



JPB Board of Directors
Meeting of October 1, 2020

Correspondence as of September 30, 2020

Subject

1 Agreement with Google LLC for the Diridon Station area

From: [Roland Lebrun](#)
To: [VTA](#)
Cc: [Board \(@caltrain.com\)](#); [MTC Info](#); [SFCTA Board Secretary](#); [BART Board](#); [CHSRA Board](#); [cacsecretary \(@caltrain.com\)](#); [SFCTA CAC](#); [Caltrain, Bac \(@caltrain.com\)](#)
Subject: Item 5 Authorization for P3 agreement with Google LLC for the Diridon Station area.
Date: Wednesday, September 30, 2020 1:50:25 PM
Attachments: [261-34.pdf](#)
[Relocated Caltrain parking lot.pdf](#)
[Staff memo.pdf](#)

Dear Chair Chavez and Board members,

I am respectfully requesting that you defer authorizing the General Manager to enter into a P3 agreement with Google for the following reasons:

- 1) The staff report makes multiple references to a P3 agreement with Google but there is no draft agreement in the packet for review by Board members or members of the public.
- 2) This item was never presented at VTA or Caltrain subcommittees for review/approval.
- 3) The City of San Jose will execute a Development Agreement with Google with the following steps:
 - Study session (late October/early November)
 - Release of the Draft Development Agreement (DDA) for review by Council and the general public (winter 2021)
 - Council approval of the final version of the Agreement
- 4) VTA proposes to relocate two Caltrain parking lots to Cinnabar Street **without any compensation to Caltrain for loss of ridership and parking revenues.**
<http://santaclaravta.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=9889&MeetingID=3132>
- 5) There is no mention of any consideration given to the potential for shared parking locations in the area between Park and West San Fernando.
- 6) VTA does not propose any compensation to Caltrain for taking over an entire 2.39-acre Caltrain block for construction staging (APN 261-34-22 attached for your convenience).
Please note that this block is required for staging during the reconstruction of the Caltrain/HSR station
- 7) The staff memo (attached) refers to a “Downtown West application to the City of San Jose” without any link or attachment for this document.
- 8) The agenda packet does not include a link to the 2019 Google MOU.

- 9) **There is no mention of any revenues generated through the sale of the entire light rail right of way between Cahill and Delmas, including the San Fernando station.**
- 10) Exhibit A included in the Board packet is marked **DO NOT USE**.

Recommendations:

- 1) Defer approval of this item.
- 2) Direct VTA staff to focus on a P3 agreement for the Downtown VTA block to satisfy FTA's EPD requirements.
- 3) Engage Google and BART in the design of an **INTEGRATED** station designed to substantially reduce VTA's proposed BART/LRT/bus footprint at Diridon.
- 4) Consider incorporating VTA's requirements into the City of San Jose's Downtown West Development Agreement.

Respectfully submitted for your consideration.

Roland Lebrun

CC

Caltrain Board
MTC Commissioners
SFCTA Commissioners
BART Board of Directors
CHSRA Board of Directors
Caltrain CAC
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VTA CAC

Exhibit A: Location of P3 Project Area in the Diridon Station Area



September 2020



500 Ft



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Santa Clara Valley Transportation Authority



Board Action 7522

Authorization for Public-Private Partnership Agreement with Google, LLC for VTA's BART Silicon Valley Extension Phase 2

Information

Department:	Dept - Real Estate	Sponsors:	Deputy GM/Chief Financial Officer, Raj Srinath
Category:	Real Estate	Functions:	Fiscal Impact, Legal Review Required

Attachments

[Printout](#)
[P3 Agreement Exhibit A](#)
[Exhibit B GC Sec 84308](#)
[Summary of Recommendation](#)
[DO NOT USE Exhibit A](#)

Financial Impact

Through a combination of in-kind contributions, cost savings and shifting of risk to the private partner, the P3 Agreement is projected to create up to \$75 million in value for VTA. The BART Phase 2 project budget would benefit from a reduction of this amount.

Recommendation

Authorize the General Manager to enter into a Public-Private Partnership Agreement (P3 Agreement) and execute all documents necessary to effect a P3 Agreement with Google LLC for VTA's BART Station area at West Santa Clara and Cahill Streets (Diridon BART Station).

Item Discussion

EXECUTIVE SUMMARY:

- The P3 Agreement will:
 1. Include Google's work on air rights entitlements to allow future Transit-Oriented Development (TOD) above the Diridon BART Station for up to 500 residential units in two high-rise buildings, consistent with VTA's Affordable Housing Policy. This is described in Google's "Downtown West" application to the City of San Jose.
 2. Allow VTA to realize substantial benefits from its use of Google's Lot D4 as a Construction Staging Area (CSA) for the Diridon BART Station; and
 3. Allow VTA to realize substantial benefits from a lease to enable it to meet the requirement in the BART Phase 2 environmental document to provide 450 spaces of replacement transit parking during construction.
- The P3 Agreement is intended to satisfy the requirement of the Federal Transit Administration's (FTA) Expedited Project Delivery Program (EPD) for a public-private partnership project in order to be eligible for an EPD funding award.

