

COMPREHENSIVE AGREEMENT

BETWEEN THE

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
(VTA)

AND THE

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
(BART)

IN CONNECTION WITH THE PROPOSED

SANTA CLARA COUNTY BART EXTENSION

- d. BART will establish priorities and schedules for implementation and coordination of all ongoing capital work on the SVRT Extension and the BART Core System.
4. VTA will have no financial responsibility for seismic upgrade on the BART Core System resulting from changes in seismic standards or design and construction practices which occur prior to the commencement of revenue service on the SVRT Extension. VTA will be supportive of BART's efforts to obtain regional, state, and/or federal funds for such purposes.
5. VTA's future responsibility for ongoing capital costs of extensions of the BART service area will be defined in subsequent agreements pertaining specifically to such extensions.

E. ANNUAL SOURCES OF REVENUE FOR OPERATING, MAINTENANCE, AND CAPITAL COSTS

The Parties agree that the annual sources of revenue described below will be credited by BART toward VTA's SVRT Extension ongoing operating, maintenance and capital financial responsibilities under Sections IV.C. and D above. The revenues will be credited by BART first to VTA's SVRT Extension operating and maintenance cost responsibilities, second to VTA's SVRT Extension capital reserve accounts, and then distributed to VTA all as more fully described in Section IV.F. of this Agreement.

1. Dedicated Revenue

- a. VTA will advance to BART for SVRT Extension operating, maintenance and capital costs as described in Sections IV.C. and D. of this Agreement a subsidy in the amount of \$12 million per quarter (\$48 million annually) in Fiscal Year 01/02 dollars. Such amount (the "Subsidy") will be adjusted quarterly from December 31, 2001 at a rate equal to the growth rate of all taxable sales in Santa Clara County for the most recent quarter for which taxable sales data is available versus the same quarter of the prior year.

VTA will remit the full amount of the adjusted quarterly payments to BART on the first day of the BART fiscal quarter in which BART service commences on the SVRT Extension. After that first quarterly payment, VTA will remit to BART the full amount of all subsequent quarterly payments on the first day of each BART fiscal quarter. Such adjusted payments will continue for the duration of this Agreement.

- b. VTA will dedicate to BART in payment of the Subsidy a revenue stream from new or existing ongoing tax source (s) sufficient to cover the Subsidy as adjusted and described in Section IV.E.1.a. All documents pertaining to said dedication must be transmitted to BART at least thirty (30) days before their scheduled approval date by VTA, and must be approved in advance by BART. Said dedication must be fully effective prior to commencement of revenue service, or no later than January 1, 2009.
- c. In the event VTA does not fulfill its obligations as set forth in Section IV.E.1.b above on or before January 1, 2009, the automatic dedication of Transportation Development Act ("TDA") Funds described in Section IV.E.1.d) shall be implemented immediately and automatically without any further action by VTA's Board of Directors.
- d. Within six (6) months of approving this Agreement, VTA's Board of Directors will dedicate to BART VTA's TDA Funds in the amount of the Subsidy described in Section IV.E.1.c. and will take all necessary steps to execute such dedication, such that it may be implemented immediately and automatically without further action by VTA's Board of Directors. All documents pertaining to said dedication must be mutually agreed to by both Parties and must be transmitted to BART at least thirty (30) calendar days before their scheduled approval date by VTA. The dedication of TDA funds

described in this Section IV.E.1.d will terminate if VTA satisfies the conditions in Section IV.E.1.b.

2. Fare Revenues

- a. Basic Fare Revenues - The responsibility and authority to establish fares for the SVRT Extension will reside exclusively with BART. Such fares for the SVRT Extension will be consistent with those in effect on the BART Core System. Net fare revenue will be calculated as base fares paid by passengers using the SVRT Extension stations for entry and/or exit* as determined by BART's DAS, net of discounts and deductions taken. If possible, within the capabilities and limitations of DAS, BART will calculate discounts and deductions specifically for SVRT Extension basic fares. If not possible within said capabilities and limitations, discounts and deductions will be based on the systemwide average. All SVRT Extension basic fare revenues will be collected and accounted for and credited by BART, according to the process described in Section IV.F.
- b. Fare Surcharges and Premium Fares – At the request of VTA, BART will establish such fares at any of the stations on the SVRT Extension. Such fares will be collected, accounted for and credited by BART according to the process described in Section IV.F.

