

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Hans F. Larsen

SUBJECT: COOPERATIVE AGREEMENTS FOR DATE: 05-31-11
BART/SILICON VALLEY
BERRYESSA EXTENSION

Approved

Date

6/3/11

COUNCIL DISTRICT: 4

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute the following agreements related to the BART project:

- a. A cooperative agreement between the City of San José (City) and Santa Clara Valley Transportation Authority (VTA) for the construction by VTA of improvements to the existing storm drain system located at Trimble Road and Capitol Avenue, at no cost to the City, and City will own, operate and maintain the improvements after completion;
- b. A cooperative agreement between the City and VTA for the construction by VTA of required improvements to support a future Berryessa BART Station, at no cost to the City, and City will own, operate and maintain the improvements after completion; and
- c. A cooperative agreement between the City, VTA, and Santa Clara Valley Water District for the construction by VTA of improvements to Upper Penitencia Creek, at no cost to the City, and City will own, operate and maintain certain improvements after completion.

OUTCOME

These agreements guide the design and construction of key infrastructure improvements within the City of San José in support of the issuance of a \$900 million Full Funding Grant Agreement (FFGA) for the BART/Silicon Valley Berryessa Extension (SVBX) project by the Federal Transit Administration (FTA). The development and execution of the subject agreements will support VTA in meeting significant milestones associated with the New Starts Project schedule and satisfy FTA's expectations with respect to inter-agency cooperation.

BACKGROUND

On June 22, 2010, VTA entered into a Master Agreement with the City for the SVBX Project. The Master Agreement provides a framework for cooperative efforts between the two agencies to advance the \$2.5 billion SVBX project, to include the key elements of design, issue resolution, outreach, and funding, while providing for the development of subsequent agreements to address specific project issues. The recommendation in this memorandum is consistent with this direction.

On April 4, 2011, VTA was granted permission to enter the Final Design phase of the Federal New Starts Program for the SVBX project. The New Starts program provides funds for construction of new fixed guideway systems or extensions to existing fixed guideway systems. Projects become candidates for funding under this program by successfully completing the appropriate steps in the major capital investment planning and project development process. Major new fixed guideway projects, or extension to existing systems financed with New Starts funds, typically receive these funds through a full funding grant agreement (FFGA) that defines the scope of the project and specifies the total multi-year Federal commitment to the project.

It is expected that VTA will formally submit a request for a FFGA from the FTA in June 2011, seeking \$900 million in federal funds through the New Starts Program. FTA's current project schedule indicates a target date for executing the FFGA of January 2012.

In considering the issuance of the FFGA, FTA has asked VTA to submit executed interagency agreements documenting how VTA will work cooperatively with local agencies affected by the project. These agreements guide the working relationship between the project sponsor and its local partner agencies and are intended to minimize risk to the project by defining the framework for major interactions between stakeholder agencies. FTA has asked VTA to include these agreements in its June 2011 submittal package.

ANALYSIS

The development and execution of the subject agreements are intended to support VTA in meeting significant milestones associated with the New Starts Project schedule and satisfy FTA's expectations with respect to inter-agency cooperation. These agreements are consistent with the description of the project as described in VTA's Supplemental Environmental Impact Report approved by the VTA Board of Directors on March 3, 2011. In addition, completion of the inter-agency agreements will provide important direction on key issues to be included as attachments to the final addendum to the Request for Proposals for the initial design-build contract for the SVBX project.

VTA and City staff continue to finalize the terms and conditions of the subject agreements. Staff expects that the delegation of authority to the City Manager to negotiate and execute these

agreements will provide sufficient time to finalize these documents and meet VTA's application schedule.

Agreement Summaries

The previously discussed Master Agreement provides the framework for the on-going interaction between the City and VTA, and is intended to be supported by subsequent agreements concerning specific issues related to the project. Accordingly, the City and VTA are near completion in the development of specific agreements for two particularly complex areas along the BART corridor that are the subject of this memorandum. A separate agreement is also being developed in coordination with the Santa Clara Valley Water District. A summary of the key elements of each agreement is as follows:

I. Agreement for the Improvements to the Existing Storm Drain System located at Trimble Road and Capitol Avenue.

The City currently owns, operates and maintains a 72-inch and 78-inch storm sewer siphon located at Trimble Road and Capitol Avenue. At this location, the proposed BART alignment has been developed to be below grade in a retained-cut configuration, conflicting with the location of the existing storm sewer. Further, the existing storm sewer lacks the capacity for conveying water during a 100-year flood. Should such a flood occur, it would inundate the VTA right-of-way, to include the BART guideway, and therefore needs to be replaced. The proposed cooperative agreement between City and VTA focuses on key design elements associated with the replacement of the storm sewer siphon under the proposed BART alignment.

