

COOPERATIVE AGREEMENT  
BETWEEN  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
AND  
CITY OF SAN JOSE  
RELATING TO IMPROVEMENTS TO THE EXISTING STORM DRAIN SYSTEM  
LOCATED AT TRIMBLE ROAD AND CAPITOL AVENUE

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Council Agenda: 1/24/12

Item No.: 6.2a(1)

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This Cooperative Agreement (hereinafter “Agreement”) is entered into between the Santa Clara Valley Transportation Authority, a public agency organized as a special district (“VTA”), and the City of San José, a municipal corporation under the State of California, (hereinafter “CITY”). This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011 (the “Effective Date”). Each of VTA and the CITY are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

## RECITALS

- A. VTA intends to construct a 16 mile extension of the Bay Area Rapid Transit system (“BART”) rail line into Santa Clara County, under the project entitled: Silicon Valley Rapid Transit Corridor Project (“SVRTC”).
- B. VTA has undertaken a program of activities leading to the aforementioned extension of BART service, to be constructed by VTA and operated by the Bay Area Rapid Transit District, in an initial phase through the City of Milpitas to the Berryessa district of San José, entitled: Berryessa Extension Project (hereinafter the “Project”).
- C. VTA and CITY entered into a Master Agreement on June 22, 2010, which describes the roles and responsibilities of the Parties with respect to the Project and this Agreement is made pursuant to said Master Agreement and the terms, conditions, and obligations of the Master Agreement shall apply to this Agreement, unless explicitly stated otherwise herein.
- D. CITY owns and operates a storm drain system within Lundy Place/Trimble Road. This existing storm drain system crosses the BART corridor owned by VTA. The existing storm drain system includes siphon segments which operate under pressure rather than having a continuous downhill slope.
- E. The portion of the storm drain within and adjacent to the VTA corridor, which includes one of the siphon segments, will need to be reconstructed to provide 100-year capacity as required by BART standards, and to provide a drainage structure having adequate structural strength beneath the BART guideway trench structure. VTA proposes to fully fund, design and reconstruct this siphon segment as part of the Project. This design and reconstruction is referred to in this Agreement as the Trimble-Lundy Improvements Work (or the “Work”), as depicted in more detail in Exhibit A and Exhibit B.

T-16785.015/782035

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- F. The existing storm drain which is the subject of this Agreement is located between the intersection of north Capitol Avenue at Trimble Road and the eastern terminus of Lundy Place on the boundary between Milpitas and San José as more particularly depicted in Exhibit A. This storm drain crosses VTA right-of-way in an area where the BART guideway will be in a retained-cut configuration.
- G. The existing storm drain system includes two siphons, consisting of a reinforced concrete double cell 6' by 4' box culvert, and a 78 inch lined corrugated metal pipe ("CMP") connected to a 72 inch reinforced concrete pipe ("RCP"). The 78 inch CMP is connected to the 72 inch RCP on the downstream end of the siphon. The two siphons are separated by a junction structure that is labeled as Manhole #2, depicted in Exhibit B, Memorandum titled "Schematic of Proposed Cross-Drainage Structure Under SVRT Alignment at Existing Lundy/Trimble or East Penitencia Creek Siphon Location". The existing double box culvert is located upstream the of the 78 inch CMP/72 inch RCP siphon and is located east of the VTA Right of Way ("ROW"). The downstream 78 inch CMP/72 inch RCP siphon is located within VTA ROW and is the subject of this Agreement.
- H. VTA prepared a conceptual layout for the proposed Work within the VTA right-of-way, as depicted in Exhibit A. The exact location, flow line elevations, and configuration of the junction structures will be determined during the final design phase.
- I. The purpose of this Agreement is to set forth the roles and responsibilities with respect to the design features of the proposed Work, define property rights needed to implement the construction of the Work, and identify on-going ownership, responsibilities for maintenance and operation of the proposed siphon system.
- J. The Work will be designed to CITY standards and specifications except as modified herein.
- K. After completion of the Work, VTA will transfer operational and maintenance control to the CITY, in accordance with the Master Agreement.

For valuable consideration, VTA and CITY hereby set forth in this Agreement their respective responsibilities as follows:

## SECTION I

T-16785.015/782035

Council Agenda: 1/24/12

Item No.: 6.2a(1)

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### **Responsibilities of VTA:**

1. To fully fund, design, bid, and construct the Work as set forth in this Agreement.
2. To complete the final design for the Work.
3. To construct the proposed Work with the following design features:
  - a. Replace the existing 78 inch CMP and 72 inch RCP siphon with a reinforced concrete double cell 6' by 5' box culvert that is approximately 60 lineal feet in length. In addition, the Work will include replacement and modification of the two existing junction structures (Manhole #2 and Manhole #3), as set forth in Exhibit B. The new box culvert is expected to have capacity for approximately a 100-year flow rate.
  - b. Construct a short transition structure to replace manhole #2. Due to the location of other utilities and the proposed deep soil mix ("DSM") wall, there is insufficient space to provide a riser pipe to the modified manhole #2. Therefore, access to this transition structure will be provided at the west end of the new box culvert (Manhole #3) and the east end of the existing box culvert (Manhole #1).
  - c. Construct proposed Manhole #3 between the proposed double cell 6' by 5' box culvert and the existing 72 inch RCP. This 72 inch RCP connects to the outfall structure that leads into East Penitencia Creek.
  - d. Construct Manhole #3 with a manhole lid centered north/south on the junction structure but is as close as possible to the westerly edge of the junction structure, to provide for ease of maintenance and avoid conflicts with VTA ROW fencing.
4. To coordinate, administer, and complete the planning, design and engineering services for the design phase of the Work.
5. To fully fund design and development of all improvements related to the Work for the Project.
6. To prepare plans, specifications and estimates for the Work under the design-build contract.

