

**Council Meeting: February 26, 2008****SUBJECT: Frances Street Transit Center Project, Authorization for the City Manager to Execute an Operations and Maintenance Agreement with the Santa Clara Valley Transportation Authority****REPORT IN BRIEF**

Authorization is requested for the City Manager to execute an Operations and Maintenance Agreement (Attachment A) for the Frances Street Transit Center, which is now substantially complete. The center was constructed by the City and is being utilized by Santa Clara Valley Transportation Authority (VTA) buses. The *Frances Street Transit Corridor Improvements – Project 824910* was developed in response to community input gathered through the development of the Sunnyvale Multimodal Station, Sunnyvale Downtown Urban Design Plan, and the Sunnyvale Downtown Plaza Project.

The Operations and Maintenance Agreement clarifies responsibilities between the City and the VTA. The City and the VTA partnered to fund and design this project; the Operations and Maintenance Agreement assumes continued cooperation to operate the facility.

Staff recommends the City Council authorize the City Manager to execute the attached draft Operations and Maintenance Agreement (Attachment A). Maintenance of the facility will total \$7,500 in new annual maintenance costs. These operating costs are included in Project 824910 and were authorized as part of the FY 2007/2008 Adopted Budget. In subsequent years, the operating costs for the Frances Street Transit Center will be reflected in the Department of Public Works' Field Services budget for *Service Delivery Plan 21602 – Sunnyvale Multimodal Transit Station Maintenance*, as a separate activity for Frances Street transit center maintenance.

BACKGROUND

The City of Sunnyvale approved major new developments in the downtown area and has completed an Urban Design Plan for further downtown redevelopment. A central feature of the redeveloping downtown is the core transit facilities in the vicinity of Evelyn Avenue and Frances Street. As a result, *Frances Street Transit Corridor Improvements – Project 824910* was financed. The project's scope includes:

- Installing transit enhancement improvements at the VTA Sunnyvale Transit Center located on Frances Street, between Evelyn Avenue and Cappella Way;
- Creating a pedestrian-scale transit corridor that connects pedestrians and transit riders from six Santa Clara Valley Transportation Authority (VTA) bus routes to the Sunnyvale Caltrain Multimodal Station, Downtown Commercial Center, Town Center development, Mozart office buildings, and Plaza del Sol;
- Six bus stop locations, two on the west side of the street and four on the east side of the street;
- An altered street configuration;
- Sidewalk and crosswalk improvements and enhancements;
- Bus shelters;
- Bicycle facilities;
- Pedestrian-scaled street lighting and pedestrian amenities;
- Enhanced landscaping; and
- A VTA bus drivers' restroom.

The City, in partnership with VTA and the Peninsula Corridor Joint Powers Board (Caltrain), recently completed Phases I and II of the Sunnyvale Multimodal Station. These initial phases provided new parking facilities and passenger amenities for Caltrain patrons.

As part of the conceptual design effort for the Sunnyvale Multimodal Station, improvement concepts were developed for the existing VTA major bus stop on Frances Street as Phase III of the Sunnyvale Multimodal Station. The City subsequently secured a total of \$1,301,611 in funding from the Federal Transit Administration (FTA), the Bay Area Air Quality Management District Transportation Fund for Clean Air (BAAQMD TFCA), and City funds to design and construct Phase III improvements along Frances Street.

On April 6, 2004, City Council authorized Budget Modification No. 33 to accept the BAAQMD TFCA grant funding for the *Frances Street Transit Corridor Improvements – Project 824910* (RTC 04-129). With this action, a project was created in the 10-Year Resource Allocation Plan and \$429,000 from the BAAQMD TFCA grant program was appropriated to the project. In addition, \$329,700 of City matching funds from the Regional Transportation Mitigation Reserve of the Capital Projects Fund/Traffic Mitigation Sub-fund, were budgeted. The total project budget at that time totaled \$758,700.

On August 10, 2004, City Council authorized Budget Modification No. 2 (RTC 04-277) to accept \$178,000 from the FTA FY 2004 Transit Enhancement Grant

Program. Simultaneously, the City matching funds were reduced to \$151,700. The total project budget remained at \$758,700.

