtracted from the Net Rail Cost to produce the system-wide fixed overhead cost.

- The SVRT Extension fixed overhead cost will be the average of a number of system measures (drivers) multiplied by the calculated system-wide fixed overhead costs. The drivers are listed in Attachment 1 “Fixed Overhead Drivers”.

4. SVRT Extension Operating and Maintenance Costs

Annual SVRT Extension Operating and Maintenance Costs will consist of the total of:

- The SVRT Extension Direct Costs calculated in Step 2 above
- The SVRT Extension Overhead Costs calculated in Step 3 above

Attachment 2 summarizes the process described above.

** Note: This cost is excluded based on the assumption that VTA will separately and apart from this Agreement assume financial responsibility for any additional ADA Paratransit services in Santa Clara County required due to the operation of the SVRT Extension.*

Attachment 1 Fixed Overhead Drivers					
					Apply to fixed costs
	A	B	C	D	E
					B/(A+B+C+D)
Driver	Current System	SVRT Extension	SFO (not incl. Colma)	Warm Springs	SVRT Extension Fixed Cost Percentage
Stations	39	7	4	1	13.7255%
Route miles	93.1	16.69	11.02	4.55	13.3137%
Patronage	99,228,381	17,479,788	9,876,540	989,400	13.7017%
Car Miles	66,881,664	16,249,609	6,155,421	4,331,624	17.3573%
Trains	57	10	3	4	13.5135%
Employee Count	3140	542.1	223.2	114.5	13.4857%
Shops	4	1	0	0	20.0000%
Average of all driver percentages					15.0139%

Attachment 2

Outline of SVRT Extension Operating & Maintenance Cost Calculation

1. Net Rail Cost to be included in the "BART O&M Cost Model":
BART FY__ Operating Budget
 - Less ADA Paratransit
 - Less Feeder Bus Service
 - Less Other Transfer Agreements
 - Less Shuttle Expense

2. Calculation of SVRT Extension Direct Costs:
 - Variable system-wide costs with the SVRT Extension included as determined by the "BART O&M Model"
 - Less variable system-wide costs without the SVRT Extension as determined by the "BART O&M Model"
 - Equals net SVRT Extension direct costs

3. Calculation of SVRT Extension Fixed Overhead Costs:
 - Net Rail Cost
 - Less system-wide variable costs with the SVRT extension included
 - Equals system-wide fixed overhead costs
 - Multiplied by the average of all fixed costs drivers (Exhibit 1)
 - Equals net SVRT Extension fixed overhead costs

4. SVRT Extension Operating & Maintenance Costs
 - Net SVRT Extension direct costs
 - Plus net SVRT Extension fixed overhead costs
 - Equals SVRT Extension operating & maintenance

Exhibit C

Annual Funding for Capital Reserve Fund

Percentage of Operating & Maintenance and Overhead Costs

<u>Year of SVRTX Operation</u>	<u>Minimum</u>	<u>Maximum</u>
1	5%	30%
2	6%	30%
3	7%	30%
4	8%	30%
5	9%	30%
6	10%	30%
7	11%	30%
8	12%	30%
9	13%	30%
10	14%	30%
11	15%	30%
12	16%	30%
13	17%	30%
14	18%	30%
15	19%	30%
16	20%	30%
all subsequent years	20%	30%

The minimum calculation of the required VTA capital contribution in any particular year is the minimum percentage specified in the table above multiplied by the sum of operating and maintenance costs plus fully allocated overhead.

The maximum calculation of the required capital contribution in any particular year is 30% multiplied by the sum of operating and maintenance costs plus fully allocated overhead.

EXHIBIT D

EASEMENT DEED

The Santa Clara County Valley Transportation Authority, hereinafter designated "Grantor," in consideration of value paid, the adequacy and receipt of which are hereby acknowledged, hereby grants to the San Francisco Bay Area Rapid Transit District, a rapid transit district, hereinafter designated "Grantee," its successors and assigns, a perpetual exclusive easement in gross and right-of-way for the purposes hereinafter described (the "Easement") on, above and under the real property belonging to grantor and described in Exhibit A and depicted on Exhibit B, attached hereto and incorporated herein by this reference (the "Servient Tenement").

The Easement is for the purposes of operating and using transportation related facilities, including but not limited to tunnels, rails, structures (either subsurface, at grade or aerial), columns, footings, communications facilities, roadways, pedestrian walks and appurtenances thereto, within the Easement Area, described hereinbelow, and pursuant to and in accordance with that certain unrecorded Agreement dated November ___, 2001, between Grantor and Grantee, as such facilities are necessary for providing mass transit services in connection with Grantee's operations as a rapid transit district. This Easement is also for incidental purposes of maintaining, altering, repairing, inspecting, and replacing such facilities in and upon the Easement Area and includes rights of necessary ingress and egress over and upon the Servient Tenement. Such rapid transit facilities shall be installed within the strip of land described in Exhibit C attached hereto and made a part hereof by this reference (the "Easement Area").

Grantor, for itself, its successors and assigns, hereby covenants and agrees that:

(a) Grantor shall not use any real property now owned or controlled by it that is contiguous to the Easement Area that would materially interfere with, damage or endanger Grantee's public transportation and related facilities or operation, maintenance, possession, replacement, enjoyment or use thereof.

(b) There shall be no use of any portion of the Easement Area by Grantor without the consent of Grantee, which consent shall not be unreasonably withheld or conditioned.

(c) Grantor understands and acknowledges that it is the present intention of the Grantee to maintain, operate, use and replace public transportation and related facilities in the Easement Area, and that the consideration received by Grantor reflects any disadvantages or adverse conditions which may exist or which may hereafter arise by reason of the proximity of any real property owned by Grantor adjacent to Grantee's rapid transit facilities.

Grantee, for itself, its successors and assigns, hereby covenants and agrees that:

(a) Grantee acknowledges that the Servient Tenement is subject to easements of record that are prior in right and title to the within Easement Deed as are described in Exhibit D attached hereto and made a part hereof, which Grantee has previously reviewed and approved, and that Grantee's rights hereunder are junior and subordinate to the rights of the holders of such easements, and Grantee thereby covenants that its uses of the Servient Tenement shall not interfere with the rights of the holders of such prior easements.

(b) Grantee shall not assign its rights or any of them arising hereunder except with the consent of Grantor first had in writing. Subject to the foregoing, the obligations

arising hereunder shall be binding upon and shall inure to the benefits of the parties hereto, their respective successors and assigns whomsoever.

IN WITNESS WHEREOF, the parties hereto have executed this grant of easement and agreement as of the date first hereinabove written.

GRANTOR

SANTA CLARA COUNTY VALLEY

TRANSPORTATION AUTHORITY

By _____

Its _____

By _____

Its _____

(Notarial acknowledgements)

**(CERTIFICATE OF ACCEPTANCE,
GOVERNMENT CODE SECTION 27281)**

This is to certify that the interest in real property conveyed by the foregoing deed or grant to the San Francisco Bay Area Rapid Transit District is hereby accepted by the undersigned on behalf of the San Francisco Bay Area Rapid Transit District pursuant to authority conferred by resolution of the Board of Directors of the San Francisco Bay Area Rapid Transit District entitled "In the Matter of Authorizing Acceptance of the Deeds and Grants" bearing No. 291 adopted on October 24, 1963, and the Grantee consents to recordation thereof.

Dated this _____ day of _____, 2001.

**SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT**

By _____
Department Manager, Real Estate Services