

**FUNDING AGREEMENT  
BETWEEN  
CITY OF MILPITAS  
AND  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
FOR  
MILPITAS ONDEMAND**

THIS AGREEMENT (“AGREEMENT”) is between the CITY OF MILPITAS, referred to herein as “CITY”, and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as “VTA”. Hereinafter, CITY and VTA may be individually referred to as “PARTY” or collectively referred to as “PARTIES”.

**I. RECITALS**

1. Whereas, on June 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax (“2016 MEASURE B”) for 30 years for nine transportation-related program categories; and
2. Whereas, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B for 30 years to pay for the nine transportation-related program categories; and
3. Whereas, the duration of 2016 MEASURE B will be 30 years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047; and
4. Whereas, on October 5, 2017, the VTA Board of Directors established the 2016 Measure B Program (“PROGRAM”) and adopted the 2016 Measure B Program Category Guidelines; and
5. Whereas, the PROGRAM includes a Transit Operations program category (“TRANSIT OPS CATEGORY”) to increase ridership, improve efficiency, enhance mobility services for seniors and disabled, and improve affordability for the underserved and vulnerable constituencies in the county; and
6. Whereas, the TRANSIT OPS CATEGORY consists of three sub-categories, including an Innovative Transit Service Models Competitive Grant Program (“INNOVATIVE TRANSIT PROGRAM”); and
7. Whereas, on December 5, 2019 the VTA Board of Directors adopted the INNOVATIVE TRANSIT PROGRAM criteria; and
8. Whereas, on October 5, 2020 the Fiscal Year (“FY”) 2020 (July 1, 2020 to June 30, 2021) to Fiscal Year 2021 (July 1, 2021 to June 30, 2022) INNOVATIVE TRANSIT PROGRAM call for projects was released; and
9. Whereas, on March 4, 2021 the VTA Board of Directors approved the project list for the INNOVATIVE TRANSIT PROGRAM; and

10. Whereas, Milpitas OnDemand is an eligible project on the VTA Board of Directors approved project list for the INNOVATIVE TRANSIT PROGRAM; and

11. Whereas, VTA and CITY desire to specify herein the terms and conditions under which the INNOVATIVE TRANSIT PROGRAM funds will be administered to CITY by VTA as directed by the VTA Board of Directors.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

## II. AGREEMENT

### 1. PROJECT DESCRIPTION

For the Milpitas OnDemand project, the CITY will provide, manage, and coordinate the operation of the transportation services (the "PROJECT") to the public during the term of this AGREEMENT. The PROJECT must be provided in accordance with the service area and parameters, attached hereto and incorporated herein as Attachment A.

### 2. TERM OF AGREEMENT

The term of this AGREEMENT will commence on the Effective Date (as defined in the signature block below) and continue through the later of: (i) 18 months after the Effective Date, (ii) completion of the PROJECT, (iii) cancellation of the PROJECT, or (iv) termination of this AGREEMENT pursuant to the terms herein.

### 3. COST OF PROJECT

Total cost of the PROJECT ("TOTAL PROJECT COST") is estimated not to exceed \$1,355,916. TOTAL PROJECT COST means the total cumulative dollar amount actually incurred and expended toward the PROJECT by all PARTIES involved, as measure at the completion or termination of the PROJECT.

### 4. FINANCIAL CONTRIBUTION TO COST OF PROJECT

- a. VTA's Financial Contribution for PROJECT. VTA will contribute an amount not to exceed \$1,084,732 of INNOVATIVE TRANSIT PROGRAM funds to be used by CITY for completion of the PROJECT. All funds will be available on a reimbursement basis only, pursuant to the terms and conditions set forth herein.
- b. CITY's Financial Contribution for PROJECT. CITY is solely responsible for all funds CITY has expended toward the PROJECT prior to March 4, 2021, and CITY must not seek reimbursement from VTA for such costs.
- c. Additional Funds. Any additional funds required to complete the PROJECT will be CITY's sole responsibility.

- d. PROJECT Savings. If the PROJECT is anticipated to be delivered under budget, INNOVATIVE TRANSIT PROGRAM funds will be reduced in proportion to CITY's Financial Contribution to PROJECT.
- e. In all circumstances, regardless of the TOTAL PROJECT COST, CITY is responsible for contributing a minimum of 20% of the TOTAL PROJECT COST.

## 5. ELIGIBLE USE OF FUNDS

Only ELIGIBLE COSTS (as defined herein) directly related to the PROJECT costs incurred by CITY after March 4, 2021, will be eligible for reimbursement.

