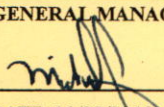
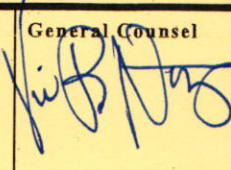
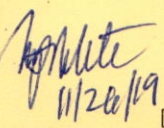
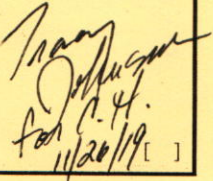
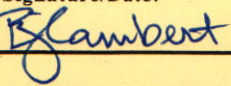
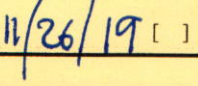
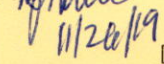
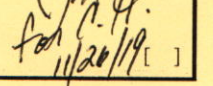




EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  11/27/19		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/22/2019		BOARD INITIATED ITEM: No		
Originator/Prepared by: Bernadette Lambert Dept: Extensions	General Counsel 	Controller/Treasurer 	District Secretary	BARC 
Signature/Date:  11-22-19	 11/26/19 []	 11/26/19 []	[]	 11/26/19 []
Status: Routed		Date Created: 11/22/2019		

Authorization to Execute the Operations & Maintenance Agreement for the Silicon Valley BART Extension

PURPOSE:

To authorize the General Manager, or his designee, to execute an Operations & Maintenance ("O&M") Agreement with the Santa Clara Valley Transportation Authority ("VTA") for the Silicon Valley BART Extension.

DISCUSSION:

BART and VTA are currently engaged in a program to extend BART service into Santa Clara County (the "Silicon Valley BART Extension"). In November 2001, the BART and VTA boards of directors authorized the execution of an agreement, referred to herein and elsewhere as the Comprehensive Agreement ("CA"), containing the institutional, project implementation, legal, financial and ongoing operational and maintenance requirements for a proposed 16-mile BART extension project starting from the BART Warm Springs Station and extending south through Milpitas and San Jose to Santa Clara.

Although the originally-proposed project was intended to be constructed in a single phase, due to financial constraints, it was later divided into two phases, and now consists of an initial 10-mile, 2-station Phase I project, for which revenue service is planned to commence in 2020, to be followed by a 6-mile, 4-station Phase II project, which is currently in the design phase. Additionally, while BART and VTA originally anticipated that BART would operate and maintain the entire Silicon Valley BART Extension, in the course of construction

of Phase I, staff at both agencies determined it would be more practical if VTA were to operate and maintain certain elements.

In consideration of the provisions of the CA and the subsequent phasing of the construction work and shared approach toward O&M responsibilities, the O&M Agreement will set forth a detailed expression of general as well as specific rights and responsibilities of both BART and VTA in connection with the operation of the Silicon Valley BART Extension. The O&M Agreement will supersede the O&M and Ongoing Costs/Revenues sections of the Comprehensive Agreement as well as prior agreements of the Parties with respect to the topics addressed in the O&M Agreement; however, the CA and other prior agreements remain in effect for all non-O&M matters.

During the O&M Agreement negotiations, Staff updated the Board of Directors, through board meetings and joint board committee meetings with VTA, on 13 separate occasions on the progress of negotiations and fundamental terms. The following provides a summary of the general intents and the fundamental roles and responsibilities of the Parties in the agreement.

The O&M Agreement will provide for a cooperative relationship between the parties, and neither will have the relationship of contractor to the other. It will address ongoing O&M matters pertaining to the Silicon Valley BART Extension such as operational responsibilities, access and control of areas and facilities, maintenance, ownership of assets, capital improvement, revenue allocation and ongoing cost and funding responsibilities.

- Stations and Revenue Vehicles will be operated and maintained with an identity consistent with the fact that this is a BART extension.
- Each Party will have decision-making authority over its separate O&M activities using its own standards, practices, policies and procedures.
- Each Party will be responsible for controlling the use and access of its respective geographical Area of Control.
- Each Party will be responsible for emergency response, security and policing within its Area of Control.

