

**SEVENTH AMENDMENT TO AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

This SEVENTH AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2011, by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and, SANTA CLARA VALLEY TRANSPORTATION AUTHORITY ("VTA"), a public entity.

RECITALS

WHEREAS, on March 24, 1998, CITY and VTA entered into an agreement entitled "Agreement for Airport Bus Service between the City of San Jose and the Santa Clara County Transit District" ("AGREEMENT") for the establishment and maintenance of VTA bus service at and through the Norman Y. Mineta San Jose International Airport ("Airport"); and

WHEREAS, the AGREEMENT has been amended several times to extend through June 30, 2012; and

WHEREAS, CITY and VTA desire to further amend the amended AGREEMENT to further extend the term and to revise the compensation provisions;

NOW, THEREFORE, the parties agree to further amend the amended AGREEMENT as follows:

SECTION 1. Section 2, "Term" is amended to read as follows:

"The term of this AGREEMENT shall be from 12:01 am on April 6, 1998 (the "Effective Date"), to 11:59 pm June 30, 2014 (the "Expiration Date"), unless sooner terminated in accordance with the terms of this AGREEMENT."

SECTION 2. Section 5, "Compensation to VTA" is amended and restated as follows:

5.1 Annual Compensation. As consideration for VTA's provision of Bus Services to Airport Passengers and for the other duties and obligations of VTA under this AGREEMENT, City shall pay VTA Annual Compensation of \$625,000 for each period from July 1 to June 30. VTA shall invoice the Annual Compensation to City in arrears in equal quarterly amounts, and City shall make payments to VTA within thirty (30) days of City's approval of each invoice.

City funding of this AGREEMENT shall be on a City fiscal year basis (July 1 to June 30) and is subject to appropriations by the City Council in June of each year. In the event that the City Council does not appropriate funding of this AGREEMENT for any upcoming City fiscal year during the Term, this AGREEMENT shall automatically terminate at 11:59 p.m. on June 30 of the then current City fiscal year.

5.2 Annual Compensation Adjustment. The Annual Compensation is subject to adjustment effective July 1, 2012, and every July 1 thereafter during the Term. The adjustment shall be calculated as follows:

5.2.1 Annual Compensation shall be increased or decreased according to the annual percentage change of the Consumer Price Index for the San Francisco Bay Area using CPI-U, All Urban Consumers index type for the 12-month period (ending March 30) preceding July 1. The Consumer Price Index "annual average" shall not be used.

5.2.2 In no event shall the Annual Compensation be reduced below \$625,000 as the result of an Annual Compensation Adjustment. Notwithstanding the preceding sentence, in the event that the Annual Compensation determined to be effective as of any July 1 is more than fifty percent (50%) of VTA's budgeted cost for the Bus Services under this Agreement for that upcoming year, the Annual Compensation will be reduced to an amount equal to fifty percent (50%) of VTA's budgeted cost for the Bus Services under this Agreement for that upcoming year.

5.2.3 Any increase in Annual Compensation for any year shall not exceed 3% of the previous year's Annual Compensation. Any limitation in the increase of the Annual Compensation may not be carried forward to any succeeding year.

5.2.4 Prior to July 1 each year, the Director, on behalf of the City, and the Manager of Materials and Purchasing for VTA, immediately following the calculation of the Annual Compensation to be effective on the upcoming July 1, shall execute a memorandum setting forth the new Annual Compensation.

SECTION 3. Section 17, "Option to Extend Term", is hereby deleted.

SECTION 4 EXHIBIT H, "Notice of Exercise of Option to Extend" is hereby deleted.

SECTION 5 All of the terms and conditions of the original AGREEMENT not modified by this Seventh Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation



KEVIN FISHER
Sr. Deputy City Attorney

By _____
DENNIS D. HAWKINS, CMC
City Clerk

"VTA"

APPROVED AS TO FORM:

SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY, a
public entity



KEVIN ALLMAND
Counsel

By 

MICHAEL T. BURNS
General Manager

8/3/11