FUNDING AGREEMENT
BETWEEN
CITY OF SANTA CLARA
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
BOWERS AVENUE CLASS IV BIKEWAY STUDY

THIS agreement ("Agreement") is between the City of Santa Clara ("City") and Santa Clara Valley Transportation Authority ("VTA") and is entered into as of the last date of signature below ("Effective Date"). City and VTA may be individually referred to as a "Party" or collectively referred to as the "Parties."

I. RECITALS

A. Whereas, on June 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before Santa Clara County voters in November 2016 to authorize a one-half of one percent retail transaction and use tax for 30 years for nine transportation-related program categories ("2016 Measure B");

B. Whereas, on November 8, 2016, Santa Clara County voters enacted 2016 Measure B;

C. Whereas, on October 5, 2017, the VTA Board of Directors (i) established the 2016 Measure B Program ("Program"), which includes a Bicycle and Pedestrian program category to fund bicycle and pedestrian projects and educational programs ("Bike/Ped Category") and (ii) adopted the 2016 Measure B Bicycle & Pedestrian Program Guidelines ("Bike/Ped Guidelines"), attached as Exhibit A; and

D. Whereas, VTA and City desire to specify the terms and conditions under which VTA will administer Bike/Ped Category funds to City per the Bike/Ped Guidelines.

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

II. AGREEMENT

A. Project Description.

The Project ("Project") is a planning and feasibility study of a potential Class IV bicycle lane on Bowers Avenue between Walsh Avenue and El Camino Real. The purpose of the Project is to complete community outreach to obtain objectives and goals, complete traffic, parking, and safety analyses of various alternatives, and develop 10% conceptual designs and cost estimates. The scope of work includes existing conditions analysis, public outreach, community engagement and technical analysis of a potential bicycle facility. The final deliverables are a study project report, a preferred alternative approved by City Council and the community, and 10% conceptual engineering design and cost estimate for the Project.

B. Term of Agreement.

The term of this Agreement will commence on the Effective Date and continue through the earlier of: (i) December 31, 2026, (ii) completion of the Project, (iii) cancellation of the Project, or (iv) termination of this Agreement pursuant to these terms and conditions.

C. Cost of Project.

Total Project Cost. The total cumulative dollar amount actually incurred and expended toward the Project by all Parties involved, as measured at the completion or termination of the Project ("Total Project Cost") is expected to be $300,000 ("Budgeted Project Cost").

D. Financial Contribution to Cost of Project.

1. **VTA's Financial Contribution to the Project.** VTA will contribute Bike/Ped Category funds in an amount not to exceed $154,000 (51% of Budgeted Project Cost) for City to use for completion of the Project. All funds will be available on a reimbursement basis for Eligible Costs (as defined in Paragraph F.1 below), pursuant to this Agreement.

2. **City's Financial Contribution to the Project.** City is solely responsible for (i) all funds it has expended toward the Project prior to the Effective Date; and (ii) all funds required to complete the Project above VTA's Financial Contribution to the Project. In all circumstances, City must contribute a minimum of 49% of the Total Project Cost.

3. **Project Savings**. If the Project is delivered under the Budgeted Project Cost, VTA's Financial Contribution to the Project will be reduced to an amount that is 51% of the Total Project Cost.

E. Reimbursement.

1. VTA will reimburse City in the amount of: (i) Eligible Costs, as defined in Paragraph F.1., submitted to VTA; or (ii) VTA's Financial Contribution to the Project, whichever is less. VTA will reimburse City based on receipt of invoices showing Eligible Costs incurred and paid for by City. VTA will not reimburse City for any costs that are not Eligible Costs.

2. If this Agreement is terminated, as set forth in Paragraph Q, VTA will not be responsible for reimbursing any costs or expenses City incurs after the effective date of termination.

