

COST-SHARING AGREEMENT

BETWEEN

THE CITY OF SAN JOSÉ

AND

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

FOR

PLATFORM ACCESS RAILINGS ALONG THE DOWNTOWN
SAN JOSÉ TRANSIT MALL

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FOR
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TRANSIT MALL**

This Cost-sharing Agreement (hereinafter "AGREEMENT") is entered into by and between the Santa Clara Valley Transportation Authority (hereinafter "VTA"), a California special district, and the City of San José, a California municipal corporation (hereinafter "CITY"). VTA and CITY are referred to herein, individually as a "PARTY" and collectively, as the "PARTIES".

RECITALS

1. VTA owns and operates a hub of bus and light rail facilities located along First and Second Streets, between Devine and San Carlos in the City of San José, commonly known as the Downtown Transit Mall ("Mall"). There are six light rail stations along First and Second Streets that include both northbound and southbound platforms at the St. James, Santa Clara, and San Antonio stations.
2. VTA and CITY desire to include safety enhancements along the Mall partially funded by the CITY ("PROJECT"). A diagram identifying the location of the PROJECT is attached as EXHIBIT "A" and is incorporated herein by this reference.
3. VTA has begun design and engineering of the platform access railings (PROJECT) that VTA will install at its light rail stations in the Mall.
4. VTA will provide design, engineering, construction, and construction administration for the PROJECT.
5. It is in the public interest for the PROJECT to be designed and constructed by VTA, and CITY desires to pay VTA for part of the PROJECT cost.
6. VTA and CITY mutually desire to cooperate in any design changes, construction, and construction administration of the PROJECT, and to set forth herein the terms and conditions under which the PROJECT are to be constructed and administered.

NOW, THEREFORE, the Parties mutually understand and agree to the following:

AGREEMENT
Section I- Performance of Work

1. **Design and Construction of PROJECT.** VTA will design, engineer, and construct the PROJECT in accordance with the Plans and Specifications and in accordance with the applicable requirements of the CITY and VTA.
2. **Project Management.** VTA will include CITY as an active participant in VTA's project management process and hold periodic meetings with CITY staff for the purpose of assessing the progress of the PROJECT to address issues as they arise.
3. **Construction Drawings.** VTA will arrange for a complete set of construction record drawings and related documents for the improvements included in this AGREEMENT to be delivered to the CITY upon completion of the PROJECT or within a reasonable time thereafter. The documentation required will include at least the following:
 - Reproducible record drawings; and
 - Bid documents issued for construction and change orders.
4. **Project Manager.** VTA and CITY will each designate a Project Manager for the PROJECT. The Project Manager will be responsible for monitoring and coordinating the performance of all its duties under this AGREEMENT.
5. **Construction Administration – City Representatives.** CITY will provide, at CITY's own expense, on-site representatives to consult and coordinate with VTA's construction administration staff. If provided, these representatives will be in addition to, and not in lieu of, VTA's construction administration role and staff.
6. **Reviews and Approvals of VTA Submittals.** CITY will provide timely reviews and approvals of submittals by VTA per a schedule agreed upon by the CITY and VTA.
7. **Change in Scope.** If VTA requests changes in the design or scope of the PROJECT in this AGREEMENT, VTA will request written approval (via email) from the CITY's Project Manager. CITY will respond promptly to such requests to avoid delays to the PROJECT and its approval will not be unreasonably withheld.

All requests for changes will be accompanied by cost estimates and funding instructions. Items added or changed solely at the CITY's request or convenience will be funded solely at the CITY's expense. Items added or changed solely for VTA's request or convenience will be funded solely at VTA's expense.

No changes that exceed the CITY's scope as shown in EXHIBIT "A" may be authorized without written amendment of this AGREEMENT.

8. **Construction Notices.** VTA will provide a written notice to CITY upon execution of

construction contracts and commencement of construction of the PROJECT and will provide CITY with a copy of the construction contract and the contractor's schedule for construction.

9. **Schedule.** The anticipated schedule for the PROJECT is set forth in EXHIBIT "B", entitled "Milestone Dates", which is incorporated herein by this reference. If it becomes necessary to revise the dates, the CITY and VTA will cooperate in developing a revision.
10. **Downtown Construction Guidelines for Work in the Public Right-of-Way.** The Project shall conform to the requirements outlined in the CITY's Downtown Construction Guidelines. Link to the guidelines:
<https://www.sanjoseca.gov/home/showpublisheddocument/56303/637788834618530000>
11. **Downtown Construction Moratorium.** No Street, lane, sidewalk, or bicycle lane closures are permitted in the downtown area as bounded by Julian Street, 11th Street, Interstate 280, Stockton Avenue, The Alameda, Cahill Street, San Fernando Street, and Delmas Avenue from Thanksgiving Day thru New Year's Day

Section II

12. **Financial Obligation of City.** CITY will reimburse VTA for 50% of the total construction-related costs of the PROJECT along the Mall, NOT TO EXCEED the amount of three hundred fifty thousand dollars (\$350,000.00) ("CITY'S COST"). CITY'S share of PROJECT COSTS is based on the value of the estimated PROJECT total construction cost of seven hundred thousand dollars (\$700,000.00), as set forth in EXHIBIT C.
13. **Invoicing.** VTA will prepare and send a monthly invoice to the CITY for CITY'S COST. Invoices will include:
 - A. A statement of construction cost for the PROJECT, which will be based on the actual bids received.
 - B. Actual construction expenditures, except for Construction Management Costs which will be paid for by VTA.
 - C. A statement of CITY'S COST.