During the design contracting phase, it was determined that additional project funding would be required to fully fund the project concept as approved by Council. On February 1, 2005, City Council Authorized Budget Modification No. 22 (RTC 05-034) to appropriate \$236,002 of additional FTA Transit Enhancement Grant Program funds and \$306,909 in additional City funds from the Regional Traffic Mitigation funds, increasing the City's approved financing to \$458,609 and the total project budget to \$1,301,611. At that time, a design contract was awarded to a team lead by DKS Associates.

On May 17, 2005, the City Council approved a conceptual design for the project (RTC 05-157). On September 12, 2006, the City Council awarded a construction contract for the project (RTC 06-288). The project is now substantially complete and an operating and maintenance agreement should be authorized and financed.

EXISTING POLICY

Land Use and Transportation Element C3.5.4 — Maximize the provision of bicycle and pedestrian facilities.

Land Use and Transportation Element C3.5.7 — Ensure safe and efficient pedestrian and bicycle connections to neighborhood transit stops.

Land Use and Transportation Element C3.5.8 — Work to improve bus service within the City, including linkages to rail.

Land Use and Transportation Element C3.6.1 — Develop clear, safe, and convenient linkages between all modes of travel; including, access to transit stations and stops, and connections between work, home, and commercial sites.

DISCUSSION

Authorization is requested for the City Manager to execute an Operations and Maintenance Agreement with the VTA for the Frances Street Transit Center located on Frances Street between Evelyn Avenue and Cappella Way.

The draft Operations and Maintenance Agreement defines responsibilities and standards for maintaining and operating facilities constructed by *Frances Street Transit Corridor Improvements – Project 824910*, including sidewalks, signs, lighting, bus shelters, the driver's restroom, and landscaping. The agreement was drafted by City staff after analyzing the types of facilities, typical maintenance responsibilities for those facilities, and City and VTA

abilities to maintain the facilities. VTA staff reviewed the agreement and provided input. VTA staff concurs with the draft agreement's provisions.

FISCAL IMPACT

The proposal requesting authority to enter into a maintenance agreement with VTA will not have an impact on the FY 2007/2008 Approved Budget. The \$7,500 in City maintenance costs was included in Project 824910 for the full 20-year planning horizon and expenditure authority was granted when the budget was adopted. VTA will fund their portion of maintenance costs through their transit operating budget, including costs for maintaining the bus driver restroom facility, bus shelter lighting, and signs. Beginning in FY 2008/2009, the City's operating expenditures will appear in the Department of Public Works' Field Services budget for *Service Delivery Plan 21602 – Sunnyvale Multimodal Transit Station Maintenance*. A new activity will be established to differentiate these expenditures from expenditures for Multimodal Transit Station maintenance that are reimbursable from Caltrain.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center, and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Authorize the City Manager to execute the attached draft Operations and Maintenance Agreement with the VTA for the Frances Street Transit Center.
2. Direct staff to negotiate modifications to the draft Operations and Maintenance Agreement with the VTA as specified by Council.
3. Do not authorize the City Manager to execute an Operations and Maintenance Agreement.

RECOMMENDATION

Staff recommends Alternative 1: Authorize the City Manager to execute the attached draft Operations and Maintenance Agreement with the VTA for the Frances Street Transit Center.

The Frances Street Transit Center project creates a transit facility on a City owned public street. An Operations and Maintenance Agreement clarifies and formalizes maintenance responsibilities for project improvements between the VTA, the transit operator, and the City, which owns the public street infrastructure.

Reviewed by:

Marvin A. Rose, Director, Public Works

Prepared by: Jack Witthaus, Transportation and Traffic Manager

Approved by:

Amy Chan
City Manager

Attachments

A) Draft Operations and Maintenance Agreement

COOPERATIVE AGREEMENT

BETWEEN

THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

AND

THE CITY OF SUNNYVALE

FOR

**SUNNYVALE MULTIMODAL STATION PHASE III
FRANCES STREET TRANSIT BUS FACILITIES**

OPERATION AND MAINTENANCE

IN

THE CITY OF SUNNYVALE

CONTRACT NO. _____

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COOPERATIVE AGREEMENT
BETWEEN
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
THE CITY OF SUNNYVALE
FOR
SUNNYVALE MULTIMODAL STATION PHASE III
FRANCES STREET TRANSIT BUS FACILITIES
OPERATION AND MAINTENANCE
IN
THE CITY OF SUNNYVALE