F. Eligible Use of Funds.

1. **Eligible Costs.** VTA will only reimburse City for actual costs directly related to performance of the Project. For purposes of this Agreement, "Eligible Costs" are as described below. No other expenses will be subject to reimbursement as Eligible Costs without the prior written approval of VTA.

a. **Direct Labor Costs.**

b. **Travel Expenses.** Travel expenses (as described below), which must be authorized by VTA in writing prior to City, consultants, and/or contractors incurring them. VTA may deny reimbursement of any travel expense incurred by City, consultants, and/or contractors prior to VTA's written approval. If VTA approves travel, VTA will reimburse the following types of travel expenses related to performance of the Project at the following per-diem or lump sum rates:

   i. Car Rental: $50/day (including all gas and all associated fees);

   ii. Flight: The rates set forth as GSA City Pairs Gov't "YCA" Fare (https://cpsearch.fas.gsa.gov/cpsearch/search.do);

   iii. Food/Beverage and Hotel: The rates set forth as GSA per diem rates (https://www.gsa.gov/travel/plan-book/per-diem-rates); and

   iv. Mileage: The rates set forth as GSA mileage allowance (see https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/privatelyowned-vehicle-pov-mileage-reimbursement-rates).

c. **Other Direct Costs.** VTA will reimburse parking, tolls, deliveries, printing, plan reproduction, blueprint services, any fees required for background checks from iproveit.com, and any other expenses directly associated with the Project at actual cost without markup. City must provide appropriate supporting documentation, including detailed receipts. If any of the other direct costs described in this paragraph will exceed $500.00, City must receive VTA's written approval prior to incurring such expense. VTA may deny reimbursement of any such other direct cost expense incurred by City, prior to VTA's written approval.

2. **Ineligible Costs.** Specific "Ineligible Costs" include, but are not limited to, the following:

   a. Expenses for organizational functions, businesses services, and information technology including, but not limited to telephone charges, computer costs, CAD machine charges, in-house copying charges, and facsimile charges will not be reimbursed as other direct costs;

   b. Rent and utilities;

   c. Food or beverages (e.g. as part of meetings, workshops, training, or events); and

   d. Alcohol, travel upgrades, fines, memberships, loss of personal property or cash, "no shows," or personal itinerary changes.

3. Should the eligibility of a cost be questioned, VTA will determine, in writing, the eligibility of a cost before the cost is incurred. In its performance under this Agreement, all Parties will strictly comply with all VTA 2016 Measure B Program requirements set forth in the Bike/Ped Guidelines.

G. Invoicing to VTA.

1. City must submit invoices to vta.accountspayable@vta.org for reimbursement of work completed on the Project. Each invoice must include all records, including staff hours, contractors' invoices, miscellaneous invoices, force account charges, and any other documentation requested by VTA as substantiation for invoices submitted for reimbursement. Invoices may not be submitted more frequently than monthly and must be submitted within one year of City incurring the cost(s).

2. All invoices must detail:

   a. Eligible Costs actually incurred and paid by City;
   b. Total reimbursement amount (in dollars) requested;
   c. Total amount reimbursed by VTA to date; and
   d. Project tasks or milestones completed for which City incurred Eligible Costs during the relevant billing cycle.

3. VTA will remit the amount due to City within 30 calendar days of receipt of a complete, fully documented invoice.

H. Return of Funds.

If VTA learns that previously reimbursed costs were not Eligible Costs, City must return such funds no later than 15 business days from receipt of notice from VTA.

I. City's Responsibilities.

1. **Implementing Agency Tasks.** City will be the sponsor and implementing agency for the Project. In its role as sponsor and implementing agency under this Agreement, City must perform the following tasks:

   a. Procuring professional services for the Project including, but not limited to, the following activities: advertising the work via a public solicitation, opening bids in response to the public solicitation, awarding a contract, approving contract documents, and administering the awarded contract in accordance with all applicable laws, regulations, and codes including, but not limited to, the California Public Contract Code and the California Labor Code;

   b. Obtaining all necessary permits for performance of the Project, as applicable;

c. Performing community engagement activities for the Project, as applicable;

d. Make staff available to present on the Project at VTA committees as needed; and

e. Conducting standard close-out activities for the Project including, but not limited to, performing final accounting review and reviewing all contractual requirements.

2. **Other Project Management Duties.** City must also perform the following duties:

a. Complete and submit to VTA the most current version of VTA's 2016 Measure B Complete Streets Checklist ("Complete Streets Checklist") for Project within five business days of the Effective Date;

b. Complete and submit to VTA a project management plan ("PMP") for Project within 30 business days of the Effective Date; the PMP must be in writing and must include information regarding staffing plan, cost, schedule, contracting plan, and risk assessment;

c. Actively monitor actual Project expenditures to ensure that the 2016 Measure B funds are used to reimburse Eligible Costs only;

d. Provide VTA with written quarterly progress updates on the Project including, but not limited to, updates on Project expenditures, any changes in scope and schedule, community engagement outcome, and Project status in a format previously provided to City;

e. Provide VTA copies of Project deliverables including, but not limited to, reports, designs, drawings, plans, specifications, schedules, and other materials; and

f. Submit the Project's final report to VTA, which must be in writing and must include information regarding final Project costs and study results, along with any other information VTA may require ("Final Report").