All invoices will be submitted with appropriate supporting documentation mutually agreeable to VTA and CITY and will indicate total expenditures to date and the total expenditures since the last invoice.

14. **Monitoring of Expenditures.** VTA will monitor the actual expenditures to assure that the PROJECT can be completed within the funding to be provided by CITY pursuant to this AGREEMENT. During construction, if VTA foresees that 50% of actual construction costs will exceed the CITY's maximum financial contribution as stated in this Agreement, VTA will promptly consult with CITY to determine the appropriate means of addressing the actual costs. VTA and CITY may execute an amendment to this

AGREEMENT to reduce scope, add funds to the financial contributions or revise method of contracting the work prior to work being performed.

15. **Reporting.** VTA will submit a final report of expenditures to CITY within one hundred twenty (120) days after the Notice of Acceptance has been issued for the PROJECT.
16. **Records.** VTA will maintain all records related to the PROJECT and its work under this AGREEMENT for a period of three (3) years after the completion of the construction contract and final payment to VTA under this AGREEMENT. During this period, VTA will make these records available to the CITY for inspection upon the CITY's request. This AGREEMENT will be subject to examination and audit of the State Auditor pursuant to Government Code § 8546.7 for a period of three (3) years after final payment hereunder. VTA will include in any contract for any part of the PROJECT a similar requirement and provision requiring its contractors to do likewise.
17. **Insurance:** VTA will maintain the insurance or self-insurance as specified in Exhibit D. VTA will require any contractor it hires to perform work that is funded in whole or in part under this AGREEMENT to maintain insurance coverage as specified in EXHIBIT D.
18. **Payment of Invoices.** CITY will authorize payment for the amount presented in VTA's invoices within thirty (30) days of receipt of VTA's invoice, provided such invoices are consistent with CITY's financial contributions set forth in this Agreement.
19. **Amendment.** VTA and CITY may execute an amendment to this AGREEMENT to reduce scope, add funds to the financial contributions or revise method of contracting the work prior to work being performed.
20. **Additional Funding.** Nothing in this AGREEMENT will be construed to prohibit either PARTY from seeking or obtaining state, federal or other funding for the costs set forth herein. However, each PARTY hereto will be responsible for its respective costs of the PROJECT as set forth in this AGREEMENT regardless of whether such funding is obtained.

Section III

21. **Hold Harmless and Indemnification:**

- A. Neither CITY nor any of its officers or employees will be responsible for any damage or liability by reason of anything done or omitted by VTA in connection with any work, authority or jurisdiction delegated to VTA under this AGREEMENT. Pursuant to Government Code Section 895.4, VTA will fully indemnify and hold

CITY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted by VTA in connection with any work, authority or jurisdiction delegated to VTA under this AGREEMENT. This hold harmless will apply to any activities, errors or omissions of VTA and/or VTA's officers, employees, agents, consultants or contractors or any persons or entities acting or omitting to act for or on behalf of VTA where such persons or entities are specifically authorized and empowered by VTA to act for VTA.

B. Neither VTA nor any of its officers or employees will be responsible for any damage or liability occurring by reason of anything done or omitted by the CITY in connection with any work, authority or jurisdiction delegated to the CITY under this AGREEMENT. Pursuant to Government Code Section 895.4, the CITY will fully indemnify and hold VTA harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted by the CITY in connection with any work, authority or jurisdiction delegated to the CITY under this AGREEMENT. This hold harmless will apply to any activities, errors or omissions of the CITY and/or its officers, employees, agents, consultants or contractors or any persons or entities acting or omitting to act for or on behalf of the CITY where such persons or entities are specifically authorized and empowered by the CITY to act for the CITY.

C. VTA will ensure that in all contracts entered into by VTA with respect to the improvements that each contractor, subcontractor, consultant, and subconsultant will indemnify and hold the CITY harmless to the same extent that VTA is indemnified and held harmless. Further, VTA will require that the CITY and its officers and employees be named as an additional insured on any liability insurance policy that VTA requires from its contractor, subcontractors, consultants, and subconsultants.

21. Dispute Resolution. If a disagreement exists between the PARTIES as to the meaning or application of the provisions of this AGREEMENT or any other matter related to this AGREEMENT, the respective Project Managers of each PARTY will meet informally to resolve the dispute. If resolution is not reached, senior management, as each PARTY will designate, will meet to seek a mutually acceptable resolution of the dispute. If resolution cannot be reached, the PARTIES may seek resolution of the disagreement through any process(es) available to the PARTIES in the sole discretion of each respective PARTY, including litigation.

