

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
CONGESTION MANAGEMENT PROGRAM
TRANSPORTATION FUND FOR CLEAN AIR
AGREEMENT
FY 2020/21**

This agreement (“Agreement”) by and between the Santa Clara Valley Transportation Authority (“VTA”) and the City of Sunnyvale (“Sponsor”) shall be effective on the date that this Agreement is fully executed by the parties hereto (“Effective Date”). Hereinafter, Sponsor and VTA may be individually referred to as a “PARTY” or collectively referred to as the “PARTIES”.

RECITALS

This Agreement is made with reference to the following facts:

- A. VTA has been designated, by resolutions of the County of Santa Clara and a majority of the cities therein, as the Program Manager for Santa Clara County’s Transportation Fund for Clean Air (“TFCA”) funds under the State of California Health and Safety Code Section 44241.
- B. Pursuant to that designation, VTA is responsible for allocating and administering the County of Santa Clara’s TFCA County Program Manager Fund (“County Program Manager Fund”) to eligible project sponsors in accordance with the State of California Health and Safety Code Sections 44241 and 44242 and VTA’s current agreement with the Bay Area Air Quality Management District (“Air District”).
- C. On September 3, 2020, the VTA Board approved the programming of Fiscal Year (“FY”) 2020/21 Transportation Fund for Clean Air Program Manager funds for the xxx (“Project[s]”).
- D. This Agreement specifies the conditions under which VTA will allocate and administer a grant[s] from the County Program Manager Fund to Sponsor for FY 2020/21.

Now, therefore the Parties agree as follows:

AGREEMENT

Section 1. Grant of TFCA Funds; Description of Projects

- A. Subject to appropriation and receipt of TFCA funds (as further set forth in Section 10, below), VTA hereby agrees to allocate to Sponsor a TFCA grant in an amount not to exceed seven hundred twelve thousand, seven hundred fifty five dollars (\$712,755) (the “Grant Funds”) in consideration for Sponsor’s agreement to implement and complete the Project[s], as further set forth in the Project summary[ies] attached hereto as **Attachment A**, in accordance with the terms and conditions set forth in this Agreement.
- B. In consideration of VTA providing Sponsor with the Grant Funds, Sponsor hereby agrees to implement and complete the Project[s] in conformance with the terms of this Agreement. In implementing the Project[s], Sponsor shall comply with the Project schedule and monitoring requirements, as described in **Attachment A**.

Section 2. Proper Expenditure; Return of Funds

- A. Sponsor must assure that all Grant Funds received under this Agreement are expended only in accordance with all applicable provisions of federal, state, and local laws, and Sponsor shall require any other sub-recipients of Grant Funds for the Projects to do the same.
- B. Sponsor must comply with all TFCA Project requirements, as set forth in the Air District's *County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending (FYE) 2021* and the Funding Agreement between VTA and the Air District (21-SC). These documents, including appendices and revisions, are incorporated herein and made a part hereof by this reference as if fully set forth herein and will be provided by VTA to Sponsor upon request.
- C. Sponsor must return to VTA all Grant Funds that are not expended in accordance with the terms and conditions of this Agreement and/or applicable provisions of law.
- D. Sponsor must also return the Grant Funds to VTA if the Project[s] are not maintained and/or operated throughout and until the conclusion of the Project's years of effectiveness ("Years of Effectiveness"). This is the default value stated in the Air District's *County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending 2021* for the applicable project type, unless a different value was approved by VTA and shown to yield a Project that meets the cost-effectiveness requirement in the TFCA Guidance document cited above. The amount of Grant Funds returned to the Program Manager must be calculated on a prorated basis based on the length of the Project's Years of Effectiveness.

Section 3. Administrative project costs

Administrative project costs are costs associated with the administration of a TFCA project, and do not include project capital or operating costs. Sponsor must expend no more than six and a quarter percent (6.25%) of Grant Funds received hereunder on administrative costs.

