



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Hans F. Larsen

**SUBJECT: BART MASTER AGREEMENT
FOR BERRYESSA EXTENSION**

DATE: 06-01-10

Approved

Date

6/9/10

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Approval of a cooperative Master Agreement with the Santa Clara Valley Transportation Authority (VTA) for design and construction of the BART extension to Berryessa for a period from execution of the agreement to June 30, 2018.

OUTCOME

Approval of the cooperative Master Agreement will enable the City and VTA to continue to pursue Federal Transit Authority (FTA) funding for the BART extension to Berryessa and establish guidelines and procedures for the City and VTA staff to resolve key elements of design, construction mitigation, outreach, funding, and future agreements.

BACKGROUND

As a result of the voter approved 2000 Measure A ballot and subsequent ballot measures in 2006 and 2008, the Santa Clara Valley Transportation Authority (VTA) is tasked with implementing the BART Extension project to Silicon Valley. VTA is currently working on Phase I of the extension project, which will bring BART service to San José at the proposed Berryessa Station. The Project is referred to as the Berryessa Extension Project (BEP). The project has significant benefits for San José and the greater Silicon Valley community related to improved regional mobility, interconnectivity, and better overall access and transportation choices.

VTA's planning, environmental review, and design of the BART BEP is progressing on schedule. VTA is working with City staff to resolve design elements that will cause changes to existing and planned City infrastructure along the Berryessa Extension. VTA seeks a strong working partnership with the host cities to be served by BART in part to fulfill Federal requirements for collaboration on major issues with local jurisdictions.

In early 2010, the Federal Transit Administration (FTA) notified local officials that the BART Berryessa Extension was given a favorable rating for Federal funding. VTA has requested \$900

million in federal aid and a decision is expected to be made later this year. A requirement for the approval of Federal funding is to show that the local jurisdictions and VTA have established guidelines and procedures as part of their working relationship to assure delivery of the project. The FTA requires an agreement between the VTA and City that addresses the overarching elements of the project and provides direction to both City and VTA staff on key elements of design, issue resolution, outreach, funding, and future agreements. Therefore, staff is requesting Council approval of the proposed agreement between the City and VTA.

ANALYSIS

Purpose

Due to the size and complexity of the BART Extension to the Berryessa district of San José, staff determined that the establishment of a master agreement with the VTA was the best approach to establish a commitment to cooperate and effectively resolve issues as part of the project. The proposed agreement defines the relationship, roles, and responsibilities between City and VTA with respect to the project. VTA will pay for all relocation costs of City infrastructure. The proposed agreement focuses on key areas, including communication and coordination, future agreements, dispute resolution, and design review and approval. Additional topic areas include City infrastructure, traffic maintenance and detours, other impact mitigation, indemnification, and insurance requirements. Details of these key elements in the proposed agreement include:

- VTA will continue to pursue implementation of the full BART project with service to Downtown San Jose, Diridon Transit Hub, and Santa Clara Caltrain Station with a transit connection to the Mineta San Jose International Airport.
- VTA is responsible for all environmental analysis and mitigation for the project.
- VTA will continue to pursue the best design alternatives for the Milpitas BART station to create a “seamless” pedestrian connection to the Guadalupe/Tasman/Capitol Light Rail Transit system.
- VTA to include the following in the design of the project: architectural and urban design standards, public art for the Berryessa station, and pedestrian and bicycle amenities.
- City will need to approve any City infrastructure, such as streetlights, sidewalks, utilities, streets, that will need to be relocated for the project and VTA will be responsible for all costs.
- As part of the encroachment permit process, VTA will submit a Community Outreach and Communication Plan.
- VTA will need to comply with Storm Water Pollution Control requirements of the regional water board and City policies.

- The CITY and VTA will continue to explore local and regional highway funding resources for the design and construction of the 101/Mabury interchange.

Two main elements that require further discussion in this report include the VTA commitment to provide funding for City staff for support in the design and construction of the project and VTA's proposal to provide a different construction outreach and mitigation process than defined by the City's Municipal Code (Part 2 of Section 13.36).

Staff Funding

City staff provides a significant level of support to the VTA and their consultants to plan, design, and construct regional projects in San José. In the past, VTA has not typically reimbursed City staff the cost for internal review of VTA plans for regional projects. Given the extraordinary scope of the BART project, City and VTA staff have discussed issues related to the level of City staff assistance needed to effectively support the project. Project support may include: public contact and meeting facilitation, design review, construction and right-of-way encroachment permitting, construction inspection, as well as acceptance of public works facilities to be owned by City upon completion of work. As a result of these discussions, VTA has agreed that the City will be reimbursed to cover City staff costs related to the design, construction, and inspection for work within City rights-of-way and for relocation of City-owned facilities. The scope of the costs will be determined as part of subsequent agreements tied to the Master Agreement between the City and VTA for specific elements of the project.