J. **VTA's Responsibilities.**

1. VTA will perform and/or be responsible for the following tasks to perform oversight for Project:

a. Provide Comple Streets Checklist form to City and review competed checklist for Project to ensure Complete Streets compliance; and

b. Provide PMP form to City and review completed PMP for Project to provide oversight of the delivery of Project and to ensure Project complies with the Bike/Ped Guidelines.

2. Pay the amount due to City within 30 calendar days of receipt of a complete, fully-documented invoice for Eligible Costs.

K. Indemnification.

Neither VTA nor any its officers or employees will be responsible for any damage or liability arising out of or relating to City's acts or omissions under or in connection with any work, authority, or jurisdiction associated with this Agreement. Pursuant to California Government Code §895.4, City must fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind, and description arising from an injury (as defined by California Government Code §810.8) relating to City's acts or omissions under or in connection with any work, authority, or jurisdiction delegated to City under this Agreement. This provision will survive the termination or expiration of this Agreement.

L. Insurance.

At all times during this Agreement, City must comply with the insurance requirements and specifications of the attached Exhibit B, Insurance Requirements. City may, in its discretion, elect to self-insure, but any such self-insurance must meet the requirements and specifications in Exhibit B.

M. Additional Insured and Indemnity Provision.

In any agreement executed between the City and a third party for purposes related in any way to the subject matter of this Agreement ("Third Party Contract"), City must require that VTA be named as (i) an additional insured on a primary and non-contributory basis with separation of insureds and waiver of subrogation on all policies of insurance, except when not applicable and (ii) an indemnified party in any indemnity provision contained in the Third Party Contract. Third Party Contracts must contain insurance requirements with coverages at least as broad as, and limits at least as great as, the requirements of Exhibit B.

N. Public Works.

If City awards a contract to a third party for the performance of a public work, as defined in California Labor Code Sections 1720 through 1720.6 ("Public Works Contract"), in connection with this Agreement, City must comply, and must require such third party to comply, with the requirements of California Labor Code Sections 1720 et seq. If the Public Works Contract is funded in whole or in part with federal funds, City must also comply, and must require such third party to also comply, with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148).

O. Compliance with Applicable Law.

In the execution of the Project and performance of its responsibilities under this Agreement, City must comply with all applicable requirements of local, state, and federal laws.

P. Compliance with 2016 Measure B Requirements.

In its performance under this Agreement, City must comply with, and must ensure Project compliance with, all 2016 Measure B requirements set forth in the Bike/Ped Guidelines.

Q. Termination

1. Either Party may at any time terminate this Agreement by giving 10 business days written notice of such termination to the other Party. Notice must identify the effective date of such cancellation and must be provided in accordance with the terms and conditions of this Agreement.

2. In the event of termination under this section, City must submit its final invoice to VTA within 30 calendar days of the effective date of termination, and such invoice will be solely for Eligible Costs City incurred prior to termination.

R. Audit and Records.

1. City must maintain, and must require their contractors to maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records, and data pertaining to services performed under this Agreement, including the costs of contract administration. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges and must be sufficient to allow a proper audit of services. All checks, payrolls, invoices, contracts, and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.

2. For the duration of the Agreement, and for a period of five years after final payment, each Party and its representatives must have access during normal business hours to any books, accounts, records, data, and other relevant documents ("Records") of the other Party that are pertinent to this Agreement for audits, examinations, excerpts, and transactions. The other Party must furnish copies of the Records upon request.

S. Notices / Authorized Representatives.

1. Notices must be in writing and addressed to the other Party's Authorized Representative ("Recipient") and will be deemed delivered or received on the date personally delivered to the Recipient or when deposited by registered or certified mail with postage and charges prepaid.