VTA will only reimburse CITY for actual costs directly related to the PROJECT ("ELIGIBLE COSTS"). ELIGIBLE COSTS are costs that: (i) are directly related to the planning, operation, and administration of the PROJECT; and (ii) were incurred in compliance with all applicable 2016 Measure B Program requirements.

## 6. CITY'S ROLE

- a. 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 and/or be responsible for the following tasks:
  - i. Serve as project manager to provide, manage, and coordinate the operation of PROJECT in accordance with service parameters in Attachment A.
  - ii. Perform all procurement actions necessary for PROJECT, including but not limited to 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.
  - iii. Begin PROJECT service operation within one (1) year of the Effective Date of this AGREEMENT.
  - iv. Obtain all necessary permits and certifications for PROJECT.
  - v. Keep VTA apprised of potential changes that may affect PROJECT operations.
  - vi. Conduct standard close-out activities for the PROJECT, including but not limited to performing final accounting review and reviewing all contractual requirements.

b. Other PROJECT Management Duties. CITY must:

- i. Submit a project management plan (“PMP”) to VTA in accordance with the PMP template in Attachment B within thirty (30) business days of the Effective Date of this AGREEMENT. The PMP must be in writing and must include information regarding service scope, staffing plan, cost, schedule, and contracting plan.
- ii. Actively monitor actual PROJECT expenditures to ensure that the 2016 MEASURE B funds are used to pay only for ELIGIBLE COSTS (as defined in Section 5).
- iii. Provide VTA with written quarterly progress reports (“PROGRESS REPORTS”) (as supplied by VTA to CITY) on the PROJECT, including but not limited to updates on PROJECT expenditures, any changes in scope and schedule, PROJECT status, monthly PROJECT performance such as ridership, total miles, total hours, fare collection and any other information VTA may require for inclusion in the progress updates.
- iv. Submit the PROJECT’s final report (“FINAL REPORT”) to VTA. This FINAL REPORT must be in writing and must include information regarding final PROJECT costs, total ridership, total revenue miles and total revenue hours, fare collection, along with any other information VTA may require for inclusion in the FINAL REPORT.
- v. CITY will make staff available to present on the PROJECT at VTA committees as needed.

## 7. VTA’S ROLE

VTA will review PROJECT’s PMP, PROGRESS REPORTS and FINAL REPORT, and provide oversight of the PROJECT to ensure PROJECT compliance with the 2016 Measure B Program Category Guidelines.

## 8. CITY’S OBLIGATIONS

CITY must:

- a. Ensure that all 2016 MEASURE B funds are expended on only allowable INNOVATIVE TRANSIT PROGRAM expenditures as described above in Section 5. ELIGIBLE USE OF FUNDS.
- b. Begin request for reimbursement of ELIGIBLE COSTS (see Section 5. ELIGIBLE USE OF FUNDS) from VTA within one (1) year of the Effective Date of this AGREEMENT.
- c. Submit to VTA all records including contractors’ invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- d. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this AGREEMENT for five (5) years. CITY shall make

such records available to VTA upon VTA's written request for review and audit purposes. Financial audits will be performed at VTA's sole discretion.

- e. Submit invoices to VTA at [vta.accounts payable@vta.org](mailto:vta.accounts payable@vta.org), no more frequently than monthly, for reimbursement of ELIGIBLE COSTS (see Section 5. ELIGIBLE USE OF FUNDS). CITY must submit invoices within one year of the date CITY incurs the cost submitted on the invoice for reimbursement (unless otherwise approved by VTA in writing).

## **9. VTA'S OBLIGATIONS**

VTA will remit the amount due to the CITY under an invoice within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice complying with the requirements set forth herein.

## **10. MODIFICATION TO PROJECT SERVICE**

CITY must inform VTA, in writing, of any minor modifications to PROJECT service, including, but not limited to removal of any proposed pick up/drop off locations and schedule adjustments within a one-hour window that do not impact frequency or service or service area changes.

CITY must inform VTA, in writing, of potential major modifications to PROJECT, including but not limited to extended or reduced service hours of more than 30 minutes and changes in service areas.

## **11. INDEMNIFICATION**

Neither VTA nor any officer or employee thereof 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.

## **12. INSURANCE**

At all times during this AGREEMENT, CITY must comply with the insurance requirements and specifications of Attachment C attached hereto, and herein incorporated by reference.