Hourly labor charges for administrative project costs must be expressed on the basis of hours worked on the TFCA project. Administrative project costs are limited to the following activities that have documented hourly labor and overhead:

- A. Costs associated with administering the TFCA Funding Agreement (e.g., responding to requests for information from Air District and processing amendments). Note that costs incurred in preparation of a TFCA application or costs incurred prior to the execution of the Funding Agreement are not eligible for reimbursement;
- B. Accounting for TFCA funds;
- C. Fulfilling all monitoring, reporting, and record-keeping requirements specified in the TFCA Funding Agreement, including the preparation of reports, invoices, and final reports; and
- D. Documenting indirect administrative costs associated with administering the Project/s, including reasonable overhead costs of utilities, office supplies, reproduction, and managerial oversight.

The costs to prepare proposals and/or grant applications are not eligible.

If Sponsor requests reimbursement of administrative project costs, Sponsor must document and explain all such expenses in its invoices. Additionally, Sponsor must track these expenses, and provide auditable documentation to VTA, to ensure that they do not exceed 6.25% of total TFCA funds received. Sponsor must reimburse VTA for any administrative project costs deemed ineligible and returned by VTA to the Air District.

Section 4. Term

- A. The term of this Agreement will commence July 1, 2020 and will continue until either the Projects are completed or terminated in accordance with Section 15C, but no later than June 30, 2022, without written approval.
- B. Any requests for additional time to complete a Project beyond June 30, 2022 must be submitted in writing to VTA no later than sixty (60) days prior to that date. VTA, in its sole discretion, may approve or deny, in writing, two 12-month extension requests. In order to approve any time extensions, Sponsor must prove to VTA that significant progress has been made on implementing the Project. Any subsequent schedule extensions for the Project can only be approved in writing by the Air District on a case-by-case basis if Air District finds that Sponsor has made significant progress on the Project. A written amendment to this agreement for an extension is not required.
- C. In addition to the specific term of this Agreement, Sponsor must maintain each Project for the Years of Effectiveness prescribed in Section 2(E) herein.

Section 5. Work Product

Sponsor must place in the public domain any software, written document, or other product developed with funds received through this Agreement, to the extent not otherwise prohibited by law, and to the extent required by the California Public Records Act (California Government Code Sections 6250 et seq.).

Section 6. Acknowledgement of Funding Sources

- A. Sponsor must acknowledge both VTA and Air District as Project's funding sources during the implementation of the Projects and must use the VTA and the Air District approved logos as specified below:
 - (1) The logos must be used on signs posted at the site of any Project construction;
 - (2) The logos must be displayed on any vehicles or equipment operated with or obtained as part of the Projects;
 - (3) The logos must be used on any material intended for public consumption associated with the Projects, such as websites and printed materials, including Project-related transit schedules, brochures, handbooks, maps created for public distribution, and promotional material; and
 - (4) Sponsor will demonstrate to VTA, through evidence such as photographs of vehicles, equipment, construction signs, and copies of press releases, that the logos are used and displayed as required by this Section.

- B. VTA must provide a copy of Air District and VTA logos to Sponsor solely for use in fulfilling Sponsor's obligations under this Section.
- C. Sponsor must acknowledge VTA and Air District as a funding source in any related articles, news releases, or other publicity materials for the Projects that are produced or caused to be produced by Sponsor.

Section 7. Indemnity and Insurance Requirements

- A. Sponsor must indemnify, defend, and hold harmless VTA, the Air District, their respective officers, agents, employees, representatives, and successors-in-interest from any claim, liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damage arising out of, or in connection with, performance of this Agreement by Sponsor and/or its agents or employees or subcontractors, excepting only loss, injury or damage caused by the gross negligence or willful misconduct of personnel employed by VTA.
- B. In any agreement between Sponsor and a third party for purposes related in any way to the subject matter of this Agreement ("Third Party Contract"), Sponsor must require that VTA be named as (i) additional insured on all policies of insurance required by CITY in the Third Party Contract and (ii) indemnified party in any indemnity provision contained in the Third Party Contract. Such Third-Party Contracts must contain requirements for General Liability, Automobile Liability, Workers' Compensation and Employer's Liability, and Pollution Liability.

Section 8. Invoicing

Sponsor must submit invoices at quarterly intervals to VTA for reimbursement of costs incurred to implement the Projects. Sponsor must email requests for reimbursement to VTA Accounts Payable at VTA.AccountsPayable@vta.org. Sponsor must include relevant, auditable back-up documentation (time sheets, bills, etc.) with each invoice.