2. The Parties Authorized Representatives are as follows:

   VTA:
   Marcella Rensi

Deputy Director, Grants & Allocations
Santa Clara Valley Transportation Authority
3331 N First Street
San Jose, CA 95134
Email: marcella.rensi@vta.org

CITY:
Michal Liw
Assistant Public Works Director
City of Santa Clara, Public Works Department
1500 Warburton Avenue,
Santa Clara, CA 95050
Email: Mliw@SantaClaraCA.gov

3. Written notification to the other Party must be provided, in advance, for changes in the name or address of an Authorized Representative stated above.

T. General Terms and Conditions.

1. **Headings.** The subject headings of the articles and paragraphs in this Agreement are included for convenience only and will not affect the construction or interpretation of any of its provisions.

2. **Incorporation of Exhibits and Attachments.** All exhibits and attachments referenced in this Contract are incorporated into it by this reference.

3. **Construction and Interpretation of Agreement.** This Agreement, and each of its provisions, terms, and conditions, has been reached as a result of negotiations between the Parties. Accordingly, each Party expressly acknowledges and agrees that (i) this Agreement will not be deemed to have been authored, prepared, or drafted by any particular Party and (ii) the rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or in the resolution of disputes.

4. **Amendment.** Except as expressly provided in this Agreement, its provisions cannot be altered, modified, or amended except through the execution of a written amendment executed by the Parties.

5. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter and supersedes all prior negotiations, contracts, agreements, or understandings, whether oral or written, of the Parties regarding the subject matter.

6. **No Waiver.** The failure of either Party to insist upon the strict performance of any of the terms, covenants, or conditions of this Agreement will not be deemed a waiver of (i) any right or remedy

that either Party may have or (ii) either Party's right to require strict performance of all of the terms, covenants, and conditions of this Agreement.

7. **Dispute Resolution.**

   a. If a question or allegation arises regarding (i) interpretation of this Agreement or its performance, or (ii) the alleged failure of a Party to perform, the Party raising the question or making the allegation must give written notice thereof to the other Party. The Parties must promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the Parties to the greatest extent possible to avoid litigation as a method of dispute resolution.

   b. Notwithstanding the foregoing, nothing in this Paragraph T will be deemed to prevent a Party from filing suit or an administrative action to preserve its right to assert a claim within any applicable statute of limitations. To the extent practicable, the Parties will negotiate in good faith to create a tolling agreement to toll such statute(s) of limitations to allow for the Parties to engage in dispute resolution provisions of this Agreement prior to filing of such actions.

8. **Severability.** If any provisions of this Agreement (or portions or applications of it) are held to be unenforceable or invalid by any court of competent jurisdiction, (a) the Parties will negotiate in good faith to make an equitable adjustment to the Agreement provisions with a view toward effecting the Agreement's purpose, and (b) the remaining provisions (or portions or applications of them) will remain valid and enforceable.

9. **Governing Law.** The laws of the State of California will govern this Agreement and any claim that might arise between City and VTA without regard to conflict of law provisions.

10. **Venue.** Any lawsuit or legal action arising from this Agreement must be commenced and prosecuted in the courts of Santa Clara County, California. City agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

11. **Ownership of Work.** All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled or prepared, in the process of being assembled or prepared, or furnished to either Party under this Agreement are the joint property of all Parties. Each Party is entitled to copies and access to these materials during the progress of the Project and upon completion of the Project or termination of this Agreement. All Parties may retain a copy of all material produced under this Agreement for use in their general activities.

12. **Attribution to VTA.** City must include attribution to VTA that indicates part of the work was funded by 2016 Measure B Funds. This provision applies to any project or publication that was funded in whole or in part by 2016 Measure B funds. Acceptable forms of attribution include

2016 Measure B's branding on Project-related documents, construction signs, public information materials, and any other applicable documents. VTA will provide 2016 Measure B branding to City for this purpose.

13. **Non-discrimination.** The Parties and any contractors performing services on behalf of the Parties ("Contractors") will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the Parties and Contractors must not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. The Parties and Contractors must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.

14. **Relationship of the Parties.** It is understood that this is an Agreement by and between independent parties and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent contractor.

15. **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. Unless otherwise prohibited by law, VTA policy, or City ordinance or 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 each of the Parties.

16. **Authority to Execute Agreement.** Each Party to this Agreement represents and warrants that each person whose signature appears below is authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

Signatures on following page

The Parties have caused their undersigned, duly authorized signatories to execute this Agreement on the dates set forth below.