WHEREAS, the Santa Clara Valley Transportation Authority (VTA) is a special district created pursuant to the California Public Utilities Code Sections 100,000 et seq.; and

WHEREAS, the City of Sunnyvale (City) is a duly established municipal corporation organized and existing under the laws of the State of California and a municipal charter effective May 18, 1949; and

WHEREAS City has constructed roadway, utility, landscaping, restroom and streetscape improvements to serve users of VTA's transit bus system on Frances Street in the City of Sunnyvale ("Project"); and

WHEREAS, the City owns and maintains Frances Street as a public street, and rights of way along which the Project will operate; and

WHEREAS, certain parts of the completed Project will become part of the maintenance responsibility of VTA and certain parts will become the maintenance responsibility of the City, and the Parties desire to define the maintenance responsibility for each facet of the Project between the Parties; and

WHEREAS, the Parties desire to set forth the principles which will govern their cooperation during operation of the Frances Street transit bus facilities in the City;

NOW THEREFORE, in consideration of the mutual covenants and agreements contain herein, the City and VTA, sometimes collectively referred to herein as the "Parties" have entered into this Cooperative Agreement (Agreement) effective on the date set forth on the signature page hereof and agree further as follows:

ARTICLE 1 – DEFINITIONS *

Sunnyvale Multimodal Station: Those facilities in the vicinity of Evelyn Avenue and Frances Street in the City of Sunnyvale serving Peninsula Corridor Joint Powers Board, Valley Transportation Authority, private shuttle bus, and taxi patrons, and consisting specifically of a parking garage, a train station, a parking lot, a passenger drop off and loading area for Peninsula Corridor Joint Powers Board patrons, concrete bus pads, bus passenger shelters, and a driver’s restroom facility.

Facility: Any physical structure, element or component constructed, installed or modified by City’s contractor(s) for the Frances Street transit bus facilities project including, but not limited to, roadways, lighting, sidewalks, passenger stations, structures, and landscaping.

Maintenance: Performance of repair, rehabilitation and cleaning operations to retain or return a facility to a safe, “like new” condition comparable to the condition of the facility at the time of its acceptance by City.

ARTICLE 2 - OPERATIONS

A. General Operations

VTA is authorized to operate bus transit systems over public streets and highways and other public rights of way. Such authorization includes the responsibility for all operational phases.

The City of Sunnyvale will retain roadway and traffic signal control and maintenance authority on City streets and at City signalized street intersections traversed by VTA transit buses. The City and VTA shall cooperate to coordinate roadway operations with VTA transit bus operations.

B. Failure to Perform

Should there be a failure of the responsible party to carry out in accordance with this Agreement any maintenance item or task, or to adhere to any designated maintenance standard or any agreed-upon modifications thereof, in which the second party has a substantial interest, a formal notice and request to properly carry out such maintenance may be filed by that party. If, following the elapse of a reasonable time period, adequate action has not been taken by the responsible party, the second party shall have the right to undertake the needed work and to bill the responsible party for all the costs thereof.

C. Modification of Project Facilities

The parties acknowledge that the Frances Street transit bus facilities in the City of Sunnyvale contain enhanced design standards and components that were specifically requested and/or paid for by City. City and VTA agree they will make no modification in any of the Project facilities that would result in a degrading of those facilities. Maintenance and repairs shall be confined to repairs and replacement

of components in-kind to those of the original Project facilities.

Nothing in this requirement shall preclude City or VTA from making necessary emergency or temporary repairs. However, any such repair shall, within a reasonable time period, be replaced by a permanent repair fully restoring the facilities to their near-original condition.

ARTICLE 3 - MAINTENANCE

Each party will be liable for the costs of maintaining the items for which it is responsible as set forth in Exhibit A - "Maintenance Responsibilities and Standards" appended hereto and by this reference incorporated herein.

Routine and ordinary maintenance operations will be performed at such times as will not adversely impact the operations of the roadway or transit bus system. City will give VTA two weeks notice for any work that may affect the ability to operate transit bus service to the Frances Street facility. Emergency maintenance will be expeditiously performed as required.