Construction Impact Mitigation Plan (CIMP)

Part 2 of Chapter 13.36 of the San José Municipal Code (Construction Impact Mitigation Plans Ordinance) provides measures to help residents and businesses located in San José through the temporary disruption of major construction projects by requiring, among other things, the owners of such projects to communicate with the surrounding neighborhood prior to and throughout the construction period of the project. Section 13.36.240 defines "major construction project" as totaling \$10 million and (i) will impact two or more signalized intersections, or (ii) sidewalk access will be precluded for the length of a block, or (iii) the project is located within the lesser of five hundred feet or one block of another project located in the right-of-way. The BART project meets this definition of a "major construction project" and be subject to the ordinance.

The Construction Impact Mitigation Plans Ordinance requires an owner of a major construction project to submit for Council approval a detail Construction Impact Mitigation Plan (Plan) as a condition of an encroachment permit to be issued by the Director of Public Works. Section 13.36.220 states that the Plan shall include, among other things, a detail description of the project, construction schedule, analysis of potential impact to residents and businesses, and detail of mitigation measures to be taken to mitigate each of the impact. Additionally, the Plan must include a communication plan setting forth a schedule of regular meetings with residents and businesses addressing their concerns.

VTA has expressed support of the City's goal to minimize construction impacts and provide appropriate communication, however due to their federal funding process and proposed design-build delivery method, VTA has proposed different actions to meet the spirit of the Construction Mitigation Plans Ordinance. Section 13.36.210B does state that terms and conditions of a cooperative agreement will control over the ordinance. Staff and VTA has negotiated a Community Outreach and Communications Plan that in conjunction with the project mitigation requirements, staff believes will address any concerns from residents and businesses during construction of the project and meet the spirit of the Construction Impact Mitigation Plan Ordinance.

The key elements in proposed agreement that differ from the CIMP ordinance are as follows:

- Construction Impacts – The ordinance requires a detailed analysis of the potential physical, environmental, and other impacts of the construction activities on residents and businesses within a 500 foot radius of the project. VTA has completed an impact analysis report as part of their environmental documents and will incorporate any required mitigation. However, VTA will not provide a separate mitigation plan and no further analysis will be completed as part of the construction process.
- Potential Impacts to Businesses – The ordinance proposes a number of mitigation measures for impacts to business including limiting construction hours, marketing assistance, and financial assistance. VTA's proposed mitigation measures as part of their environmental document and proposed agreement do not include these types of mitigations.

The proposed agreement is sufficient to meet the intent of the provisions of the CIMP ordinance.

In summary, this agreement includes reference to remedies San José staff determined, with VTA concurrence, was the best approach to establish a commitment to cooperate and effectively resolve issues. The proposed agreement defines the relationship, roles, and responsibilities between City and VTA with respect to the project. VTA will pay for all relocation costs of City infrastructure. The proposed agreement focuses on key areas, including communication and coordination, future agreements, dispute resolution, and design review and approval as well as City infrastructure, traffic maintenance and detours, other impact mitigation, indemnification, and insurance requirements.

EVALUATION AND FOLLOW-UP

The proposed Master Agreement will be the basis for subsequent agreements to further establish details in mitigating project impacts on City residents and City facilities. Staff will seek Council approval for subsequent agreements at the appropriate time.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum will be posted on the City's website as part of the Council Agenda outreach process. As part of the BART project, City staff and the VTA will conduct stakeholder outreach and outreach to the public on the proposed project as appropriate. The VTA has conducted numerous public meetings, open houses, and other public forums to advise the public on this project. Many forms of public contact, i.e. advertisements, flyers, mail-outs, and e-mails were sent by VTA staff to inform the public of the BART project.

COORDINATION

This item has been coordinated with the City Attorneys Office; Departments of Building Planning and Code Enforcement, Public Works, Environmental Services, Parks, Recreation, and Neighborhood Services, and General Services Department; Office of Economic Development, City Manager's Office, and the San Jose Redevelopment Agency.

FISCAL/POLICY ALIGNMENT

The Project aligns with the City's *Green Vision*/Green Mobility goals, as well as all Transportation & Environment CSA goals as established by Council Policy.

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CEQA

Not a project. There is a statutory exemption from CEQA for feasibility and planning studies and cooperative agreements under Section 15-262. VTA will prepare all necessary environmental documents to inform future City decisions regarding the potential construction of a BART Extension to the Berryessa area of San José. This work effort will be coordinated with City Planning, Building, and Code Enforcement staff.

/s/

HANS F. LARSEN
Acting Director of Transportation

For questions please contact Manuel Pineda, Acting Deputy Director of Transportation,
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