

MAINTENANCE AND REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF CHULA VISTA AND THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM TO PROVIDE MAINTENANCE FOR THE BENEFIT OF THE SOUTH BAY RAPID PROJECT

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2019, (the “Effective Date”), by and between the City of Chula Vista, a California Chartered Municipal Corporation (“City”), and the San Diego Metropolitan Transit System (“MTS”), a public transportation service provider, for the purpose of outlining and defining the roles, responsibilities, terms and conditions related to the maintenance of certain infrastructure that are part of the South Bay Rapid project (“Project”). The City and MTS may be referred to in this Agreement individually as a “party” and collectively as the “parties”.

RECITALS

WHEREAS, the South Bay Rapid project (Project) is a bus rapid transit route including an exclusive guideway and transit stations that runs from downtown San Diego to I-805 then along East Palomar Street, over SR-125, around Otay Ranch Town Center Mall to Millenia then onto Birch Road, and onto SR-125 to the Otay Mesa Transit Center in the southwest quadrant of the SR-905/Siempre Viva Road Interchange (see Exhibit B);

WHEREAS, the Project will provide Bus Rapid Transit (“BRT”) service for those commuting between downtown San Diego and the Otay Mesa Border Crossing;

WHEREAS, pursuant to a Joint Use and Maintenance Agreement (“JUMA”) between MTS, the City, and the San Diego Association of Governments (“SANDAG”), MTS and the City took on certain maintenance responsibilities for the Project (see Exhibit A);

WHEREAS, MTS desires to contract with the City to have the City or its contractors perform certain maintenance items on MTS’s behalf.

NOW, THEREFORE, in accordance with the mutual benefits contained in the aforementioned Recitals and in consideration thereof, City and MTS agree as follows:

AGREEMENT

Article I - Maintenance

1. Maintenance Services. The City shall furnish the maintenance services (“Maintenance Services”) described in Exhibit C at the estimated frequencies provided therein and in accordance with the Maintenance Standards described in Article I, Section 2. The City shall furnish maintenance services for the storm water facilities described in Exhibit C in a manner consistent with the South Bay Bus Rapid Transit 100% Water Quality Technical Report (WQTR) and in accordance with Storm Water Compliance requirements as described in Article I, Section 3.
2. Maintenance Standards. The City shall perform the Maintenance Services in accordance with the standards described in Exhibit A.

To the extent that all or a portion of a party’s facilities are damaged by the other party, the party causing the damage shall repair and/or replace the damaged facilities at the damaging party’s expense. The repair and/or replacement shall meet the standards of the facility’s owner and be subject to the review and approval of the party’s designated representative.

3. Storm Water Compliance. The City is enrolled under San Diego Regional Water Quality Control Board Order No. R9-2013-001, as amended by Order Nos. R9-2015-0001 and R9-2015-0100, NPDES No. CAS0109266 (Regional MS4 Permit) and any successor Regional MS4 Permit, and has developed and is implementing storm water programs consistent with the requirements of the Regional MS4 Permit. The BRT maintenance activities performed by the City shall be performed and reported in accordance with the Regional MS4 Permit.

MTS is enrolled under the State Water Resource Control Board General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems Order No. 2013-0001-DWQ (Statewide Small MS4 Permit) and has developed and is implementing storm water programs consistent with the requirements of the Statewide Small MS4 Permit. BRT maintenance activities related to the transit station locations will be performed and reported by MTS, or their agent, in accordance with their Statewide Small MS4 Permit.

4. Response Times.
 - a) Maintenance Services shall be initially provided at the frequency and within the response times set forth in Exhibit C. The parties acknowledge and agree that the frequencies may be modified due to actual services needed.
 - b) In all cases, the City's response times may temporarily be varied at the City's sole option due to diversions or reallocations of forces and equipment needed for public emergencies or urgent response items.
5. Scheduling. All Maintenance Services involving a BRT GUIDEWAY closure will be coordinated, between the City's Public Works Superintendent and MTS' Supervisor of Passenger Facilities.
6. Provision of Maintenance Services by Others. Notwithstanding any other provision hereof, the City, at any time and from time to time, may arrange for any item of Maintenance Services to be provided by City Personnel or by third parties contracting directly with the City.

Article II - MTS Compensation to Chula Vista for Services Rendered.

1. Reimbursement. MTS agrees to reimburse the City for all costs incurred by the City in performing the Maintenance Services pursuant to Article I above. MTS acknowledges that the rates identified in Exhibit C are estimates only and MTS agrees to reimburse City for all costs incurred in performing the Maintenance Services. These costs shall include but not be limited to salaries, wages, overhead, travel, materials, equipment, supplies, contractor and subcontractor costs, and fixed fees.
2. Invoices/Payments.
 - a) The City shall deliver to MTS, a quarterly invoice for the work performed together with such reports of Maintenance Services performed during the immediately preceding months as MTS may reasonably request.
 - b) MTS shall pay invoices within thirty (30) days of MTS' receipt and approval of same.
 - c) Each invoice and check shall refer to this Agreement. Invoices and payments shall be sent, as appropriate, to:

To City:
Director of Public Works
City of Chula Vista
1800 Maxwell Road
Chula Vista, CA 91911

To MTS:
Mike Daney
Manager of Contract Operations and
Passenger Facilities
San Diego Metropolitan Transit System
1255 Imperial Ave., Suite 1000
San Diego, CA 92101-7490

Article III - Access to Chula Vista Right-of-Way.

For the purposes of the maintenance activities undertaken by the City pursuant to this Agreement, neither MTS nor the City shall be required to obtain a permit for routine maintenance work within the Chula Vista right-of-way.

Article IV - Non-Interruption of Use or Operation of Facilities.

