

From: Roland Lebrun

Sent: Tuesday, November 16, 2021 5:02 AM

To: MTC-ABAG Info <info@bayareametro.gov>

Cc: BART Board <boardofdirectors@bart.gov>; VTA Board Secretary <board.secretary@vta.org>

Subject: 11/17 MTC Commission Item 5 FTA Letter Of Intent for the Silicon Valley BART extension

External Email

Dear Chair Pedroza and commissioners,

The intent of this email is to substantiate and elaborate on the comments I made about the status of VTA's Expedited Project Delivery (EPD) application as documented in FTA's attached Letter Of Intent (LOI):

1. ***"VTA's financial plan submitted in April 2021 assumed a total project cost of \$6.941 billion and an EPD Pilot Program Federal share request of \$1.735 billion (25.0 percent). FTA assigned a financial contractor to assess VTA's financial plan for purposes of determining the non-EPD funding commitment. FTA determined that \$3.392 billion of non-EPD funds (48.9 percent of total project cost) were committed or budgeted. The remaining \$1.814 billion in non-EPD funds (26.1 percent of total project cost) were considered as planned."***
- 2.
3. ***"Following the risk review workshop, FTA provided VTA with an updated total project cost of \$9.148 billion. Under Section 3005(b)(9) of the FAST Act, total Federal funding to any project under the EPD Pilot Program is limited to 25 percent of total project cost. With this LOI, FTA intends to obligate either \$2.287 billion (25 percent of the updated Project cost) or 25 percent of the final project cost, whichever is less, for the project scope as presented in the VTA's April 7, 2021, EPD Pilot Program application, should an FFGA be approved."***
- 4.
5. ***"Prior to the Project's consideration for an FFGA, VTA must secure and document the commitment of all non-Federal funding for the Project and submit revised financial information as per the requirements in the NOFO, based on the revised cost and revised revenue service date. VTA also must provide updated information regarding BART's system-wide operations and maintenance costs and funding sources, given that BART will operate and maintain the Project. FTA will continue to work with VTA as it secures local financial commitments and FTA will carry out a financial review refresh within 2 years of issuing an LOI to determine if the project is eligible for an FFGA."***

Conclusion:

The project as it currently stands has a total funding gap of \$3.469B (\$1.814B + \$1.655B).

Recommendations:

1. **VTA should drop its EPD application effective immediately and transition to a Federal New Starts application to increase the Federal contribution cap to 50% of total project cost.**
2. **VTA should consider costs reductions** such as the revised tunneling strategy which proposes to eliminate 3.5 miles of single-bore tunnels.
3. **VTA should work with private developers** on additional station entrance opportunities instead of exercising the power of eminent domain.
4. **VTA should consider securing additional contributions from the private sector over and above Google's generous \$75M.**

Respectfully presented for your consideration.

Roland Lebrun

CC

BART Board of Directors

VTA Board of Directors

VTA PAC

VTA CAC



U.S. Department
of Transportation

**Federal Transit
Administration**

Executive Director

1200 New Jersey Avenue, SE
Washington, DC 20590

October 25, 2021

Ms. Carolyn Gonot
Chief Executive Officer
Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA 95134

Dear Ms. Gonot:

The Federal Transit Administration (FTA) is pleased to provide this Letter of Intent (LOI) for the Santa Clara Valley Transportation Authority's (VTA) application for an Expedited Project Delivery (EPD) Pilot Program for the Bay Area Rapid Transit (BART) Silicon Valley Phase II project (the Project), in San Jose, California, as authorized by Section 3005(b) of the Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94). The LOI is the mechanism authorized by Section 3005(b)(8) of the FAST Act for announcing an intention to obligate funds for an eligible project under the EPD Pilot Program. An LOI is not a Federal obligation or an administrative commitment; rather if FTA awards a Full Funding Grant Agreement (FFGA) in the future, FTA will then establish the terms of participation by the Federal Government for the Project.

This LOI is specific to the requirements of the EPD Pilot Program and not transferrable to any other FTA program or funding source, including the Capital Investment Grants program under 49 U.S.C. § 5309. In addition, this LOI covers the project scope as presented in VTA's April 7, 2021, EPD Pilot Program application, which includes extending BART's Silicon Valley service six miles from the Berryessa Station through downtown San Jose to the City of Santa Clara. The project includes four stations, five miles of subway tunnels, 48 heavy rail vehicles, two mid-tunnel ventilation and egress facilities, and a maintenance facility. Service is planned to operate in the opening year from 4:00 AM to 1:00 AM on weekdays and from 6:00 AM to 1:00 AM on weekends, with trains every 7.5 minutes during the weekday peak period, every 7.5-15 minutes off-peak during the weekday, and every 20 minutes on evenings and weekends.