3. Ancillary Revenues

- a. Concession, Fiber Optic and Advertising Revenues – VTA may enter into agreements with vendors of goods and services on the SVRT Extension or into franchises for advertising in accordance with Section VIII.A.2.b.(2) of this Agreement. Alternatively, BART and VTA may jointly determine that in some instances it may be more beneficial for BART to enter into certain agreements

* In negotiating this Agreement the Parties agreed that BART Core System riders who would be diverted from Core System stations to SVRT Extension stations upon the commencement of revenue service on the SVRT Extension will not be deducted from the total number of passengers using the SVRT Extension

and franchises for both the SVRT Extension and the BART Core System. Revenues from concession and fiber optic agreements and franchises will be allocated proportionately to the SVRT Extension and the BART Core System on the basis of the most appropriate measure as agreed to by the Parties. All agreements and franchises described herein will provide for net revenues attributed to the SVRT Extension to be remitted directly to BART and will be accounted for and credited by BART according to the process described in Section IV.F.

- b. Parking Revenues – Parking revenues from parking facilities on the SVRT Extension will be collected by BART or its agents and accounted for and credited by BART according to the process described in Section IV.F.
- c. Parking Fines – All parking fines will be collected by BART or its agents at SVRT Extension stations and at parking facilities on the BART Core System for which VTA has paid a proportionate share of initial capital costs. Such fines will be accounted for and credited by BART according to the process described in Section IV.F.
- d. Other – Any investments on the BART Core System for which VTA has paid a proportional share of initial capital costs which generate ancillary revenue (e.g., parking) will be collected, accounted for, and credited by BART according to the process described in Section IV.F.

stations for entry and/or exit. At the same time, the Parties also agreed that BART will have no financial responsibility for any ongoing capital investments south of the WSX Project.

F. PROCESS FOR ALLOCATING ANNUAL REVENUES FOR OPERATING, MAINTENANCE, AND CAPITAL COSTS

The process for allocating the annual revenues under Section IV.E. to the operating, maintenance, and capital costs as described in Sections IV.C. and D. will be as follows:

1. On an annual basis, within sixty (60) days after BART's audited financial statements are approved by BART's Board of Directors, BART will calculate for the previous fiscal year the amount of SVRT Extension annual revenues received as described in Section IV.E. and will also calculate the amount of such revenues to be credited toward SVRT Extension operating and maintenance costs for the previous fiscal year. SVRT Extension operating and maintenance costs will be calculated using the BART Operating and Maintenance (O&M) Cost Model as developed by Manuel Padron and Associates, or a similar model mutually agreed upon by BART and VTA, collectively referred to herein as the "Model". The process for using the Model to calculate operating and maintenance costs is described in Exhibit B. If BART and VTA differ on the service level inputs described in Step 2 of Exhibit B, they will mutually agree on an independent consultant to help resolve their differences.
2. The balance of revenues for the fiscal year, over and above revenue used to cover operations and maintenance costs, will be allocated to an interest bearing, segregated capital reserve fund. Starting with the first year of operation, the minimum capital reserve fund allocation will be 5% of the operating and maintenance costs, as determined in accordance with Section IV.F.1.above. The minimum capital reserve fund allocation will increase annually by an amount equal to 1% of the operating and maintenance cost to a level, not to exceed 20% of the operating and maintenance cost as shown in Exhibit C, attached hereto and incorporated by reference as if fully set forth herein. The maximum capital reserve fund allocation in any year will be 30% with the exception of circumstances as described in Section IV.F.5. below.