## **13. 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"), the CITY must require that VTA be named as (i) Additional insureds on a primary and non-contributory basis with Separation of Insureds and Waiver of Subrogation on all policies of insurance, except when not applicable required in the Third Party Contract and (ii) indemnified parties in any indemnity provision contained in the Third Party Contract.

#### **14. PUBLIC WORKS**

If the CITY awards a contract to a third party for the performance of a public work (as defined in California Labor Code Section 1720 through 1720.6) (a “Public Works Contract”) in connection with this AGREEMENT, the CITY must comply, and must require such third party to comply, with the requirements of California Labor Code Section 1720 et seq. If the Public Works Contract is funded in whole or in part with federal funds, the 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).

#### **15. COMPLIANCE WITH APPLICABLE LAW**

In the execution of the PROJECT and performance of its responsibilities set forth herein, CITY and any contractor or subcontractors must comply with all applicable requirements of state, federal, and local law. CITY and any contractor or subcontractors must comply with any applicable laws, regulations, and/or guidelines relating to COVID-19, including, but not limited to, Centers for Disease Control and Prevention (CDC) guidelines and Santa Clara County Department of Public Health orders and/or guidelines.

#### **16. COMPLIANCE WITH WAGE AND HOUR LAWS**

CITY and any contractor or subcontractors they employ to perform work of the PROJECT under this AGREEMENT, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.

#### **17. 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 2016 Measure B Program Category Guidelines for the TRANSIT OPS CATEGORY as identified in Attachment D, attached hereto.

#### **18. TERMINATION**

Each of the PARTIES may at any time terminate this AGREEMENT by giving ten (10) business days' written notice of such termination to 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.

In the event of termination as set forth herein, CITY must submit its final invoice to VTA within thirty (30) calendar days of the effective date of termination solely for ELIGIBLE COSTS incurred by CITY prior to the effective date of the termination (see Section 5. ELIGIBLE USE OF FUNDS).

#### **19. AUDIT AND RECORDS**

a. CITY must maintain, and shall 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.

- b. For the duration of the AGREEMENT, and for a period of five (5) years after final payment, VTA shall have access during normal business hours to any books, accounts, records, data, and other relevant documents that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions and copies thereof must be furnished upon request.

## 20. NOTICES

All notices required or permitted under this AGREEMENT must be in writing, will be effective five (5) days after being sent by personal service or certified mail, or forty-eight (48) hours after being sent by electronic mail to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the PARTIES hereto.

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:  
Ned Thomas  
Planning Director  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035  
Email: nthomas@ci.milpitas.ca.gov

Written notification to the other PARTY must be provided, in advance, for changes in the name or address of the individuals identified above.

## 21. GENERAL TERMS AND CONDITIONS

- a. **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.
- b. **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.

- c. **Amendment.** No 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.
- d. **Entire Agreement.** This AGREEMENT contains the entire understanding between VTA and CITY relating to the subject matter hereof. This AGREEMENT supersedes any and all other agreements which may have existed between the PARTIES, whether oral or written, relating to the subject matter hereof. This AGREEMENT is binding upon each PARTY, their legal representatives, and successors for the duration of the AGREEMENT.
- e. **Representation and Warranty of 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 behalf of the entity that is a party to this AGREEMENT.
- f. **No 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 either PARTY's right to require strict performance of all of the terms, covenants, and conditions hereunder.
- g. **Dispute Resolution.** 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 shall give written notice thereof to the other PARTY. The PARTIES shall 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.
- h. **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.
- i. **Governing Law.** The laws of the State of California will govern this AGREEMENT, as well as any claim that might arise between CITY and VTA, without regard to conflict of law provisions.
- j. **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.
- k. **Attribution to VTA.** CITY must include attribution to VTA that indicates PROJECT was funded by 2016 Measure B Funds. This provision applies to any project or publication that was funded



in part or in whole 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.

- l. 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 shall 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.
  
- m. 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.

***Signatures of PARTIES on following page.***

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the last date set forth below (“Effective Date”).