FTA is required by law to evaluate proposed EPD Pilot Program projects against a number of criteria and ensure that the prospective grant recipient demonstrates the technical, legal, and financial capability to implement the project. As a result of FTA's evaluation of VTA's EPD application, FTA has selected the Project for award of a grant if VTA satisfies the requirements of this LOI.

As indicated in the notification of project selection, VTA has automatic pre-award authority to incur costs for engineering activities, utility relocation, real estate acquisition, construction and

other non-construction activities such as the procurement of vehicles, rails, ties, commodities, and other specialized equipment. VTA should consult with the FTA Region IX office for a determination of whether any other non-construction activity falls within the automatic pre-award authority granted with the selection of the Project. Please note that VTA undertakes any work under this pre-award authority at its own risk, and that the Project must meet the requirements of this LOI, and progress through further evaluations in the EPD Pilot Program to be eligible for consideration to receive an FFGA. Additionally, because this LOI is specific to the requirements of the EPD Pilot Program and not transferrable to any other FTA program or funding source, such pre-award authority will not transfer should VTA apply to any other program or for any other funding source for this project.

This pre-award authority does not constitute any FTA commitment that future Federal funds will be approved for the Project or for any element of the Project. Consistent with any pre-award authority, all Federal requirements must be met prior to incurring costs in order to retain eligibility for future FTA grant assistance. Additional guidance regarding pre-award authority is provided in the FTA Fiscal Year 2021 Apportionments, Allocations, and Program Information Notice, published in the *Federal Register Notice* on July 22, 2021.

This LOI will expire after 2 years on October 25, 2023 unless the following conditions are met:

Local Financial Commitment

VTA's financial plan submitted in April 2021 assumed a total project cost of \$6.941 billion and an EPD Pilot Program Federal share request of \$1.735 billion (25.0 percent). FTA assigned a financial contractor to assess VTA's financial plan for purposes of determining the non-EPD funding commitment. FTA determined that \$3.392 billion of non-EPD funds (48.9 percent of total project cost) were committed or budgeted. The remaining \$1.814 billion in non-EPD funds (26.1 percent of total project cost) were considered as planned.

Following the risk review workshop, FTA provided VTA with an updated total project cost of \$9.148 billion. Under Section 3005(b)(9) of the FAST Act, total Federal funding to any project under the EPD Pilot Program is limited to 25 percent of total project cost. With this LOI, FTA intends to obligate either \$2.287 billion (25 percent of the updated Project cost) or 25 percent of the final project cost, whichever is less, for the project scope as presented in the VTA's April 7, 2021, EPD Pilot Program application, should an FFGA be approved.

Prior to the Project's consideration for an FFGA, VTA must secure and document the commitment of all non-Federal funding for the Project and submit revised financial information as per the requirements in the NOFO, based on the revised cost and revised revenue service date. VTA also must provide updated information regarding BART's system-wide operations and maintenance costs and funding sources, given that BART will operate and maintain the Project. FTA will continue to work with VTA as it secures local financial commitments and FTA will carry out a financial review refresh within 2 years of issuing an LOI to determine if the project is eligible for an FFGA.

Scope, Schedule, Cost, and Technical Capacity

FTA and its Project Management Oversight Contractor (PMOC) have determined that VTA has the technical capacity and capability to effectively manage the Project under this LOI. FTA and its PMOC have conducted a risk assessment of the project and are discussing the potential cost and schedule results with VTA. The Project, however, is early in its lifecycle, and FTA and the VTA have agreed to continue discussions and to update project budget and schedule information as necessary, as the design and procurement processes progress and additional information becomes available. Over the 2-year duration of this LOI, VTA should continue working closely with the FTA team on addressing the recommendations in FTA's Readiness for EPD Pilot Program Project Selection Report.

Within the 2-year duration of this LOI, if significant changes to the project cost, scope or schedule occur, or VTA anticipates withdrawing or postponing the Project, VTA should submit a written request to FTA. FTA looks forward to working with VTA on the BART Silicon Valley Phase II project. If you have any questions regarding the enclosed materials, please call me at 202-366-1668 or contact Mr. Ray Tellis, Regional Administrator, at (415) 734-9471.

Sincerely,

A handwritten signature in black ink that reads "Matthew J. Welbes". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Matthew J. Welbes