- Advantage of approval: this item is necessary for a successful EPD application to FTA. Disadvantage of no approval: without this P3 Agreement, VTA will incur substantially higher costs for the Diridon BART Station CSA and would incur greater expense to acquire a site and construct a parking structure for construction replacement parking. Pursuing an alternate P3 agreement would result in considerable delay for the Phase 2 extension due to the time needed to structure, solicit, and draft a new P3 agreement.
- This action advances Strategic Plan goals for innovation in transportation systems funding.

BACKGROUND:

Google's announcement of its "Downtown West" mixed-use development on 84 acres around the future Diridon BART Station, with up to 12 million square feet or more of office, residential, retail, cultural, arts, events, and other uses presents a tremendous opportunity to increase ridership and benefits from VTA's investment in the BART Phase 2 extension.

Recognition of these benefits, as well as understanding the challenges of planning and constructing two adjacent major capital projects, led VTA to enter into a Memorandum of Understanding (MOU) in early 2019 with Google. The scope of the MOU includes land use and transit synergy; high-quality placemaking and "Good TOD"; public transit and automobile parking; transit access and operations; value capture from public investment; and commitments to timely implementation and information sharing.

Since execution of the MOU, VTA and Google staff have worked extensively to evaluate a range of issues and items for potential collaboration that would be of mutual benefit to both projects. This work is shaped by a mutual understanding that both VTA's and Google's project would be improved by working together, and that without such collaboration each project would struggle with additional adverse impacts and additional costs.

DISCUSSION:

The P3 Agreement includes three items that VTA will use to satisfy the public-private partnership requirement for eligibility for an EPD Full Funding Grant Agreement. These elements are the result of extensive design and engineering coordination work between VTA and Google. The locations are shown on Exhibit A:

1. Google's work to include VTA property in its "Downtown West" planning application and environmental review for up to 500 units of high-rise residential in air rights development above the Diridon BART station; with 18,000 square feet of ground floor retail, commercial and service uses; and up to 125 parking spaces reflecting reduced need for parking. (Such a project would need to include at least 20% of the units affordable to low- and very-low income households as set forth in VTA's Affordable Housing Policy).
2. VTA's use via a lease of Google's 1.6-acre "Lot D4" east of the Diridon BART Station for VTA's use as a Construction Staging Area for BART Phase 2, at a cost that is the lesser of \$300,000 per year or five percent below fair market value pursuant to an appraisal, with three percent annual increases, through December 31, 2028. VTA would have three six-month lease options that could extend the term through June 30, 2030. This provides greater benefits to VTA than would be possible through a typical Temporary Construction Easement.
3. VTA's use via a lease of Google's warehouse building at the southwesterly corner of N. Montgomery and Cinnabar Streets. VTA would adaptively reuse the building for indoor parking to meet VTA's obligation to provide 450 transit rider and public replacement parking spaces during BART Phase 2 construction pursuant to the certified environmental document for the project. The lease term would be through June 30, 2030, with two six-month lease options that could extend the term through June 30, 2031. The lease cost is tied to VTA's transfer to Google of approximately 6,800 square feet of unused surplus land adjacent to the Vasona Light Rail tracks (disposal of this site was previously authorized by the Board of Directors), or if that is not possible \$270,000 per year or five percent below fair market value pursuant to an appraisal, with three percent annual increases.

These elements would generate significant project benefits for VTA, including project cost savings, by avoiding the need to pursue a complex and lengthy rezoning effort to provide entitlements for a TOD air rights project; acquiring essential sites for project construction in a more rapid and cost-effective manner; and avoiding the need for VTA to acquire another parcel and construct a parking structure to accommodate the 450 construction period replacement parking spaces. The total value of these benefits to VTA is estimated at up of \$75 million, based on VTA's estimated costs for alternative solutions.

In addition to the P3 Agreement items, VTA and Google are in the process of developing a sub-area Diridon Construction Management Plan to coordinate the respective projects and reduce impacts (this is in addition to the Construction Management Plan that is a mitigation requirement for the BART Phase 2 project). VTA and Google are also conducting preliminary studies to evaluate a range of design, engineering, and development considerations involved in potential future air rights TOD above the Diridon BART Station (a future Board of Directors agenda item would be scheduled prior to commencement of any development-specific negotiations or action to issue a Request for Proposals).

Following Board authorization, VTA and Google will prepare and execute the P3 Agreement so that it can be included in VTA's EPD application to FTA for a full funding grant agreement for BART Phase 2.

ALTERNATIVES:

The Board could direct staff to pursue another P3 project to qualify BART Phase 2 for an EPD submittal. This would delay submittal of an EPD application until well into 2021 or beyond.

CLIMATE IMPACT:

Compared to alternative parking solutions that would require VTA to construct a multi-story concrete parking structure to satisfy the construction period replacement parking mitigation, the proposed P3 Agreement would reduce Greenhouse Gas (GHG) generation.

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