Section 9. Reimbursement

- A. All funds allocated by VTA to Sponsor must be on a cost-reimbursement basis only. VTA will pay no funds in advance.
- B. Upon review and approval of invoices and documentation, VTA will, within fifteen (15) days of receipt of an invoice that conforms to the requirements set forth in this Agreement, reimburse Sponsor for all eligible expenditures up to the maximum amount described in Section 1 of this Agreement. Only those Project costs incurred by Sponsor on or after July 1, 2020 will be considered reimbursable expenditures.
- C. Funds for the Projects described in this Agreement, which are not submitted for reimbursement prior to June 30, 2022, will not be available to reimburse Project costs unless a Project schedule, which extends the Project completion date beyond June 30, 2022, has been approved by VTA and Air District, as set forth in Section 3, above.

Section 10. Funds Subject to Appropriation/Allocation of Funds Contingent on Appropriation

VTAs obligations under the terms of this Agreement are contingent upon and subject to the allocation of TFCA funds to VTA by the Air District under VTA's "21-SC" agreement with the Air District for approved projects during Fiscal Year 2020/21.

Section 11. Audit

This Agreement is subject to the examination and audit of the California State Auditor pursuant to California Government Code Section 8546.7 for a period of five (5) years after final payment. Audits may also be conducted by an auditor chosen by the Air District or VTA.

Section 12. Sponsor's Record Keeping

Sponsor must:

- A. Allow VTA and Air District staff, authorized representatives, and independent auditors, during the term of this Agreement and for five (5) years following completion of each Projects, to conduct performance and financial audits of the Projects and to inspect the Projects. During audits, the Sponsor must make available to the auditor, in a timely manner, all records relating to Sponsor's implementation of the Projects. During inspections, Sponsor will provide, at the request of VTA or the Air District, access to inspect the Projects and related records.
- B. Maintain employee time sheets documenting those hourly labor costs incurred in the implementation of the Projects, including both administrative and Project implementation costs, or to establish an alternative method to document staff costs charged to the funded Projects.
- C. Keep all financial and Project implementation records necessary to demonstrate compliance with this Agreement and the TFCA Program. Such records must include documentation that demonstrates significant progress made for those TFCA Program Projects seeking extensions to the completion date. Sponsor must keep such documents in a central location for a period of five (5) years following completion of the Projects.
- D. Submit an interim project report to VTA in each May and October until the Project [s] is/are completed and all closeout requirements have been fulfilled. The interim report must utilize Air District-approved report forms. One form should be submitted for each Project[s] listed in Attachment A. VTA will supply the Interim Project Report form to Sponsor for this requirement.

Section 13. Project Closeout

- A. Sponsor must submit a Final Report for each completed Project on the Air District-approved report form appropriate for the specific project type. Sponsor must also submit a final Cost-Effectiveness spreadsheet. VTA will provide the Final Report Forms and spreadsheets for this requirement.

Section 14. Review

- A. VTA will review Sponsor's progress in implementing the Projects at the end of the sixth (6th) quarter following execution of this Agreement. If progress at the sixth (6th) quarter review is insufficient to implement the Projects or to expend the funds within the period described in Section 3, VTA will develop an action plan with the Sponsor to ensure that the Grant Funds are not required to be repaid to VTA and/or the Air District, and the action plan may include reprogramming funds to other projects within Santa Clara County to ensure their expenditure prior to the term expiration date described in Section 3.
- B. VTA must provide Sponsor with all Air District-approved Program Manager reporting forms required pursuant to this Agreement.

Section 15. Non-Performance

- A. If Sponsor causes all or part of these Grant Funds to be subject to repayment to the County Program Manager Fund as a result of failure to complete the Projects according to the work scope described in Attachment A, Sponsor's next grant allocation of any kind that is from or passes through VTA shall be reduced by the amount that VTA repaid to the County Program Manager Fund.
- B. Sponsor will be ineligible for future funding under this program if Sponsor has five (5) or more Projects greater than two (2) years old on the Air District's annual "Funding Status Report."