***Santa Clara Valley  
Transportation Authority***

***City of Milpitas***

---

Carolyn M. Gonot  
General Manager/CEO

---

Steve McHarris  
City Manager

---

Date

---

Date

Approved as to Form:

Approved as to Form:

---

Shannon Smyth-Mendoza  
Senior Assistant Counsel

---

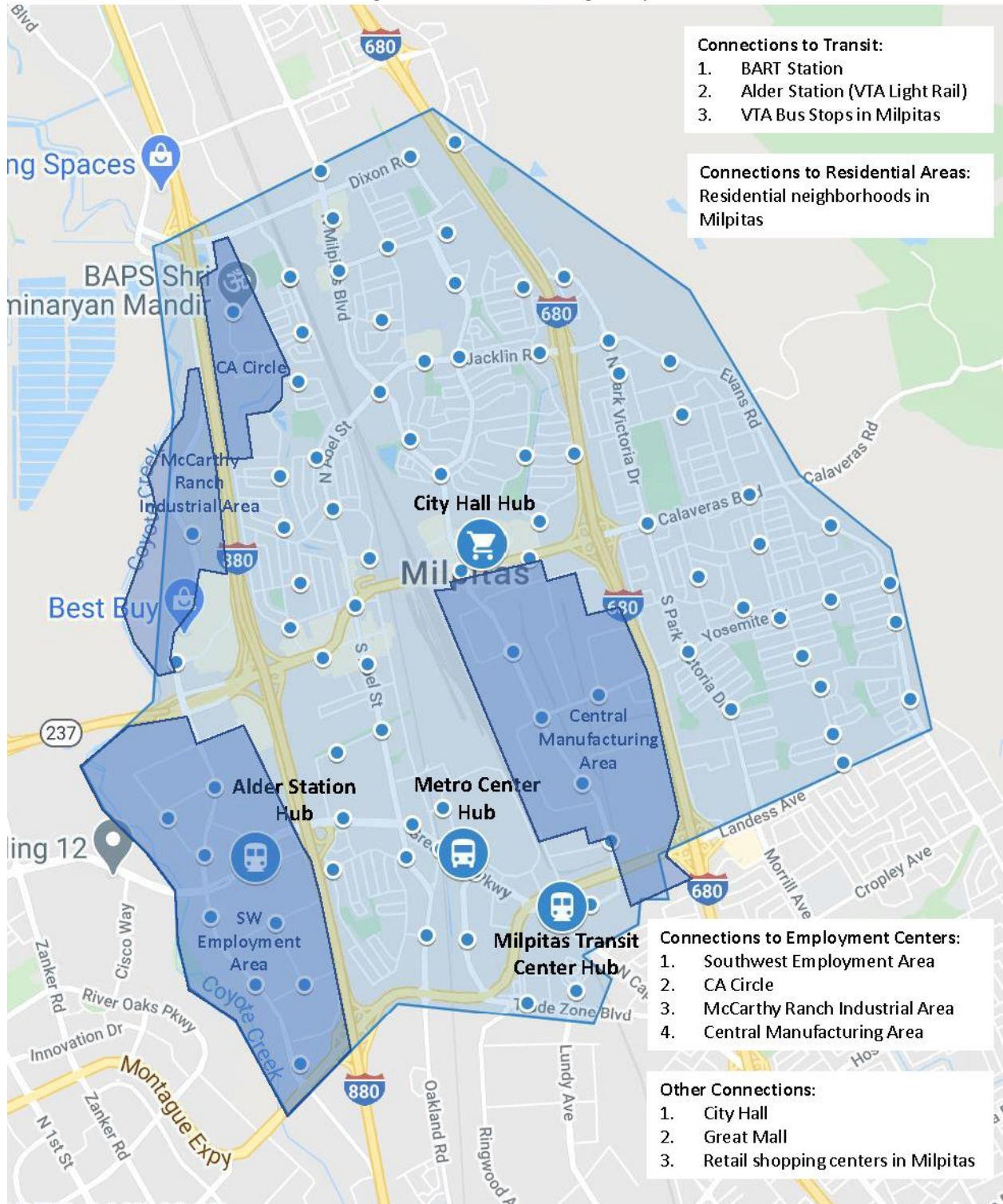
Christopher J. Diaz  
City Attorney

## **ATTACHMENT A**

### **Service Parameters**

1. **Service Span:** Service runs Monday through Friday. Service hours match current VTA fixed bus routes in Milpitas and will change accordingly if VTA service hours in Milpitas change at any point in the future.
2. **Service Coverage:** City limit of Milpitas, as shown in Figure 1.
3. **Routes:** Service is on-demand micro-transit service that has many virtual stops across the city limit of Milpitas to any one of four hub locations: City Hall, Metro Center Hub, Alder Station, and Milpitas Transit Center. Vehicles may pick up passengers from anywhere within the service coverage area and may take the shortest route to the next stop on the ever-updating vehicle itinerary.
4. **Infrastructure:** Service operates with seven minivans, three of which will be fully ADA accessible. Service vehicle accommodates bicycles on board.
5. **Fares:** \$2.5 regular fares and \$1 for disabled, low-income, or youth population.
6. **Online App:** Passengers can book trips through mobile and web applications. All service data is available through a real-time dashboard. The software allows riders to pay in a variety of ways including cash, credit/debit cards, and any applicable VTA fare media. The online app offers seat selection options for mobility-limited riders/wheelchair users as well as standard seat types for ambulatory passengers.

