

**COOPERATIVE AGREEMENT No. 11
BETWEEN
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND THE CITY OF SAN JOSE
FOR THE RESOLUTION OF ALL OUTSTANDING ISSUES RELATING TO
THE SILICON VALLEY BERRYESSA EXTENSION PROJECT**

This Cooperative Agreement No. 11 (hereinafter "Agreement") is entered into between the Santa Clara Valley Transportation Authority, a public agency organized as a special district under California law ("VTA"), and the City of San José , a California municipal corporation under the State of California (hereinafter "CITY"). This Agreement is entered into this _____ day of _____, 2021 (the "Effective Date"). Each of VTA and the CITY are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

SECTION 1: RECITALS

1.1 VTA intends to construct a 16 mile extension of the San Francisco Bay Area Rapid Transit District ("BART") rail line into Santa Clara County.

1.2 VTA has undertaken a program of activities leading to the aforementioned extension of BART service, to be constructed by VTA and operated by BART, in an initial phase through the City of Milpitas to the Berryessa district of San José , known as the "Silicon Valley Berryessa Extension Project" (hereinafter the "Project").

1.3 VTA and CITY entered into a Master Agreement on June 22, 2010 ("Master Agreement"), which describes the roles and responsibilities of the Parties with respect to the Project. Since that time, the Parties have entered into a total of nine (9) cooperative agreements pursuant to the Master Agreement, numbered 1 through 4 and 6 through 10 ("Cooperative Agreement(s)"). Cooperative Agreement #5 was negotiated but never executed by the Parties. This Cooperative Agreement #11 is made pursuant to the

Master Agreement, and the terms, conditions, and obligations of the Master Agreement shall apply to this Agreement, unless explicitly stated otherwise herein.

1.4 CITY has raised issues concerning:

- A. Stormwater flows across the Upper Penitencia Creek trail
- B. Mabury Road signal interconnect cable (“Mabury Road SIC”) replacement
- C. Project haul routes pavement restoration
- D. Berryessa Station Way traffic signal replacement cameras
- E. Repairs to the Hostetter Road Siphon Vault
- F. Trade Zone Boulevard landscaping

1.5 The Parties desire to enter into this Agreement to provide reimbursement from VTA to CITY for all outstanding issues and items of work relating to the Project, and to conclude the Master Agreement.

SECTION 2: OUTSTANDING ISSUES

2.1 CITY and VTA have reached agreement on the resolutions to all outstanding issues, which are as follows:

- A. VTA will compensate CITY the sum of \$162,000.00 for modifications CITY will undertake to alleviate its concerns about stormwater flows across the Upper Penitencia Creek trail (the “Trail”). City will take over ownership and maintenance of the Trail retroactive to January 1, 2021, and relieve VTA of any future responsibility and liability for the Trail. CITY will take full responsibility and liability for modifications to the Trail from its original design/current condition.
- B. VTA will compensate CITY the sum of \$10,000.00 for the damaged Mabury Road SIC.

- C. VTA will compensate CITY the sum of \$233,752.00 for the project haul routes pavement restoration.
- D. VTA will compensate CITY the sum of \$17,000.00 for the replacement and upgrade of 20 cameras at the Berryessa Transit Center.
- E. VTA will compensate CITY for CITY's costs to repair the Hostetter Road Siphon Vault, which amount will not exceed \$284,000.00.
- F. VTA will compensate CITY the sum of \$6,028.09 for CITY's cost to pay its contractor to purchase plants required for the Trade Zone Boulevard landscaping.

SECTION 3: ACCEPTANCE AND PAYMENT

3.1 By executing this Agreement, CITY accepts all elements of the Project. Following the full execution of this Agreement, and the completion of the outstanding issues, CITY may submit a properly documented invoice to VTA for compensation for each of outstanding issues listed in Section 2.

SECTION 4: TOTAL PAYABLE BY VTA TO CITY

4.1 The total amount payable by VTA to CITY under this Agreement shall not exceed Seven Hundred Twelve Thousand Seven Hundred Eighty Dollars and Nine Cents (\$712,780.09).

SECTION 5: MISCELLANEOUS

5.1 Representatives. Notwithstanding the provisions of the Master Agreement:

5.1.1 The General Manager of VTA or his/her/their designee is hereby made the representative of VTA for all purposes under this Agreement.

5.1.2 The City Manager or his/her/their designee is hereby made the representative of CITY for all purposes under this Agreement.

5.2 Waiver. The failure of either party to insist upon the strict performance of any of the terms, covenants and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either party may have, and shall not be deemed a waiver of either party's right to require strict performance of all of the terms, covenants, and conditions thereafter.

5.3 Notice. Notwithstanding the provisions of the Master Agreement, any notice required to be given by either party, or which either party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA:

Santa Clara Valley Transportation Authority
Jim Costantini, PE
Deputy Director, Construction
3331 North First Street, Building A
San José, CA 95134

To CITY:

City of San José , Department of Public Works
Jeff S. Lee, PE
Principal Engineer, Development Services Division
200 East Santa Clara Street, 3rd Floor
San José, CA 95113

5.4 Amendments. This Agreement may not be modified or amended, in whole or in part, except by an amendment in writing signed by an authorized officer or representative of each of the Parties hereto.

5.5 Term. This Agreement shall be effective as of the execution date and shall remain in effect until December 31, 2021 or until earlier termination.

5.6 Termination. Notwithstanding the provisions of the Master Agreement, either party may terminate this Agreement at any time, for any reason, upon giving thirty (30) days written notice to the other party.

5.7 Counterparts/ Electronic Signatures. This Agreement may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute one and the same agreement. VTA and Developer agree that electronic signatures delivered by email, DocuSign or in other agreeable electronic format will be fully binding upon the Party delivering the same as if an original thereof had been delivered.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as set forth below.

APPROVED AS TO FORM:

“VTA”

SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY, a
public agency

By: _____
VICTOR PAPPALARDO
Senior Assistant Counsel

By: _____
EVELYNN TRAN General Counsel
& Interim General Manager/CEO

Date: _____

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____
JON CALEGARI
Deputy City Attorney

By: _____
TONI TABER
City Clerk

Date: _____