VTA is currently working with City staff to design and coordinate the development of the replacement storm sewer system. VTA will replace the existing storm sewer siphon at no cost to the City. The improvements will be constructed in accordance with City standards and specifications with the exception of specific non-standard features to address unusual site conditions, which have been developed in consultation with City staff. The improvements will be inspected and approved by the City prior to the City taking ownership. Upon completion and acceptance by the City, VTA will transfer operational and maintenance control of the improvement to the City, in accordance with the Master Agreement.

2. Agreement for the Improvements on Berryessa Station Way and Other Improvements

City and VTA staff have worked cooperatively to define the scope of public improvements required in the Berryessa Station area and other improvements in the City to support the SVBX Project alignment. In addition to VTA and BART facilities, VTA will construct improvements in the Berryessa Station area that will be owned, operated and maintained by the City. These improvements include a new roadway (Berryessa Station Way) connecting Mabury Road and Berryessa Road within the Berryessa BART station campus, minor roadway realignment (Lenfest Road), improvements to Berryessa Road and Mabury Road,

and utility and drainage systems improvements. These improvements are being developed in accordance with City standards and specifications, and any specific non-standard features have been developed in consultation with City staff. Once constructed, and the associated public improvements (e.g., roadway, streetlights, traffic signals, storm/sanitary sewers, etc) are accepted by the City, the City will operate and maintain Berryessa Station Way, which includes the Berryessa Station Way bridge across Upper Penitencia Creek. The attached Exhibit A provides an overview of the location and layout of the Berryessa Station area.

Also included in this agreement is the design direction for the replacement of the storm sewer system in the vicinity of Sierra Road/Lundy Avenue. The design of the Sierra Road/Lundy Avenue Improvements includes the installation of a large storm sewer siphon and underground storm water pump station to replace the current gravity system. As the depth of the proposed pump station would exceed the reach of the City's existing maintenance vehicles, the SVBX project will provide the City with a vacuum truck to support the maintenance of the proposed pump station and siphon. After completion and the City's acceptance of the improvements, VTA will transfer operational and maintenance control to the City.

3. Agreement for the Upper Penitencia Creek Channel Improvements

Upper Penitencia Creek flows through the northern portion of the Berryessa station campus. The existing creek channel lacks the capacity for conveying a 100-year flood. Should such a flood occur, it could inundate the Berryessa Station Campus and adjacent properties. The Santa Clara Valley Water District (SCVWD) is planning for future Upper Penitencia Creek flood protection improvements along the 4.2-mile creek. However, the SCVWD's schedule for the creek improvements is delayed due to lack of funding. One of the planned improvements for the SVBX project is to modify the portion of existing Upper Penitencia Creek within the station campus area. The creek improvement will provide environmental mitigation for wetland impacts applicable to the entire SVBX project, including impacts occurring in wetland areas in other parts of the corridor. VTA will be funding and constructing these improvements as part of the SVBX project.

The exact grading of the Upper Penitencia Creek channel and the design elements of Berryessa Station Way Bridge will be finalized during the final design performed under the proposed design-build contract for SVBX. After completion of the creek improvements, VTA will transfer operational and maintenance control to SCVWD. The City of San José is a party to this agreement as well, because it will own, operate and maintain the Berryessa Station Way Bridge (as discussed above) over the channel, as well as several utility crossings of the Upper Penitencia Creek channel.

In summary, this cooperative agreement documents the roles and responsibilities of VTA, CSJ and SCVWD with respect to performance of the design, construction, acceptance, and warranty of the improvements of Upper Penitencia Creek within the Berryessa Station site.

POLICY ALTERNATIVES

The recommended actions are consistent with the previously approved Master Agreement between the City of San José and the VTA for the BART/SVBX project.

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)**

While the recommended action does not meet the \$1 million threshold under Criterion 1, this memorandum will be posted on the City's website for the Council agenda.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

The recommendations of this memorandum support the development of the Project which aligns with the City's Green Vision/Green Mobility goals and the Transportation & Aviation CSA goal to provide viable transportation choices that promote a strong economy.

COST SUMMARY/IMPLICATIONS

In delivery of the SVBX project, VTA will cause changes to City facilities that will result in new or the replacement of existing infrastructure to include underground storm and sanitary sewer facilities, roads and bridges, traffic signals and street lighting, pedestrian and bicycle facilities and street landscaping. New infrastructure will add to the City's overall operating and maintenance (O&M) costs, whereas replaced infrastructure should reduce the O&M costs associated with aging or deficient infrastructure. This is true for most of the project, with the

05-31-11

Subject: Cooperative Agreements for BART/Silicon Valley Berryessa Extension

Page 6 of 6

exception of the storm sewer replacement at Sierra Road/Lundy Avenue. At this location, a gravity storm sewer will be replaced with a deep siphon system and new pump station.

