



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

**SUBJECT: COOPERATIVE AGREEMENTS
FOR BART EXTENSION TO
BERRYESSA**

DATE: May 10, 2021

Approved

Date

5/14/2021

COUNCIL DISTRICT: 4

RECOMMENDATION

1. Approve the proposed Continuation and Fifth Amendment to Master Agreement with the Santa Clara Valley Transportation Authority to retroactively extend the term of the agreement from January 1, 2021 to December 31, 2021.
2. Approve the proposed Cooperative Agreement No. 11 with the Santa Clara Valley Transportation Authority for the resolution of all outstanding issues relating to the Silicon Valley Berryessa Extension Project.

OUTCOME

The recommended actions will facilitate the acceptance of City infrastructure constructed by the project with the resolution of all outstanding issues. The actions will also allow the City Manager to execute the agreement for Ongoing Operation and Maintenance of Facilities Constructed as part of the BART Silicon Valley Berryessa Extension (SVBX) Project.

BACKGROUND

BART Phase I, the Berryessa Extension, was a two-station extension south from the Warm Springs Station in Fremont, through Milpitas and to the Berryessa/North San José Station. Phase I was completed and opened for revenue service on June 13, 2020.

In June 2010, the City and Santa Clara Valley Transportation Authority (VTA) entered into a Master Cooperative Agreement (Master 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 Master Agreement established a framework for the on-going interaction between both parties and allows for

subsequent agreements to address specific project issues and future City funding. On December 5, 2017, the First Amendment to Master Agreement was executed by the City Manager (pursuant to San Jose Municipal Code Section 4.04.055) to extend the term of the agreement to December 31, 2018. On December 18, 2018, the Second Amendment to Master Agreement was approved by Council to extend the term of the agreement to December 31, 2019. On December 19, 2019, the Third Amendment to Master Agreement was executed by the City Manager (pursuant to San Jose Municipal Code Section 4.04.055) to extend the term of the agreement to June 30, 2020. On August 11, 2020 the Fourth Amendment to Master Agreement was approved by Council to extend the term to December 31, 2020. The City and VTA now desire to further amend Master Agreement to retroactively extend the term to December 31, 2021, the anticipated completion date of City services for the Project. The term extension is retroactive because resolution to all outstanding issues was complex and took longer than anticipated to negotiate. Prioritizing an agreement intended to be comprehensive and final to close out the project also lengthened the negotiation process.

In June 2012, the City and VTA entered into Cooperative Agreement No. 9 for the construction of City improvements as part of the Project, whereby both parties agreed on the process for City's acceptance, operation and maintenance of City improvements constructed. In September 2015, Cooperative Agreement No. 10 covered funding, design, construction, maintenance and operations of the SVBX Upper Penitencia Creek Trail Connector. During the project acceptance process, outstanding issues and items of work relating to the project were identified. The parties now desire to enter into Cooperative Agreement No. 11 to provide reimbursement from VTA to City to resolve outstanding issues and to conclude the Master Agreement.

ANALYSIS

As a part of Cooperative Agreement No. 11, City and VTA have reached an agreement on the resolutions to all outstanding issues, which are as follows:

- A. VTA will compensate City the sum of \$162,000 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 for the damaged Mabury Road Signal Interconnect Cables.
- C. VTA will compensate City the sum of \$233,752 for the project haul routes pavement restoration.
- D. VTA will compensate City the sum of \$17,000 for the replacement and upgrade of 20 traffic signal cameras at the Berryessa Transit Center.
- E. VTA will compensate City for the costs to repair the Hostetter Road Siphon Vault, which amount will not exceed \$284,000.

- F. VTA will compensate City the sum of \$6,028 to pay City's contractor to purchase plants required for the Trade Zone Boulevard landscaping.

CONCLUSION

In summary, the proposed agreements between the City and VTA represent a commitment to cooperate and effectively resolve outstanding issues. The proposed agreements will allow the City to accept the City infrastructure constructed by the project and execute the agreement for Ongoing Operation and Maintenance of Facilities Constructed.

EVALUATION AND FOLLOW-UP

Upon receipt of compensation from VTA, staff will bring forward recommendations to recognize and appropriate the funds to the respective departments to complete the necessary repairs.

CLIMATE SMART SAN JOSE

The recommendation in this memo 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 May 25, 2021 Council Meeting.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

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FISCAL/POLICY ALIGNMENT

The recommended actions are the final steps to the completion of the BART Phase I project and aligns with the City's Envision 2040 goals to facilitate increased travel by transit and the Transportation & Aviation Services CSA goals to provide transportation choices that support a strong economy.

COST SUMMARY/IMPLICATIONS

The design and construction of City infrastructure were fully funded by the BART project. City staff costs incurred for direct support of the project were reimbursed by the VTA. The annual maintenance costs associated with the City infrastructure constructed by BART Phase I has estimated and added to the Department of Transportation's operating budget as part of prior year's budget processes. As part of the recommended Cooperative Agreement No. 11 with VTA, once the funds are received, staff will bring forward for City Council approval recommendations to recognize and appropriate the funds to the respective departments for the necessary repairs.

CEQA

Santa Clara Valley Transportation Authority's Final Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report, ER21-065.

/s/

MATT CANO

Director of Public Works

For questions, please contact J. Guevara, Deputy Director of Public Works, at (408) 807-1801.