Figure 1: Service Coverage Map



## ATTACHMENT B

### Project Management Plan Template

Submitted by: Contact for this PMP.

First submittal date:

Revision version & date:

#### PART A – PROJECT INFORMATION

1. Project Name:
2. Project Sponsor:
3. Partnering Agencies: <List all project partners>
4. Date
  
5. Project Description:
  - a. Service type
  - b. Service area, route & stops
  - c. Service span
  - d. Vehicles  
<Note any accommodation of wheelchair users and bikes>
  - e. Scheduling  
<Note any technology, website, online applications for the user and operators>
  - f. Fare collection  
<Describe how you plan to collect fares>
  
6. Project team  
(Identify project staff/team/partner roles and responsibilities as applicable)
  - a. Project Manager  
<The PM must be a Member Agency staff. Please identify email/phone and VTA will contact the PM for any project or PMP questions.>
  - b. Procurement manager
  - c. Operations
  - d. Coordinator
  - e. Safety and Training
  - f. Marketing/outreach
  - g. Others

Attach a project organization chart.

#### PART B – FINANCIAL MANAGEMENT

1. Total project cost estimate:
  - a. Capital cost
  - b. Operating cost

2. Source of Funds

(Identify 2016 Measure B fund and non-2016 Measure B fund sources)

**PART C – PROJECT IMPLEMENTATION & MANAGEMENT**

1. Project schedule

<Modify the following schedule table as needed.>

Project Milestone	Month/Year
Release RFP for service provider/operator	
Develop contract	
Award/Execute contract	
Recruit project staff	
Conduct project outreach and marketing	
Start-up operation (if applicable)	
Full operation	

2. Training and qualifications of project staff and operators

3. Agreements

<Identify any existing/anticipated agreements and provide date of execution & expiration>

## ATTACHMENT C

### 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 IN ADVANCE OF PROPOSAL SUBMISSION TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS CONTRACT.**

#### INSURANCE

Without limiting City's obligation to indemnify and hold harmless VTA, City must 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 City, its agents, representatives, or employees, or subcontractors. The cost of such insurance must be included in Contract price. In the event of any material change in the Contract Scope of Services, VTA reserves the right to change the insurance requirements set forth herein. City must furnish complete copies of all insurance policies required herein, within five (5) 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. Insurance Services Office General Liability coverage ("occurrence" form CG 0001), including Products/Completed Operations Liability. General Liability insurance written on a "claims made" basis is not acceptable.
- b. Insurance Services Office 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.

- d. Public Officials Errors and Omissions Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of City's services under this Agreement. This coverage must be continuously maintained for a minimum of two (2) years following completion of this Agreement. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.
- e. Cyber Liability (including privacy liability and network security coverage).

## **2. Minimum Limits of Insurance**

City must maintain limits no less than:

- a. General Liability: \$10,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability 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. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying General Liability policy, "Follow Form" coverage, and a "Drop Down" provision.
- b. Automobile Liability (including umbrella/excess liability): \$10,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying auto liability policy, "Follow Form" coverage, and a "Drop Down" provision.
- c. Workers' Compensation and Employer's Liability: Statutory Workers' Compensation limits and Employer's Liability limits of \$1,000,000 per accident.
- d. Public Officials Errors and Omissions Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim. This requirement may be satisfied by a combination of Professional Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying professional liability policy, "Follow Form" coverage, and a "Drop Down" provision.
- e. Cyber Liability: \$1,000,000 per occurrence.



### **3. Self-Insured Retention**

If City is a governmental authority such as a state, municipality or special district, self-insurance is permitted.

## **B. 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 provide that:

1. The policy must be in effect as of the date of this Agreement and the 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 contract period.
4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

## **C. 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.
- e. Products/Completed Operations Liability coverage must be maintained for a minimum of two (2) years following completion of this Contract.