22. Term of Agreement. Unless otherwise modified by a written amendment to this AGREEMENT, the term of this AGREEMENT will be from the date this AGREEMENT is fully executed by the PARTIES until the PROJECT is accepted by both PARTIES and all obligations and final payments pursuant to this AGREEMENT are fulfilled.

23. Correspondence and Authorized Representatives. Correspondence and notices required by this AGREEMENT will be sent to the Authorized Representative of the receiving PARTY at the address below. Written notification to the other PARTY will

be provided in advance of any changes in the name or address of such Authorized Representatives.

VTA: Kenneth Ronsse
Santa Clara Valley Transportation Authority
3331 North First Street, Bldg. A San Jose, CA
95134-1906
Kenneth.Ronsse@VTA.org

CITY: City of San José
Alisar Aoun, Department of
Transportation
City of San José
200 E. Santa Clara Street, 8th Floor
San José, CA 95113-1905
Alisar.Aoun@sanjoseca.gov

24. Nothing in this agreement is intended to affect liability, maintenance, and/or operation responsibilities included in all other VTA and City agreements, including but not limited to the Master Agreement or the Downtown Transit Mall between the City of San Jose and the Santa Clara County Transit District entered into by the PARTIES on November 13, 1984.
25. **Entire Agreement.** This AGREEMENT contains the entire understanding between the PARTIES with respect to the subject matter herein. There are no representations, agreements, or understandings, oral or written, between the PARTIES relating to the subject matter of this AGREEMENT which are not fully expressed herein.
26. **Execution in Counterparts:** This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
27. **Use of Electronic Signatures:** Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

IN WITNESS WHEREOF, VTA and the CITY have entered into this AGREEMENT effective as of the date it is fully executed by the PARTIES.

CITY

City of San José, a California municipal corporation



Email: sarah.zarate@sanjoseca.gov
Date: 11/08/2022 GMT

By: _____
Sarah Zarate
Director, City Manager’s Office

VTA

Santa Clara Valley Transportation Authority, a California special district



Email: carolyn.gonot@vta.org
Date: 11/03/2022 GMT

By: _____
Carolyn Gonot
General Manager, GM/CEO

APPROVED AS TO FORM:



Email: matthew.tolnay@sanjoseca.gov
Date: 11/07/2022 GMT

Matthew Tolnay
Deputy City Attorney

APPROVED AS TO FORM:



Email: shannon.smyth-mendoza@vta.org
Date: 10/25/2022 GMT

Shannon Smyth-Mendoza
Senior Assistant Counsel

EXHIBIT A PROJECT Location Map

Location Map



Legend:
★ Platform Location

EXHIBIT B
Milestone Dates

Timeline

- **Engineering is complete**
- **Advertisement planned for early 2023**
 - **Contingent on Cost Share Agreement**
- **Construction**
 - **Approximately 4 months to complete starting mid2023**
 - **Downtown Construction Moratorium does not permit roadway/bike/sidewalk closures from Thanksgiving Day thru New Year's Day**

EXHIBIT C
Cost Summary

Total Construction Cost Estimate is \$700,000

- **Construction Contract estimated \$620,000**
- **Construction administration estimated \$80,000**

EXHIBIT D

Insurance Requirements

INSURANCE REQUIREMENTS. VTA shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by VTA, its agents, representatives, employees or subcontractors.

D-1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage (“occurrence” form CG 0001); and
2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers’ Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance; and
4. Contractor’s Pollution Liability Insurance covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City’s Risk Manager.

D-2 Minimum Limits of Insurance

VTA shall maintain limits no less than:

1. Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Subcontractors to VTA shall maintain limits no less than \$1,000,000 per occurrence, \$2,000,000 aggregate.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers’ Compensation and Employers Liability: Workers’ Compensation

limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

4. Contractor's Pollution Liability Insurance: \$1,000,000 per contamination incident. This item shall not apply to VTA subcontractors not performing construction operations.

D-3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City.

D-4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, VTA; products and completed operations of the VTA; premises owned, leased or used by the VTA; or automobiles owned, leased, hired or borrowed by the VTA. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
- b. VTA's insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, or agents shall be excess of the contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.
- d. Coverage shall state that VTA's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

2. Workers' Compensation and Employers' Liability

Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

D-5 Acceptability of Insurance

Insurance is to be placed with insurers with an A.M. Best's rating no less than A VII, unless specific prior written approval has been granted by the City's Risk Manager.

D-6 Self-Insurance

VTA may meet any or all the requirements through a program of self-insurance.

D-7 Verification of Coverage

VTA shall furnish the City with a self-insurance letter or certificate of insurance with copies of endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the VTA's insurance company as evidence of the stipulated coverages. This proof of insurance shall provide the VTA's email and phone number to contact in case of insurance notifications or inquiries.

Proof of insurance or self-insurance shall be emailed in pdf format to:
Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San José – Finance Department
Risk Management
200 East Santa Clara St., 14th Floor Tower
San Jose, CA 95113-1905

D-8 Subcontractors

VTA shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor meeting the requirements of this Exhibit D.