Santa Clara Valley Transportation Authority	**City of Santa Clara**
Carolyn M. Gonot General Manager/CEO	Jõvan D. Grogan City Manager
Date	Date
Approved as to Form:	**Approved as to Form:**
Tamara Costa Senior Assistant Counsel	Glen R. Googins City Attorney
Date	Date

EXHIBIT A

2016 Measure B Bicycle & Pedestrian Program Guidelines

[Revised and approved by VTA Board of Directors: August 4, 2022]

To fund bicycle and pedestrian projects of countywide significance identified by the cities, County and VTA. The program will give priority to those projects that connect to schools, transit and employment centers; fill gaps in the existing bike and pedestrian network; safely cross barriers to mobility; and make walking or biking a safer and more convenient means of transportation for all county residents and visitors. Bicycle and pedestrian educational programs such as Safe Routes to Schools, will be eligible for funding.

Total Funding

3.97% of Program Tax Revenues

Program Type

Formula-based program

Distribution of Funds

- Funds will be allocated on a two-year cycle, in conjunction with the VTA Biennial Budget process.
- Funds are allocated on an annual basis, based on the application of the ballot-established ratio to the estimated Program Tax Revenue. The allocations are calculated in two steps:
  1. Multiplying the ballot-established ratio by the projected Program Tax Revenues for that fiscal year.
  2. Reconciling prior allocations, which were based on estimated Program Tax Revenues, with actual Program Tax Revenues (referred to as a "true-up process"). This true-up process will occur in the first fiscal year of each biennial budget cycle.
- The program will consist of three sub-categories: Education & Encouragement Programs, Planning Studies, and Capital Projects.
- A minimum of 80% of available program category funds will be allocated to Capital Projects.
- A maximum of 15% of available program category funds will be set aside for Education & Encouragement. The funds will be allocated as follows:
  1. 25% for countywide (including targeting unincorporated areas) education & encouragement programs
  2. Remaining funds allocated by city population formula with a $10,000 annual minimum allocation per city
- A maximum of 5% of available program category funds will be allocated to Planning Studies.
- If the Planning Studies or Capital Projects competitive grant cycle is not fully awarded, the balance of funds from that cycle will roll into its next call for projects cycle.

Implementation

- Only projects currently listed on Attachment A of 2016 Measure B are eligible.

- **Education & Encouragement (Formula Distribution)**
  - VTA and individual agencies will enter into a Master Agreement for Education & Encouragement funds.
  - The 2016 Measure B Program Office will notify agency of allocation for two-year cycle.
  - Funds will be distributed on a reimbursable basis.
  - Agency will submit annual education & encouragement work program and annual progress report.
  - Education & Encouragement funds may be banked for a maximum of three years with explanation of banking purposes upon approval by the 2016 Measure B Program Office.
  - The 2016 Measure B Program Office will conduct an assessment regarding the effectiveness of the program.

- **Capital Projects & Planning Studies (Competitive Grants)**
  - Only a public agency can serve as a project sponsor. Other entities must partner with a public agency to apply for a grant.
  - The grant program contains two categories:
    - Capital projects
      - Activities leading to/including:
        - Environmental Clearance
        - Design
        - Right of Way
        - Construction
      - Construction grant requests must include cost estimates supported by 30% to 35% design.
    - Planning studies
      - Includes planning studies to support capital project development for those projects currently listed on Attachment A of 2016 Measure B. It does not include general/master planning efforts.
  - The minimum grant award is $50,000.
  - The maximum grant award per sponsoring agency can be no more than 50% of the total available funds per call for projects per cycle, unless the cycle is undersubscribed.

    The 2016 Measure B Program Office developed project criteria in conjunction with the VTA Technical Advisory Committee (TAC) Capital Improvement Program Working Group and incorporated input from the TAC and Bicycle & Pedestrian Advisory Committee (BPAC).

- Scoring committees for the grant programs will be comprised of three BPAC members, three Member Agency staff, and one VTA staff person. If enough BPAC or Member Agency staff are not available as described above, Board-adopted scoring committee policy will be followed.