Section 16. General Terms and Conditions

- A. **Notices.** Any notice required to be given by either Party, or which either Party may wish to give, must be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority
Director, Planning & Programming
3331 North 1st Street
San José, CA 95134-1906

To SPONSOR: City of Sunnyvale
City Manager
456 W. Olive Ave
Sunnyvale, CA, 94086

- B. **Program Liaison.** Within thirty (30) days from the Effective Date of this Agreement, Sponsor must notify VTA of Sponsor's "Program Liaison" and provide the Program Liaison's address, telephone number, and email address. The Program Liaison must be the contact to VTA pertaining to implementation of this Agreement and for information about

the Project[s]. Sponsor must notify VTA of the change of Program Liaison or of the Program Liaison's contact information in writing no later than thirty (30) days from the date of any change.

C. Termination.

Voluntary. Either Party may terminate this Agreement and/or a Project at any time by giving written notice of termination to the other Party which must specify the effective date thereof. Notice of termination under this paragraph must be given at least ninety (90) days before the effective date of such termination unless the Parties mutually agree to an earlier termination date. This Agreement will also terminate at the end of the fiscal year during which VTA loses its designation as County Program Manager for Santa Clara County.

If VTA terminates this Agreement and/or a Project pursuant to this provision, the Sponsor must cease all work under this Agreement and cease further expenditures of Grant Funds received under this Agreement for the terminated Project immediately upon receipt of the notice of termination, excepting any work permitted to continue that is specified in the notice of termination. VTA will reimburse Sponsor for eligible costs on the Project expended up to the effective date of the termination and no further Grant Funds will be provided for that Project.

If Sponsor terminates this Agreement and/or a Project pursuant to this provision, the Sponsor must return all Grant Funds provided by VTA for the specific Project up to and including the date of termination.

After Breach. VTA may terminate this Agreement and/or a Project for breach. Upon any breach, VTA will deliver a written notice of termination for breach that specifies the date of termination, which will be no less than ten (10) business days from delivery of such notice and will provide the Sponsor an opportunity to contest such breach within that period of time. If Sponsor contests the notice of termination for breach, VTA will provide written notice of VTA's determination of Sponsor's contestation. If VTA upholds the termination for breach, the written notice will specify the effective date of termination and Sponsor will have ten (10) business days to cure. If the breach is not cured within the allotted time, VTA will pursue the termination. The notice of termination will specify the Total Grant Funds VTA has paid to the Sponsor, which Sponsor must reimburse to the VTA within thirty (30) days of the effective date of termination.

D. Non-Waiver. 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.

E. Assignment: Sponsor must not assign, sell, license, or otherwise transfer any rights or obligations under this Agreement without the prior written consent of VTA.

F. Integration. This Agreement, including all attachments and references, constitutes the entire Agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations, and understandings of the Parties relative thereto.

G. Amendments. Future amendments and modifications to this Agreement must be made in writing and signed by both parties.

- H. **Attachments.** Each attachment hereto is incorporated into this Agreement as if fully set forth herein.
- I. **Severability.** If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, covenants, conditions, and provisions of this Agreement, or the application thereof to any person or circumstance, must remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- J. **Warranty of Authority to Execute Agreement.** 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 behalf of the entity that is a Party to this Agreement.
- K. **Survival.** Any provision that, by its nature, extends beyond the term or termination of this Agreement will survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date shown below.

City of Sunnyvale
(Sponsor)

Santa Clara Valley Transportation Authority
(VTA)

Dated: _____

Dated: _____

Kent Steffens
City Manager
City of Sunnyvale

Evelynn Tran
General Counsel and Interim GM/CEO
VTA

Approved as to Form:

Approved as to Form:

Rob Boco
Senior Assistant City Attorney

Shannon Smyth-Mendoza
Senior Assistant Counsel

ATTACHMENT A: PROJECT INFORMATION SUMMARY

- A. Project Number: 21SC05
- B. Project Title: Fremont Avenue Signal Timing
- C. TFCA Program Manager Funds Allocated: \$315,000
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$315,000
- F. Total Project Cost: \$350,000
- G. Project Description:

Grantee will use TFCA funds to develop, optimize and implement signal timing plans along Fremont Avenue from Wright Avenue to Manet-Bobwhite.
- H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.
- J. Comments (if any): None.

ATTACHMENT A: PROJECT INFORMATION SUMMARY

A. Project Number: 21SC06

B. Project Title: Hollenbeck Avenue Signal Timing

C. TFCA Program Manager Funds Allocated: \$315,000

D. TFCA Regional Funds Awarded (if applicable): \$0

E. Total TFCA Funds Allocated (sum of C and D): \$315,000

F. Total Project Cost: \$350,000

G. Project Description:

Grantee will use TFCA funds to develop, optimize and implement signal timing plans along Fremont Avenue from Wright Avenue to Manet-Bobwhite.