T-16785.015/782035

Council Agenda: 1/24/12

Item No.: 6.2a(1)

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7. To coordinate with and submit plans and specifications for review and approval to CITY and BART to ensure that the design meets applicable criteria and standards of the respective agencies.
8. To construct improvements so as not to preclude CITY from building future storm drain improvements as shown in Exhibit B.
9. To advertise, award, and administer the Work construction contracts, at no cost to CITY. This will be done utilizing VTA and/or consultant personnel to provide a Resident Engineer and such other construction related engineering, design services during construction, inspection, quality assurance and testing as may be required for satisfactory completion of the Work.
10. To obtain all applicable permits required for construction of the Work, per the Master Agreement, Section 8.D, "Permits".
11. To complete the Work and transfer ownership, operation, and maintenance responsibility of the Work to City upon of the Project in accordance to this Agreement and Master Agreement.

## SECTION II

### **Responsibilities of CITY:**

1. To assist VTA in coordinating and administering the engineering services for the design phase of the Work.
2. To review, comment, and approve the Work design plans and specifications per the Master Agreement, Section 8.C, "CITY Review of PROJECT Plans and Specifications".
3. To accept the Work provided that (i) the Work is built according to plans and specifications which have been reviewed and approved by CITY, and (ii) VTA is in compliance with the provisions of this Agreement and Master Agreement relating to the Work. Any other responsibilities of the Parties as to maintenance of the storm drain system in this area will be unchanged by this Agreement.

T-16785.015/782035

Council Agenda: 1/24/12

Item No.: 6.2a(1)

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### SECTION III

#### **It is Mutually Agreed:**

1. The Parties acknowledge that VTA intends to construct BART improvements within the VTA Corridor above the Work that will be constructed by VTA as part of this Agreement. The BART improvements within the VTA Corridor will require a “Secure Zone” of approximately sixty (60) feet wide, as shown in Exhibit B, where surface access within the Secure Zone should be limited to protect the BART improvements. City agree agree to use its best efforts to limit any surface access within the Secure Zone and to promptly notify BART and/or VTA if surface access within the Secure Zone to access the Work is required for maintenance, repairs, replacement, or emergency work.
2. After completion of the Work, the Parties shall keep and maintain books, papers, plans, drawings, records, files, reports and other materials relating to the Work for a period of three years. The Parties shall make these records available to the other party and any agency providing any part of the funding for the services and their respective auditors at any reasonable time and upon reasonable notice for the purpose of auditing, inspection, and copying. The Parties shall include in any contract for any part of the services a similar requirement.
3. Pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify, defend and hold the other Party, its officers, employees and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such Party under this Agreement. Neither Party, nor any officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other Party under this Agreement.
4. The failure of either Party to insist upon the strict performance of any of the terms, covenant and conditions of this Agreement shall not be deemed a waiver of any right or

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remedy that Party may have, and shall not be deemed a waiver of the right to require strict performance of all of the terms, covenants, and conditions thereafter.

5. Except as otherwise specifically described herein, all communications with respect to this Agreement shall be given by first-class mail to the Parties as follows, or to such other person, addresses, or telephone numbers as the Parties may designate in writing from time to time:

<b>VTA</b> Mr. John Donahue Group Manager Santa Clara Valley Transportation Authority 1971 Milmont Drive Milpitas, CA 95035 Telephone No. (408) 942-6196	<b>CITY</b> City of San Jose 200 East Santa Clara Street San Jose, CA 95113 Attention: Director of Transportation Phone: 408- 535-3830
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Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

1. Entire Agreement. Together with the Master Agreement, this Agreement constitutes the entire agreement between the Parties pertaining to the Work. If any terms, conditions, and obligations of this Agreement conflicts with any provision of the Master Agreement, this Agreement shall prevail.
2. VTA's Resident Engineer and CITY shall cooperate and consult with each other. CITY shall review and approve the design of the Work and VTA's Resident Engineer shall manage and oversee the performance of the Work construction contract. CITY's assigned representative shall have no direct contact with VTA's contractor, the public, other local agencies, without prior consent of VTA's Resident Engineer.
3. Insurance. The work described in this Agreement is part of the Project, and will be covered by the same insurance program and requirements as the rest of the Project by VTA or the contractor. VTA shall require all of its contractors and/or subcontractors, as applicable, to name CITY, its officers, employees, and agents, as additional insured on any insurance required for the Work.

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4. Severability. If any term, provision, covenant, or condition of this Agreement is held by a jurisdictional court to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect.
5. Amendments. This Agreement may not be modified except by written instrument executed and approved in the same manner as this Agreement.
6. Term. The term of this Agreement is from the date of full execution of all Parties and shall expire on the same date as the Master Agreement.
7. The Recitals shall be incorporated herein and made a part of the Agreement.

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

SANTA CLARA VALLEY  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_

Michael T. Burns  
General Manager

CITY OF SAN JOSÉ

By: \_\_\_\_\_

Deanna Santana,  
Deputy City Manager

T-16785.015/782035

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APPROVED AS TO FORM:

By: \_\_\_\_\_

Kevin D. Allmand  
General Counsel

APPROVED AS TO FORM:

By: \_\_\_\_\_

Johnny V. Phan  
Deputy City Attorney

T-16785.015/782035

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