## **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. The Certificate must disclose the actual amounts of all deductibles or self-insured retentions.
- b. If any coverage forms or endorsements required by this Contract 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 Contract, VTA reserves the rights to require City to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

## **D. 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.

## **E. Certificates of Insurance**

City must furnish VTA with a Certificate of Coverage. The certificates for each insurance policy are to be signed by an authorized representative of that provider. City must instruct their insurance broker/agent to submit all certificates and required notices electronically in PDF format to Insurance.certificates@vta.org. All endorsements must be attached to the 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 above, 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 Contract number 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 Contract Documents.

It is a condition precedent to award of this Contract that all insurance certificates and endorsements be received and approved by VTA before Contract execution. No work may be performed 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.

**F. Maintenance of Insurance**

If City fails to maintain insurance as required herein, VTA, at its option, may suspend payment for work performed and/or may order City to suspend work at City's expense until a new policy of insurance is in effect.

## ATTACHMENT D

### Transit Operations Program Guidelines

*(Adopted by VTA Board of Directors on October 5, 2017)*

#### **Definition from Resolution No. 2016.06.17**

The revenue from this program category will provide additional funds specifically for bus operations to serve vulnerable, underserved, and transit dependent populations throughout the county. The goals of the program category are to increase ridership, improve efficiency, enhance mobility services for seniors and disabled, and improve affordability for the underserved and vulnerable constituencies in the county. As VTA considers modifications to bus operations and routes to improve ridership and efficiencies, these funds may also be utilized to maintain and expand service to the most underserved and vulnerable populations. The funds may be used to increase core bus route service frequencies, extending hours of operations to early morning, evenings and weekends to improve mobility, safe access and affordability to residents that rely on bus service for critical transportation mobility needs. Attachment D describes the list of Candidate Projects and Programs.

#### **Total Funding**

- \$500 million in 2017 dollars.

#### **Distribution**

- VTA anticipates that allocations will be programmed based upon the total allocation for the Transit Operations Program contained in 2016 Measure B divided by the number of years in the measure.
- Future allocations will vary depending upon the amount of sales tax revenue collected.
- The Transit Operations Program Area funding will be allocated for the following four programs identified in 2016 Measure B Attachment D:
  - Enhance Frequent Core Bus Network by increasing core bus route service frequencies, and expanding or adding additional evening, late night and weekend service.
  - Expand mobility services and affordable fare programs for seniors, disabled, students and low-income riders.
  - Support new/innovative transit service models to address first/last mile connections and transit services for the transit dependent, vulnerable populations and paratransit users that is safe and accountable.
  - Improve amenities at bus stops to increase safety, security and access with lighting and access improvements.

The proposed allocations for the four categories are as follows:

### **2016 Measure B Transit Operations Program Area**

Area	Funding Allocation (Proposed)
Frequent Core Bus Network	73%
Innovative Mobility Models & Programs	8%
Fare Programs	15%
Bus Stop Amenities	4%

### **Implementation**

For FY18 & FY19 Budget Allocation:

- The Enhanced Frequent Core Bus Network will directly fund VTA’s core bus network of services increasing core bus route service frequencies, and expanding or adding evening, late night and weekend service.
- The Fare Programs will fund the Transit Assistance Program (TAP) and reduced fares for youth.
- The Innovative Transit Models Program will support goals to address first/last mile connections. Strategies may include competitive grant programs to help fund services operated by local jurisdictions, utilize excess paratransit capacity, and other programs that encourage investments in local service.
- The Bus Stop Amenities Program will directly fund improvements at VTA’s bus stops. The bus stop improvements will be prioritized based on VTA’s Transit Passenger Environment Plan and ongoing maintenance needs.

Six to 12 months into the implementation of the Next Network, staff will have ridership data available to evaluate potential increases to the ridership hours where we see higher demand for service. To meet our commitment as expressed in 2016 Measure B and in collaboration with the public, VTA will make increased investments in service hours in the system focusing on those areas where we see the greatest demand by transit dependent populations.

VTA will consider the potential for further reducing the fares for seniors and youth with a requested goal of free rides.

### **Criteria**

- Only projects and programs currently listed on 2016 Measure B Attachment D are eligible.

### **Requirements**

- For potential competitive grants for the Innovative Transit Models Program:
  - Reporting requirements will be detailed in agreements executed with VTA for project funding.
  - All applications must include a delivery schedule.
  - Funds will be available on a reimbursement basis.
- VTA Complete Streets reporting requirements will be required for all capital

improvements projects.

- All collateral material will be required to display a 2016 Measure B logo.