



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein
Matt Cano

SUBJECT: SEE BELOW

DATE: September 8, 2020

Approved

Date

9/11/20

COUNCIL DISTRICT: 4

**SUBJECT: ACTIONS RELATED TO THE MASTER COOPERATIVE AGREEMENT
BETWEEN THE VTA AND THE CITY FOR THE BART EXTENSION TO
BERRYESSA/NORTH SAN JOSE STATION**

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute the following:

- (a) A roadway easement to be conveyed by the Santa Clara Valley Transportation Agency (“VTA”) over a portion of Mabury Road starting approximately at the corner of 1411 Mabury Road;
- (b) A roadway easement to be conveyed by the VTA over a portion of Lenfest Road at the intersection of Mabury Road and Lenfest Road along with a utility easement;
- (c) A roadway easement from the Santa Clara Valley Water District (“SCVWD”) over a portion of Berryessa Station Way approximately at the intersection of Berryessa Road and Berryessa Station Way;
- (d) A sanitary sewer easement conveyed by the SCVWD which runs along Berryessa Station Way approximately at the intersection of Berryessa Road and Berryessa Station Way; and
- (e) Two License Agreements from the VTA for utilities crossing the rail road transportation corridor.

OUTCOME

Approval will authorize the City of San José (“City”) to execute and accept roadway and public service easements associated with the Master Cooperation Agreement (“Master Agreement”)

between the City and Valley Transportation Authority (“VTA”) for the BART Extension to Berryessa Project. Completing these remaining real estate matters associated with the Master Agreement will support the City’s commitment to the VTA and BART Extension to Berryessa Project, secure critical public roadway access along Berryessa Station Way, Mabury Road, as well as Lenfest Road around the Berryessa BART Station, and secure necessary public service easements serving the station and communities within the City of San José.

BACKGROUND

In June 2010, the City and VTA entered into a Master Cooperative Agreement, whereby both parties agreed to consult and cooperate on the planning, environmental review, preliminary engineering, final design, construction, and funding of the BART Extension to Berryessa as part of the Silicon Valley Rapid Transit Corridor Project (SVRTC). The Master Agreement established a framework for the on-going interaction between both parties and allowed for subsequent agreements to address specific project issues and future City funding.

On June 21, 2011, the City Council passed Resolution No. 75895 authorizing the City to enter into an agreement with VTA to support the required improvements for a future Berryessa BART Station, at no cost to the City. The City agreed to own, operate, and maintain certain improvements after construction was completed by the VTA.

BART Phase I is the first phase of the 16-mile BART Silicon Valley extension of the regional BART system as part of the SVRTC Project to downtown San Jose and the City of Santa Clara, extending from the Warm Springs Station in Fremont south to the Berryessa/North San Jose Station. In accordance with cooperative agreements with the City, the VTA designed and constructed BART Phase I and various supporting projects, including a new roadway (Berryessa Station Way), expansion of Mabury Road and Lenfest Road, the Berryessa BART Station, and Upper Penitencia Creek Trail.

BART Phase I project construction is complete with a few remaining punch list items, and the Berryessa Station is open to the public. The City and the VTA now desire to finalize real estate matters pertaining to the Master Agreement, as described in this memorandum.

ANALYSIS

The City and the VTA entered into a Master Cooperative Agreement, whereby both parties agreed to consult and cooperate on the planning, environmental review, preliminary engineering, final design, construction, and funding of the BART Extension to Berryessa Project. The BART Phase 1 extension project construction is now complete with a few remaining punch list items, and the station is operating and open to the public. Completing the remaining Phase 1 real estate

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matters will eliminate barriers to proceeding with preparation of Phase 2 and will affirm the City's commitment to the BART Extension Project as part of the SVRTC Project.

In the Master Agreement, the VTA committed to the construction and funding of the roadways and infrastructure necessary to serve the Berryessa BART Station. The VTA acquired a roadway easement over a portion of Mabury Road and Lenfest Road. The Mabury Road easement allowed the VTA to expand the roadway at Mabury Road to 106 feet with 10-foot sidewalks, 4 lanes of traffic approximately 76-feet wide, and 5-foot dedicated bike lanes. The Lenfest Road easement allowed VTA to widen Lenfest Road to approximately a 74-foot wide street with sidewalks and align the roadway with the newly constructed Berryessa Station Way. Along with the Lenfest Road easement, the VTA will convey to the City a distribution pipeline easement for the conveyance of gas along underground pipes within the Lenfest roadway. The VTA designed and constructed the Berryessa Station Way, which serves as the main route to the Berryessa/North San Jose BART Station, connecting Berryessa and Mabury Roads.