Figure 1. Roles and Responsibilities General Overview

<u>Area of Control/ Facility/Equipment</u>	<u>Owns</u>	<u>Operates & Maintains</u>	<u>Provides Safety & Security</u>
Station Buildings	VTA	BART	BART
Operating Corridor	VTA	BART	BART
Wayside Support Facilities	VTA	BART	BART

Revenue Vehicles	VTA	BART	BART
Transit Centers (Plazas, Parking, Intermodal areas)	VTA	VTA	VTA
Access Roads	VTA	VTA	VTA
Berryessa Police Zone Facility	VTA	BART	BART
Track Equipment	BART	BART	BART
Operating Software & Licenses	BART	BART	BART
Spare Parts	BART/VTA	BART/VTA	BART/VTA

The O&M Agreement will provide that VTA is responsible for 100% of the costs attributable to the operation of the Silicon Valley BART Extension, including extension operations and maintenance costs and capital costs, a portion of capital costs on BART's core system (that part of the system not in Santa Clara County), and a share of BART's systemwide fixed costs.

With respect to funding sources:

- VTA will receive credit for all net fare revenue from riders that either start or end their trip at a Silicon Valley BART Extension Station, with some exceptions.
- In addition to revenue from fares, VTA must dedicate a revenue stream to BART. In 2008, the voters of Santa Clara County approved Measure B, a VTA-sponsored measure to authorize a 1/8th cent sales and use tax and the revenues from such tax ("Measure B Revenues") will be the initial dedicated revenues for use towards VTA's obligations under the O&M Agreement.
- Additionally, subject to conditions, VTA may use the Silicon Valley BART Extension right of way and facilities to generate ancillary revenues, which it will receive directly and could use toward costs.

In the event that identified fund sources are insufficient in a year to cover all of VTA's costs for that year, VTA will remain contractually obligated to make up the difference with other funds.

In order to provide for BART's timely receipt of funds, BART will be entitled to receipt of a subsidy payment which is anticipated, at least initially, to be transferred to BART on a monthly basis. In addition, prior to the revenue service date, VTA will fund a subsidy assurance account in the amount of \$34.5 million in FY20 dollars for BART to hold in reserve and will deposit with a trustee an equivalent to one month of the subsidy amount and

also will fund a reserve account to be held by a trustee in the amount of \$18.5 million in FY20 dollars. The general flow of funds is as follows:

1. **Trustee:** Trustee will receive Measure B funds and retain trustee's costs;
2. **Subsidy:** Trustee will transfer a calculated subsidy amount to BART;
3. **Subsidy Shortfall:** Trustee will transfer to BART the difference between the calculated subsidy amount and the annual O&M budget;
4. **Subsidy Assurance:** Trustee will transfer to BART amounts sufficient to maintain a reserve equal to the subsidy;
5. **Reserve:** Trustee will hold a reserve amount for BART to draw upon for additional O&M and capital expenses; and
6. **Residual:** Trustee will transfer remaining funds to VTA to hold in a residual account.

In addition to executing the O&M Agreement, the Parties will enter into a trust agreement with a trustee which will provide for the dedication of Measure B Revenues to BART and will contain mechanisms and terms related to the receipt, flow and allocation of Measure B Revenues. BART and VTA will also execute an amendment to the "TDA Pledge and Assignment Agreement" that they entered into effective as of July 1, 2002, which amendment will provide for a suspension of BART's lien on TDA funds created by that agreement while the Measure B Revenues are available.

Other terms include:

- **Regulatory Reporting:** Each party will be responsible for meeting its own regulatory reporting requirements according to its responsibilities.
- **Public Communications** – Each party will take the lead in providing information to the Public related to its area of responsibility.
- **Implementation and Amendment:** General Managers will have authority to enter into implementing agreements and administrative amendments.

At this time, staff at BART and VTA have successfully negotiated terms for the O&M Agreement related to the general intents and fundamental roles and responsibilities of the Parties.

FISCAL IMPACT:

The O&M Agreement will provide that all of BART's costs attributable to the operation of the Silicon Valley BART Extension are the responsibility of VTA.

ALTERNATIVES:

The BART Board of Directors could choose not to authorize the General Manager to execute an O&M Agreement with VTA. Not having an executed O&M Agreement in

advance of the revenue service date would lead to uncertainty as to how the Silicon Valley BART Extension would be operated and maintained and could increase the risk of a delay in the start of service on the Silicon Valley BART Extension. In addition, if BART were to operate the Silicon Valley BART Extension without a full operations and maintenance agreement in effect, it could lead to a delay or uncertainty in BART receiving reimbursement for its costs in connection therewith.

RECOMMENDATION:

Staff recommends that the Board adopt the following motion:

MOTION:

The BART Board of Directors hereby authorizes the General Manager or his designee to execute an Operations and Maintenance Agreement between BART and VTA for the Silicon Valley BART Extension.