ARTICLE 4 - INDEMNIFICATION

Neither the City, nor any officer, employee, agent, consultant or contractor thereof shall be responsible for any damage or liability, occurring by reason of anything done or omitted by City in connection with any work, performed by City or jurisdiction delegated to City under this Agreement. Pursuant to Government Code Section 895.4, City shall fully indemnify, defend and hold the VTA harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted by City in connection with any work, performed by City or jurisdiction delegated to City under this Agreement. This hold harmless shall apply to any activities, errors or omissions of City and City's officers, employees, agents, consultants or contractors or any persons or entities acting or omitting to act for or on behalf of City where such persons or entities are specifically authorized and empowered by City to act for City. Upon request of VTA, City shall furnish appropriate evidence of insurance covering the legal obligations assumed hereunder.

Neither City, nor any officer, employee, agent, consultant or contractor thereof shall be responsible for any damage or liability, occurring by reason of anything done or omitted by the VTA in connection with any work, performed by VTA or jurisdiction delegated to the VTA under this Agreement. Pursuant to Government Code Section 895.4, the VTA shall fully indemnify, defend and hold City harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted by the VTA in connection with any work, performed by VTA or jurisdiction delegated to the VTA under this Agreement. This hold harmless shall apply to any activities, errors or omissions of the VTA and the VTA's officers, employees, agents, consultants or contractors or any persons or entities acting or omitting to act for or on behalf of the VTA where such persons or entities are specifically authorized and empowered by the VTA to act for the VTA. Upon request of City, VTA shall furnish appropriate evidence of insurance covering the legal obligations assumed hereunder.

ARTICLE 5 - NOTICES

Except as otherwise specifically described herein, all communications with respect to this Agreement shall be given by first class mail to the Parties as follows, or to such other person or address as the Parties may designate in writing from time to time:

CITY: Marvin A. Rose, Director of Public Works
City of Sunnyvale
P.O.Box 3707
Sunnyvale, California 94088

VTA: Michael Burns, General Manager
Santa Clara Valley Transportation Authority
3331 N. First Street, Building C
San Jose, California 95134

ARTICLE 6 - DISPUTES

If a question arises regarding interpretation of this Agreement or the performance, or the alleged failure to perform, of a party, the party raising the question or making the allegation shall give written notice thereof to the other party. The Parties shall promptly meet and use their best efforts to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation or binding arbitration, may be pursued by mutual agreement. Each party shall bear their own costs in making use of alternative dispute resolution methods. It is the express intent of the Parties that litigation be avoided as a method of dispute resolution.

ARTICLE 7 - MISCELLANEOUS PROVISIONS

Entire Agreement: This Agreement and its exhibit, constitute the entire agreement between the Parties pertaining to the subject matter contained therein and supersedes all prior or contemporaneous agreements, representations and understandings of the Parties relative thereto.

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

Severability: If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

Waiver: The waiver by either party of a breach by the other of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this agreement.

No Third-party Rights : The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this agreement or of any duty, covenant, obligation, or undertaking established herein.

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

Term of Agreement: The effective date of this Agreement shall be _____, and it shall continue in force until terminated by mutual agreement of the parties.

Amendments: This agreement may be modified or amended only by a written document executed by both VTA and City, and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this agreement.

IN WITNESS WHEREOF, CITY and VTA have entered into this Agreement as of _____, 2008.

CITY OF SUNNYVALE

**SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY**

Amy Chan
City Manager

Michael Burns
General Manager

Thomas Smith
Purchasing and Materials Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

