

**FUNDING AGREEMENT  
BETWEEN  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
AND  
THE CITY OF SUNNYVALE  
FOR  
THE PEERY PARK RIDES PILOT PROJECT  
LOCAL MATCH CONTRIBUTION**

This Funding Agreement (“Agreement”) is entered into by and between the Santa Clara Valley Transportation Authority (“VTA”), an independent special district created pursuant to California Public Utilities Code Sections 100000 et seq., as the implementing agency, and the City of Sunnyvale, a California chartered municipal corporation (“City”), and will be effective upon full execution by both VTA and City (individually “Party” and collectively, the “Parties”).

**RECITALS**

- A. Whereas, Peery Park is a 446-acre business park in central Sunnyvale that is being redeveloped into higher density Class “A” office and tech-based industrial buildings.
- B. Whereas, the City has adopted the Peery Park Specific Plan (“Specific Plan”) to guide development in the Peery Park area and has established mandatory trip reduction goals to encourage the use of alternative transportation modes.
- C. Whereas, Peery Park is an ideal candidate for a “last mile” shuttle bus service given its large existing and planned employment base and its proximity to nearby Caltrain and VTA bus stops.
- D. Whereas, the Parties have a mutual interest in Peery Park growing sustainably by reducing transportation-related emissions through automobile trip reductions and associated mode shifts to transit.
- E. Whereas, on October 2, 2015, the Parties jointly requested and were awarded \$1,129,000.00 in Climate Initiatives Parking Management and Transportation Demand Management (TDM) Grant funds from the Federal Transit Administration (FTA) (“Grant Funds”) to help fund the cost of implementing “Peery Park Rides”, a two-year pilot program providing flexible shuttle service that will offer Peery Park employees and nearby residents an attractive transit option for their commute and non-commute needs (“Project”).
- F. Whereas, the City has agreed to contribute an aggregate amount of \$500,000.00 in local match funds to VTA for the Project, which City has agreed to make available to VTA pursuant to this Agreement.
- G. Whereas, VTA will contribute local funds in the maximum amount of \$356,400.00 for the Project.
- H. Whereas, VTA, as the implementing agency, will be responsible for developing and completing the Project.

- I. Whereas, the Parties desire to specify herein the terms and conditions under which the Project is to be financed and implemented.

**NOW, THEREFORE,** in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

### **AGREEMENT**

1. **Project Funds.** Subject to the terms and conditions of this Agreement, VTA and City shall each contribute local match funds to be used by VTA for performance of the Project.
  - a. **City Funds.** City shall contribute an amount not to exceed \$500,000.00 (“City Contribution Funds”) as local match funds for the Project:
    - i. \$356,400.00 shall be used as the local match to VTA’s contribution, as defined below in Section 1(b).,
    - ii. \$100,000 to make the service fare free for passengers, and
    - iii. \$43,600 for project marketing costs provided by the transportation provider.
  - b. **VTA Funds.** VTA shall contribute an amount not to exceed \$356,400.00 as local match funds for the Project (“VTA Contribution Funds”).
  - c. **Transfer of City Contribution Funds.** VTA will invoice City for City Contribution Funds upon selection of a Contractor for the Project. City will provide City Contribution Funds to VTA no later than thirty (30) days upon receipt of the invoice.
2. **Eligible Use of Project Funds.** City Contribution Funds, VTA Contribution Fund, and Grant Funds will collectively be referred to as “Project Funds”. VTA may use Project Funds for costs incurred by VTA necessary for the implementation of the Project, including costs related to hiring consultants and contractors, service planning, vehicle procurement/lease, project administration and management, operations of a flexible shuttle service for Peery Park employees and surrounding residents, and other costs associated with implementing the Project (collectively referred to as “Allowable Costs”).
3. **Term.** This Agreement will commence upon the Effective Date, as defined in the signature block below, and will remain in effect through December 31, 2023 (unless earlier terminated pursuant to the terms contained herein).
4. **VTA Obligations.**
  - a. VTA will serve as the “Lead Project Manager” responsible for managing the Project in collaboration with the City and Contractor, executing contracts with consultants and contractors, ensuring compliance with Project Funds, and ensuring Project completion.
  - b. VTA will update and seek the input of City’s Project Manager on significant Project decisions including, but not limited to, scopes of work, selection of consultants and

- contractors, Project milestones, and Project timelines; the determination as to whether a decision will be considered “significant” is in the sole discretion of VTA.
- c. VTA may retain or contract with consultants or contractors to perform any of the functions necessary for the implementation of the Project, per Section 2 herein, the costs associated with such engagements would be Allowable Costs.
  - d. VTA will review all contractor invoices and verify that the work, as stated on the invoice(s), was satisfactorily performed by the applicable contractor(s) and/or consultants and are Allowable Costs.
  - e. Additional Insured Endorsements. VTA shall require its consultants and contractors performing Project work to provide certificates of insurance and endorsements showing the City of Sunnyvale, its officers, agents, and employees as additional insureds and shall provide City with a copy of such certificates and endorsements.
  - f. Disputes with Consultants and Contractors. VTA is solely responsible for resolution of any and all disputes arising out of or related to VTA’s contracts with consultants and contractors hired by VTA for the Project.
  - g. Compliance with Laws, Regulations, and Permit Requirements. VTA shall at all times comply with, and require its consultants and contractors to comply with, all applicable federal and state laws, rules, regulations, permits, and local ordinances.