A portion of Berryessa Station Way was constructed as a bridge over Penitencia Creek and crosses approximately 70 ft of land currently owned by the Santa Clara Valley Water District (SCVWD). The SCVWD uses this public bridge as both ingress and egress to Penitencia Creek for the purpose of water management and storm drainage. SCVWD has agreed to convey to the City a roadway easement for this portion of Berryessa Station Way as well as a sanitary sewer easement. The City previously held a sanitary sewer easement in this area which was moved and reconstructed during the development of the Berryessa BART Station. The City shall have no responsibility to maintain the flood/creek channel underneath the Berryessa Station Way bridge. These improvements were agreed to by the City under the Master Cooperative Agreement #3 executed on January 24th, 2013 and previously approved by the City Council on January 24, 2012 under Resolution No. 76125. Accepting these easement currently held by the VTA would fulfill City's prior commitments under the Master Agreement to own, operate, and maintain the improvements after construction by the VTA.

The VTA acquired property along the railroad transportation corridor for use by BART in order to operate and maintain the rail corridor as well as to construct the Berryessa BART Station. The City was previously granted two licenses for utilities which cross under the railroad corridor when the corridor was owned by Western Pacific Railroad Company. Now that the VTA owns the land along the rail corridor, the City and VTA wish to enter into two License Agreements for the continued use of an underground 18-inch sanitary sewer line with 30-inch casing and an underground 2.2-foot storm drain ("License Agreements"). The sanitary sewer line and storm drain are already constructed and have been in operation at least since 1978 and 1984 respectively. Accepting the License Agreements from the VTA will allow the City to continue to operate and maintain the utilities and appurtenant facilities.

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CONCLUSION

The City's acceptance of the roadway easements, public service easements, and licenses will fulfill commitments associated with the completion of the BART Extension to Berryessa Project agreed to by the City under the Master Agreement. The City's support for the Phase 1 BART Extension Project will assist staff in continued negotiations of the Phase 2 BART extension to Downtown San Jose.

Approval of the recommendations in this memo will direct staff to negotiate, execute, and record the remaining easement matters in the Official Records of Santa Clara County and negotiate and execute the two (2) License Agreements. Staff will execute all remaining real estate matters after the Department of Public Works completes overall project acceptance.

EVALUATION AND FOLLOW-UP

Staff will continue coordination with the VTA on the BART extension into Downtown San Jose adhering to the Master Cooperative Agreement and all related City requirements.

CLIMATE SMART SAN JOSE

The recommendations in this memo encourage travel by modes other than single occupancy vehicles and thus aligns with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the September 22, 2020 Council Meeting. Additionally, the VTA conducted numerous public meetings, open houses and other public forums to advise the public on the BART project.

COORDINATION

This memorandum has been coordinated with the Department of Planning, Building and Code Enforcement, the City Attorney's Office, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

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COST SUMMARY/IMPLICATIONS

There are no direct costs associated with the recommended actions in the memorandum. However, there will be staff time used for project management and processing of real estate transactions, which will be reimbursed by the VTA pursuant to the Master Agreement. The expenses and reimbursements are budgeted in the Construction Excise Tax Fund as part of the Traffic Capital Improvement Program.

BUDGET REFERENCE

The table below identifies the fund and appropriation to fund the staff costs associated with executing the real estate transactions.

Fund #	Appn. #	Appn. Name	Total Appn	Amt. for Contract	2020-2021 Proposed* Budget Page	Last Budget Action (Date, Ord. No.)
465	7439	BART Design and Construction Support	\$207,000	N/A	V-432	06/23/2020, Ord. No. 30437

* The 2020-2021 Adopted Operating Budget was approved on June 16, 2020 and adopted on June 23, 2020 by the City Council.

CEQA

Determination of Consistency with the BART Extension to Milpitas, San Jose, and Santa Clara Final EIR, BART Extension to Milpitas, San Jose, and Santa Clara Final Supplemental EIR, and BART Silicon Valley Phase 1 -Berryessa Extension Final 2nd Supplemental EIR, and Addenda thereto, Resolution No. 76126.

/s/
NANCI KLEIN
Director of Economic Development

/s/
MATT CANO
Director of Public Works

For questions, please contact Kevin Ice, Senior Manager, Real Estate Services, at (408) 535-8197.