3. The capital reserve fund and all interest accruing to that fund will be used as a source of funding for ongoing capital costs under this Agreement. The CIP and annual capital investment financial plan as described in Section III. above will be used to determine the amounts from the capital reserve fund to be used for particular capital projects.
4. If revenues less operating and maintenance allocations in any fiscal year are insufficient to cover the required minimum capital contributions as described in Section IV.F.2. and Exhibit C, BART will invoice VTA and VTA will remit the balance of funds needed to meet these commitments within sixty (60) days of being invoiced by BART.
5. If revenues less operating and maintenance allocations and capital reserve fund allocations in any fiscal year are more than the required maximum of 30% capital reserve fund allocation as determined in Exhibit C, BART will remit the excess revenues to VTA within sixty (60) days of such determination or, at VTA's option such excess revenues may be carried forward to cover VTA's capital reserve fund allocations in future years. However, during the first fifteen 15 years of SVRT Extension operation, VTA will not receive revenues in excess of the required maximum 30% capital reserve fund allocations unless mutually agreed levels of revenue vehicles, shop capacity, and AFC equipment have been provided by VTA to support actual and projected ridership levels for the next five (5) year period. Such revenues will be allocated to an interest bearing, segregated excess capital reserve fund. The excess capital reserve fund will be used to fund investments in additional revenue vehicles, shop capacity, and AFC equipment. The excess capital reserve fund will be held until such time that sufficient funds for mutually agreed levels of revenue vehicles, shop, and AFC capacity have been committed.
6. Within sixty (60) days of BART Board of Directors' approval of BART audited financial statements, BART will supply VTA with a report on a) all revenues received under Section IV.E., b) allocations made to operating and maintenance costs, the capital reserve fund, and the excess

capital reserve fund, c) earnings on the capital reserve and excess capital reserve funds, and d) funds drawn from the capital reserve fund and the excess capital reserve fund in the previous fiscal year.

7. VTA and BART will mutually agree on the method of determining when or if superfunding of the capital reserve exists and the appropriate remedies.

G. JOINT DEVELOPMENT REVENUES

1. VTA will be entitled to all joint development revenues from stations on the SVRT Extension net of any operating and capital expenses directly related to such development that may be incurred by BART.
2. BART will be entitled to all joint development revenues from stations in the BART District. VTA will not be charged for any capital expenses BART may incur in support of such development.

H. ADDITIONAL SOURCES OF FUNDING FOR CAPITAL COSTS

It is the Parties expectation that the capital reserve and excess capital reserve funds alone will not be sufficient to cover all capital costs of the SVRT Extension. The Parties agree that VTA will meet its remaining responsibility for SVRT Extension ongoing capital costs as described in Section IV.D. herein by obtaining or allocating grants, formula funds, or other funding from private, local, regional, state, and federal sources.

1. Formula funds, including but not limited to, Section 5307 Fixed Guideway, and Section 5309 Urbanized Area formula funds which VTA and/or Santa Clara County receive(s) because of the operation of the SVRT Extension in Santa Clara County will be allocated to, and used to meet VTA's financial responsibilities for ongoing capital costs.

I. FUTURE EXTRAORDINARY EVENTS

1. The Parties agree that VTA will have financial responsibility to contribute funds to resolve future Extraordinary Events. As used herein an

Exhibit C

Annual Funding for Capital Reserve Fund

Percentage of Operating & Maintenance and
Overhead Costs

<u>Year of SVRTX Operation</u>	<u>Minimum</u>	<u>Maximum</u>
1	5%	30%
2	6%	30%
3	7%	30%
4	8%	30%
5	9%	30%
6	10%	30%
7	11%	30%
8	12%	30%
9	13%	30%
10	14%	30%
11	15%	30%
12	16%	30%
13	17%	30%
14	18%	30%
15	19%	30%
16	20%	30%
all subsequent years	20%	30%

The minimum calculation of the required VTA capital contribution in any particular year is the minimum percentage specified in the table above multiplied by the sum of operating and maintenance costs plus fully allocated overhead.

The maximum calculation of the required capital contribution in any particular year is 30% multiplied by the sum of operating and maintenance costs plus fully allocated overhead.