## **5. City Obligations.**

- a. City shall work collaboratively with VTA on all necessary tasks and functions required for the Project, including but not limited to, finalizing relevant parameters of the service such as coverage area, specific stop locations, service span; vehicle branding and design; external outreach and marketing; pre-launch testing; launch day events; promotional campaigns and messaging, and Project reporting. City shall ensure sufficient staff support is provided for the Project.
- b. City shall make available to VTA any data and local information relevant to the Project such as, but not limited to, local trip patterns, development activity within the Project area, and identification of key stakeholders and employers.
- c. City shall work with VTA and Contractor to promote the Project, create local awareness and support by providing useful local insight, and leveraging existing marketing platforms, email lists and social media presence to promote the Project.
- d. Expenses incurred by City pursuant to this Section 5 will not be considered Allowable Costs and will not be reimbursable from the Project Fund.
- e. Within thirty (30) calendar days from the Effective Date of this Agreement City must notify VTA of the name of City’s designated Project Manager (“City Project Manager”) and of such City Project Manager’s address, telephone number, and email address. City Project Manager will be the liaison to VTA in connection with the implementation of this Agreement and will be the contact person for all matters related to the Project including coordinating Project activities with VTA and any contractors and/or consultants. City shall notify VTA in writing of any change in City Project Manager or of the City Project Manager’s contact information no later than thirty (30) days prior to the date of any change.

**6. Indemnification.**

- a. Neither VTA nor any officer or employee thereof will be responsible for any damage or liability occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority, or jurisdiction delegated to VTA or City under this Agreement. Both Parties agree that, pursuant to Government Code 895.4, City shall fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind, and description brought on for or on account of injury (as defined in Government Code Section 810.8) arising out of or relating to City's negligence, recklessness, or willful misconduct under or in connection with any work, authority, or jurisdiction delegated to City under this Agreement.
- b. Neither City nor any officer or employee thereof will be responsible for any damage or liability occurring by reason of anything done or omitted to be done by VTA under or in connection with any work, authority, or jurisdiction delegated to City or VTA under this Agreement. Both Parties agree that, pursuant to Government Code 895.4, VTA shall fully defend, indemnify, and save harmless City from all suits or actions of every name, kind, and description brought on for or on account of injury (as defined in Government Code Section 810.8) arising out of or relating to VTA's negligence, recklessness, or willful misconduct under or in connection with any work, authority, or jurisdiction delegated to VTA under this Agreement.
- c. This indemnification provision will survive the termination of this Agreement.

**7. Changes to Terms of Agreement.** No amendment, alteration, or variation of the terms of this Agreement will be valid unless made in writing and signed by both of the Parties hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the Parties hereto.

**8. Entire Agreement.** This Agreement contains the entire understanding between VTA and City relating to the subject matter hereof and supersedes any and all other prior agreements or understandings which may have existed between the Parties, whether oral or written.

**9. Binding on Successors and Assigns.** This Agreement will be binding upon each Party and any successors and/or assigns.

**10. Notices.** Any notice which may be required under this Agreement must be in writing, will be effective when received, and must be given by personal service, by the U.S. Postal Service certified mail, to the addresses set forth below, or to such addresses which may be specified in writing by the Parties hereto.

VTA: Santa Clara Valley Transportation Authority  
3331 North First Street  
San Jose, CA 95134  
Attn: Aiko Cuenco, Transportation Planner

City: Community Development Department  
City of Sunnyvale

456 W. Olive Avenue  
Sunnyvale, CA 94086  
Attn: Amber Blizinski, Principal Planner

11. **Nonwaiver.** The failure of either Party to insist upon the strict performance of any of the terms, covenants, and conditions of this Agreement will not be deemed a waiver of any right or remedy that either Party may have, and will not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.
12. **Dispute Resolution.** If a question arises regarding interpretation of this Agreement or its performance, or 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 extent possible that litigation be avoided as a method of dispute resolution.
13. **Choice of Law; Venue.** This Agreement will be construed and its performance enforced under California law. In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must be exclusively vested in the State courts of the County of Santa Clara or, if federal jurisdiction is appropriate, exclusively in the United States District Court for the Northern District of California, in San José, California.
14. **Interpretation of this Agreement.** The Parties hereto acknowledge and agree that each of their respective legal counsels have reviewed and negotiated the terms of this Agreement. Consequently, the doctrine that ambiguities in an agreement should be resolved against the drafting party will not be employed in connection with this Agreement, which will be interpreted in accordance with its fair meaning.
15. **Signature Authority.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on its behalf.
16. **Severability.** If any of the provisions of this Agreement (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and City shall negotiate an equitable adjustment in the provisions this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
17. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument.

IN WITNESS WHEREOF, VTA and City have executed this Contract as of the last date set forth below (“Effective Date”).

**SANTA CLARA VALLEY  
TRANSPORTATION AUTHORITY  
(VTA)**

**CITY OF SUNNYVALE  
(CITY)**

Nuria I. Fernandez  
General Manager / CEO

Kent Steffens City Manager	Date
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Approved as to Form:

Approved as to Form:

Uzma Saeed  
Assistant Counsel

Date

City Attorney \_\_\_\_\_ Date \_\_\_\_\_