H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.

I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.

J. Comments (if any): None.

ATTACHMENT A: PROJECT INFORMATION SUMMARY

- A. Project Number: 21SC07
- B. Project Title: Mary Avenue Signal Timing
- C. TFCA Program Manager Funds Allocated: \$ 130,950
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$ 130,950
- F. Total Project Cost: \$149,595
- G. Project Description:

Grantee will use TFCA funds to develop, optimize and implement signal timing plans along Mary Avenue from Maude Avenue to El Camino Real.
- H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.
- J. Comments (if any): None.

ATTACHMENT A: PROJECT INFORMATION SUMMARY

- A. Project Number: 21SC08
- B. Project Title: Remington Drive Signal Timing
- C. TFCA Program Manager Funds Allocated: \$ 131,805
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$ 131,805
- F. Total Project Cost: \$146,355
- G. Project Description:

Grantee will use TFCA funds to develop, optimize and implement signal timing plans for Remington Drive from Bernardo Avenue to Manet Drive.
- H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.
- J. Comments (if any): None.

ATTACHMENT B

INSURANCE REQUIREMENTS

INSURANCE

Without limiting CITY's obligation to indemnify and hold harmless 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 from or in connection with the performance of the Work by CITY, its agents, representatives, employees, or subcontractors. The cost of such insurance must be borne exclusively by CITY. In the event of any material change in the Agreement Scope of Services, VTA reserves the right to change the insurance requirements set forth herein. CITY must furnish complete copies of all insurance policies, within three (3) business days of any request for such by VTA.

A. Liability and Workers' Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. General Liability coverage; Insurance Services Office "occurrence" form CG 0001. General Liability insurance written on a "claims made" basis is not acceptable. Completed Operations coverage must be continuously maintained for at least two (2) years after Final Acceptance of the Work.
- b. 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.
- c. Workers' Compensation insurance, as required by the Labor Code of the State of California, and Employer's Liability insurance.

2. Minimum Limits of Insurance

- a. CITY must maintain limits no less than:
 1. General Liability (including umbrella/excess liability): \$4,000,000 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. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event may the General Liability primary policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying General Liability policy, "Follow Form" coverage, and a "Drop Down" provision.
 2. Automobile Liability (including umbrella/excess liability): \$4,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied

by a combination of Auto with Excess or Umbrella, but in no event may the Automobile Liability primary policy limit per occurrence be less than \$2,000,000, unless Excess policies feature inception and expiration dates concurrent with the underlying auto liability policy, "Follow Form" coverage, and a "Drop Down" provision.

3. Workers' Compensation and Employer's Liability: Statutory Workers' Compensation limits and Employer's Liability limits of \$1,000,000 per accident.
- b. Notwithstanding any language in this Agreement to the contrary, if CITY carries insurance limits exceeding the minima stated in Section 2(a)(1)-(4) immediately above, such greater limits will apply to this Agreement.

3. Self-Insured Retention

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention for all coverages required herein. Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if CITY is a publicly-traded company) must be declared to and approved by VTA. If CITY is 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 \$50,000, 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.

B. Reserved.

C. Claims Made Provisions

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber. For coverage written on a claims-made basis, it must be clearly stated on the Certificate of Insurance. In addition to all other coverage requirements, such policy must provide that:

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 allows for reporting of circumstances or incidents that might give rise to future claims.

D. Other 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 are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of CITY, including VTA's general supervision of CITY; products and completed operations of CITY and its subcontractors; premises owned, occupied or used by CITY; or automobiles owned, leased, hired or borrowed by CITY. 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. CITY's insurance must 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.
- d. The General Liability General Aggregate limit must apply per project, not per policy.

2. All Coverages

- a. The insurer must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising from work performed by CITY and its subcontractors for VTA.
- 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. For all lines of coverage, 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.

E. Acceptability of Insurers

Insurance and bonds 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.

F. 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 receives notice that any of the insurance policies required by this Exhibit 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 Exhibit is canceled or coverage is reduced.

G. Maintenance of Insurance

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