David Kahn
City Attorney

Suzanne Gifford
Legal Counsel

EXHIBIT A –OPERATIONS AND MAINTENANCE RESPONSIBILITIES AND STANDARDS

CATEGORY	City Responsibility	City Maintenance Standards & Schedule	VTA Responsibility	VTA Maintenance Standards & Schedule
Lighting	City street lighting. Transit bus shelter lighting maintenance and repairs.	Minor electrical repairs to street lights completed within 24 hours after notification. Major electrical repairs completed within 72 hours after notification. Street light lamp outages replaced within 24 hours after notification. In the event of pole knockdown, replacement of luminaries within time frame of pole replacement. Emergency repairs, replacement of street luminaries within 2 hours and permanent repairs within 10 working days. All other items inspected monthly and replaced as required.	Transit bus shelter lighting electricity costs.	
Driver Restroom Facility	Structure maintenance and repairs.	Structural inspection and repairs every two (2) years.	Interior maintenance and repairs, including cleaning and fixture repairs/replacement as needed. Driver restroom facility electrical service, including electricity costs.	As per VTA relevant Maintenance Standard Procedures.
Signs and Pavement Markings	Non-bus transit-related roadway signs, pavement and curb markings, striping legends, arrows and raised pavement markers, and all warning signs	Critical signs, <i>i.e.</i> , stop signs, yield signs, within 4 hours. Repair non-critical signs within 30 days of discovery/notification. Repaint critical markings annually.	All bus transit route signs, all bus transit schedule signs.	Repairs within 72 hours of discovery/notification.

CATEGORY	City Responsibility	City Maintenance Standards & Schedule	VTA Responsibility	VTA Maintenance Standards & Schedule
Shelters	Bus shelter repairs and maintenance Transit bus shelter lighting and electrical repairs.	Repair as required.		
Seat Walls	Seat walls	Structural inspection and repairs performed every two (2) years.	None.	N/A
Graffiti Removal	Graffiti removal on seat walls, transit shelters, street furniture, street lighting. .	Graffiti shall be removed within three (3) days after notification. Obscene graffiti shall be removed within one (1) day after notification.	Driver restroom facility,	Daily inspection and clean up within 48 hours of notification to VTA Obscene graffiti removal within 24 hours of notification to VTA
Roadway	City street pavement, roadway, curbs, and sidewalks s. Roadway (pavement, striping, pavement delineators, etc.), and roadway appurtenances located in City right of way	Perform permanent asphalt or concrete patching of any non-hazardous pavement failure within 30 days of notification. Make asphalt or concrete patching of any hazardous pavement failure within one (3) hours of discovery/notification. Inspect sidewalks for defects every 10 years; grinding of any displacements discovered less than 3/4 inch; replacement of any concrete displaced greater than 3/4 inch. Temporary ramping within 24 hours of notification or discovery of any displacement greater than 3/4 inch.	None	N/A

<p>Landscaping</p>	<p>All landscaping, irrigation and hardscaping (decorative cobbles) located in City right of way including in-street hardscaping. Irrigation system electrical costs.</p>	<p>Inspected quarterly.</p> <p>Plant Material: All plant material shall be maintained to provide good quality, color, form and shape, vigorous new growth indicative for the specific species, and be disease and pest free as determined by quarterly inspections. Plant material failing to meet this criteria will be noted for replacement. All plant material requiring replacement for various reasons shall be replaced at the first opportunity.</p> <p>Inspection: All plant material and hardscape areas will be maintained for litter and debris twice weekly, weeding will be completed once every three weeks. All areas will be inspected on a regular basis. For any areas that are found to be infested by litter, debris and/or weeds, a notification will be given to the city and they shall be required to correct the deficiency within 7 working days.</p> <p>Pruning: Trees and shrubs shall be placed on a pruning cycle that maintains the natural horticultural beauty indicative for the specific species, and provides safety for the public. Trees shall be pruned in accordance with The International Society of Arboricultural class II pruning techniques. Shrubs shall be pruned in a manner that maintains the natural look and shape of the plant indicative for the specific species.</p> <p>Edging: All ground cover areas shall be edged in a manner that maintains a manicured appearance and prevents growth beyond the outside edge of the curb or the edge of any other material</p>	<p>None.</p>	<p>N/A</p>
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		surrounding the ground cover plants. Irrigation: All irrigation components shall be maintained to optimize sprinkler efficiency and minimize water waste. Source of water shall be of a quality that sustains the plant with no adverse effects. Irrigation-related complaints shall be responded to within 24 hours of notification.		
Utilities	Municipal storm drain, sanitary sewer, water distribution, and streetlight electrical systems.	Repair as required.	None.	N/A
Trash Receptacles	Outdoor trash receptacle maintenance and repair, trash pick-up	Weekly	trash containers inside driver restroom facility, trash pick up.	
Unlisted Project Facilities	Facilities owned by City.		Facilities owned by VTA.	As per VTA relevant Maintenance Standard Procedures.