Preliminary estimates indicate over \$23 million in capital improvements that VTA will invest in City infrastructure. For the project elements discussed in this agreement, the estimated annual O&M costs for the new infrastructure are likely to fall in the range of approximately \$50,000 to \$100,000 and will be further refined as the project design is finalized. These costs may be fully incurred as early as 2017. Additional improvements and associated O&M costs will become known at a later date once the final design elements are developed and incorporated into regular O&M reporting. It is expected that final engineering estimates will be available at the onset of construction, expected to begin by early 2012.

BUDGET REFERENCE

Not Applicable.

CEQA

Not a Project, File No PP10-066 (g) Memorandum of Understanding.

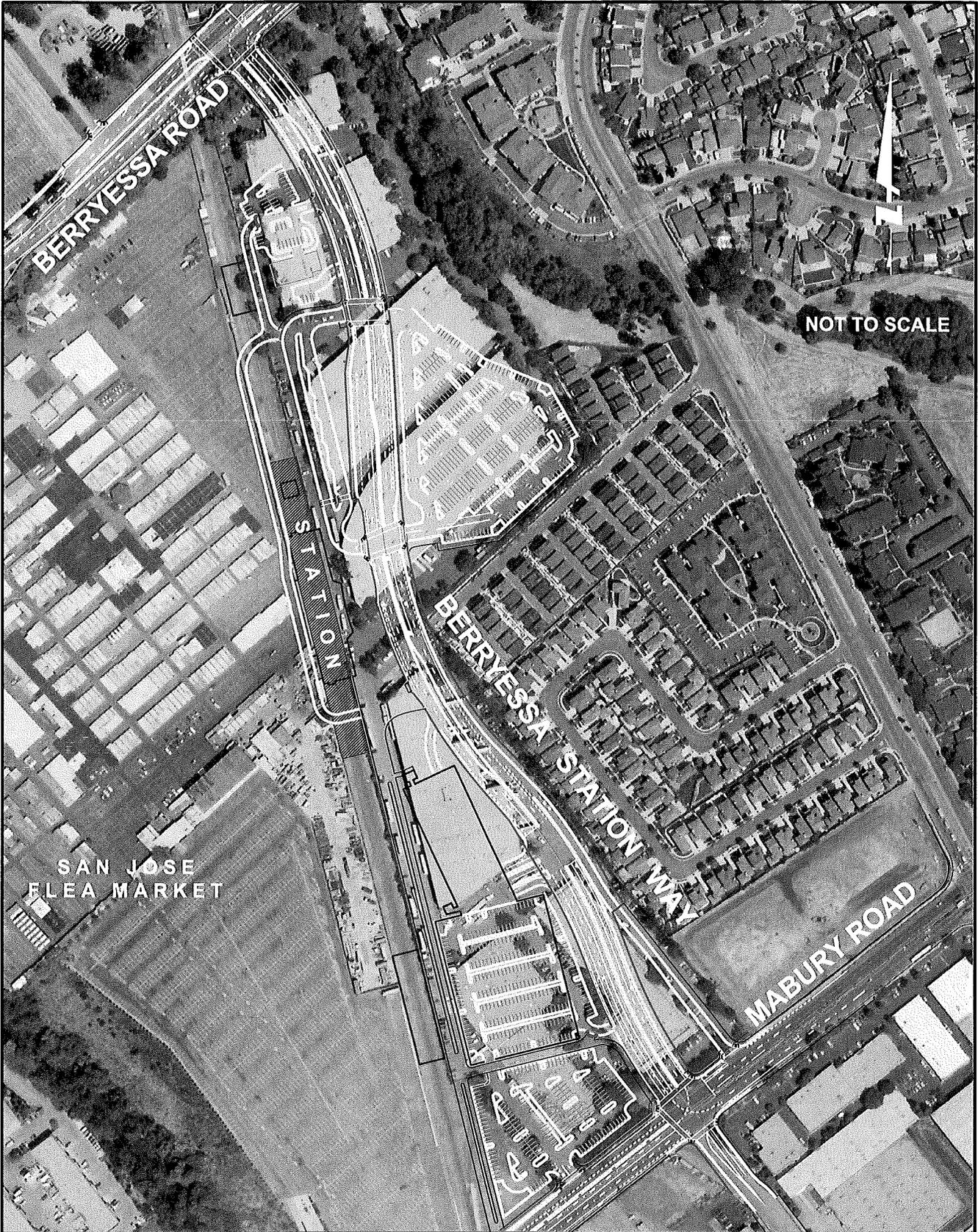
/s/

HANS F. LARSEN
Director of Transportation

For questions please contact Manuel Pineda, Acting Deputy director, at 975-3295.

Attachment

ATTACHMENT A



BERRYESSA BART STATION