1. Scheduled Work. MTS and the City acknowledge that the Project will operate on a combination of public streets, exclusive guideway, and exclusive transit stations. MTS and the City each have an interest in limiting any interruptions or impairments of use of its facilities. Any maintenance work that requires the closure of a traffic lane or the one-lane guideway shall be planned in a manner to limit the duration and level of interference. MTS and the City shall work together in good faith to address any traffic impacts caused by maintenance or other work related to the Project.
2. Emergency Work or Acts of God. Notwithstanding any contrary provision in Section 4(a), in the event of damage caused by an act of God, War, or other casualty, or damage caused under circumstances where it would be impractical or impossible for one party to notify the other party of the necessity for temporary interference with the other party's facilities, the party creating the temporary interference may, without notice, make emergency repairs to restore its service. The party responsible for the facility experiencing the temporary interference shall, however, take reasonable and prudent measures to protect the facilities of the other party and minimize such interference, and as soon as practically possible, notify the other party of such emergency repairs. If permanent repairs are required after such emergency repairs have been made, reasonable notice shall be given to the other party.

Article V - Mutual Indemnity.

1. Neither City nor any officer, official, director, or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by MTS under or in connection with any work, authority, or jurisdiction delegated to MTS under this agreement. It is understood and agreed that, pursuant to California Government Code Section 895.4, MTS shall fully defend, indemnify, and save harmless City, and all officers, officials, directors, and employees thereof from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in California Government Code Section 810.8) occurring by reason of anything done or omitted to be done by MTS under or in connection with any work, authority, or jurisdiction delegated to MTS under this Agreement.
2. Neither MTS, nor any director, officer, or employee thereof, is responsible for any damage or liability occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority, or jurisdiction delegated to City under this Agreement. It is also understood and agreed that pursuant to California Government Code Section 895.4, City shall fully defend, indemnify, and save harmless MTS, its directors, officers, and employees from all claims,

suits, or actions of every name, kind, and description brought for or on account of injury (as defined in California Government Code Section 810.8) occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority, or jurisdiction delegated to City under this Agreement.

Article VI – Insurance

MTS and the City, and their respective contractors, shall maintain in force, during the term of this Agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the other Parties, and their officers, agents and employees as additional insureds in an amount of \$1 million per person and \$2 million in aggregate. Coverage shall be evidenced by a Certificate of Insurance/Endorsement in a form satisfactory to the other Parties. This requirement may be satisfied by a program of self-insurance.

Article VII – Termination

Either party may terminate this Agreement by providing written notice to the other party. Termination shall become effective 90 days after notice is received, unless a later date is specified in the notice.

Article VIII - Miscellaneous

- 1. Effective Date. The Agreement shall take effect upon full execution of the Agreement, as of the Effective Date stated on page 1 of the Agreement.
- 2. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, at the addresses identified below.

To City:
 Iracema Quilantan
 City of Chula Vista
 Director of Public Works
 1800 Maxwell Road
 Chula Vista, California 91911

With a copy to:
 Glen R. Googins
 City of Chula Vista
 City Attorney
 276 Fourth Avenue
 Chula Vista, California 91910

To MTS:
 San Diego Metropolitan Transit System
 Chief Executive Officer
 1255 Imperial Avenue, Suite 1000
 San Diego, California 92101

With a copy to:
 Mike Daney
 Manager of Contract Operations and Passenger
 Facilities
 San Diego Metropolitan Transit System
 1255 Imperial Ave., Suite 1000
 San Diego, CA 92101-7490
 (619) 557-4561

- 3. Entire Agreement. This Agreement, together with any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the Parties relating to the subject matter hereof. This Agreement supersedes any and all other agreements, either oral or written with respect to the subject matter contained herein.

- 4. Capacity of Parties. Each signatory and Party hereto hereby warrants and represents to the other Party that it has legal authority and capacity and direction from its principal to enter into this Agreement; that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.
- 5. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, which shall also be deemed to be the sole and proper venue for any action or proceeding relating to this Agreement.
- 6. Modification. No amendment, modification, waiver, or discharge of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Parties hereto, and then shall be valid only in the specific instance and for the purpose for which given.
- 7. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which, when taken together shall constitute but one instrument.
- 8. Severability. In the event that any provision of this Agreement shall for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Agreement or such other appropriate action as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein.
- 9. Headings. The captions and headings in this Agreement are for convenience only and shall not define or limit the provisions hereof.
- 10. Waiver. No course of dealing or failure or delay, nor the single failure or delay, or the partial exercise of any right, power or privilege, on the part of the Parties shall operate as a waiver of any rights herein contained. The making or the acceptance of a payment by either Party with knowledge of the existence of a breach shall not operate or be construed to operate as a waiver of any such breach.
- 11. No Additional Beneficiaries. Despite the fact that the required performance under this Agreement may have an effect upon persons not Parties hereto, the Parties specifically intend no benefit therefrom, and agree that no performance hereunder may be enforced by any person not a Party to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first written above.

CITY OF CHULA VISTA

**SAN DIEGO METROPOLITAN
TRANSIT SYSTEM**

By _____
MARY CASILLAS-SALAS
Mayor

By _____
PAUL C. JABLONSKI
Chief Executive Officer

Approved as to form:

Approved as to form:

By _____
GLEN R. GOOGINS
City Attorney

By _____
KAREN LANDERS
General Counsel

- Exhibit A – JUMA dated January 27, 2019
- Exhibit B – Maintenance Map
- Exhibit C – Maintenance Services

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Exhibit A

JOINT USE AND MAINTENANCE AGREEMENT

(MTS Doc. No. G2198.0-19)

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Exhibit B

MAINTENANCE MAP

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Exhibit C

MAINTENANCE SERVICES

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