Criteria

- Capital Projects and Planning Studies will be scored on criteria that supports the language in 2016 Measure B, including but not limited to:
  - Countywide significance
  - Connection to/serves schools, transit, or employment centers
  - Fills gaps in bicycle/pedestrian network
  - Provides safer crossings of barriers
  - Makes walking or biking safer
  - Makes walking or biking more convenient
  - Other criteria to consider:
    - Safety benefits
    - Increase in bicycle and pedestrian usage
    - Community support
    - Project readiness
    - Projects serve Equity Priority Communities or vulnerable populations with specific needs
    - Non-2016 Measure B contribution

Requirements

- Competitive grant projects require a minimum 10% non-2016 Measure B contribution.
- Reporting requirements will be detailed in agreements executed with VTA for project funding.
- VTA Complete Streets reporting requirements are required for Planning Studies and Capital Projects.
- All projects must comply with 2016 Measure B program oversight requirements.
- All collateral material must comply with 2016 Measure B branding requirements.

EXHIBIT B

INSURANCE REQUIREMENTS

CITY'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT CITY CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS AGREEMENT.

INSURANCE

Without limiting City indemnification and defense of claims obligations to VTA, City must procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise under or in connection with any work, authority, or jurisdiction associated with the Agreement. The cost of such insurance must be borne by City. City must furnish complete copies of all insurance policies within three (3) business days of any request for such by VTA.

A. MINIMUM SCOPE OF INSURANCE

Coverage must be at least as broad as:

1. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.

2. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance.

4. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's services under this Contract. This coverage must be continuously maintained for a minimum of two (2) years following completion of this Contract. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.

5. Contractor's Pollution Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.

B. MINIMUM LIMITS OF INSURANCE

1. City must maintain limits no less than:

   a. General Liability: $5,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.

b. Automobile Liability (including umbrella/excess liability): $5,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying Automobile Liability policy, "Follow Form" coverage, and a "Drop Down" provision.

c. Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of $1,000,000 per accident.

d. Professional Liability: $2,000,000 each occurrence/aggregate minimum limit per claim.

e. Contractor's Pollution Liability: $3,000,000 per occurrence. This requirement may be satisfied by a combination of Pollution Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying Pollution Liability policy, "Follow Form" coverage, and a "Drop Down" provision.

2. Notwithstanding any language in this Lease to the contrary, if City carry insurance limits exceeding the minima stated in Section B(a)(1)-(3) immediately above, such greater limits will apply to this Agreement.

C. SELF-INSURED RETENTION

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or deductible in excess of $250,000 must be declared to and approved by VTA. If City are a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of $250,000, City must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess City's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require City to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by City. City may request execution of a nondisclosure agreement prior to submission of financial reports.

D. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTO LIABILITY)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is

written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must comply with the following:

1. The policy retroactive date must be no later than the date of this Agreement.

2. If any policy is not renewed or the retroactive date of such policy is to be changed, City must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least two (2) years.

3. No prior acts exclusion may be added to the policy during the Agreement period.

4. The policy must allow for reporting of circumstances or incidents that might give rise to future claims.

E. OTHER INSURANCE PROVISIONS

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

1. General Liability and Automobile Liability

a. VTA, its directors, officers, officials, employees, and volunteers must be named as additional insureds as respects: liability arising out of City's performance under this Agreement. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.

b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.

c. Coverage must state that Lessee's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. The General Liability General Aggregate limit must apply per project, not per policy.

e. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

2. All Coverages

a. City must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising under or in connection with any work, authority, or jurisdiction associated with the Agreement.

b. City's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply

only as excess to City's insurance. City's insurance must not seek contribution from VTA's insurance program.

3. **Other Insurance Provisions**

   a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.

   b. If any coverage forms or endorsements required by this Agreement are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Agreement, VTA reserves the rights to require City to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

F. ACCEPTABILITY OF INSURERS

Insurance must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

G. CERTIFICATES OF INSURANCE

City must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy must be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. City must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to real.estate@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required herein, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA property leased must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Agreement documents.

It is a condition precedent to granting of this Agreement that all insurance certificates and endorsements be received and approved by VTA before Agreement execution. No occupancy may be taken until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If City receive notice that any of the insurance policies required by this Attachment may be cancelled or coverage reduced for any reason whatsoever, City must immediately provide written notice to VTA that such insurance policy required by this Attachment is canceled or coverage is reduced.

H. MAINTENANCE OF INSURANCE

If City fail to maintain insurance as required herein, VTA, at its option, may suspend the Agreement until a new policy of insurance is in effect.

Ed. Rev. 10-1-19