

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Hans F. Larsen

**SUBJECT: BART CONSTRUCTION  
AGREEMENT**

**DATE:** May 21, 2012

Approved



Date

5/25/12

**COUNCIL DISTRICT: 4**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager to:

- a. Negotiate and execute a Three-Party Construction Agreement/Encroachment Permit with the Santa Clara Valley Transportation Authority (VTA) and Skanska, Shimmick, and Herzog Joint Venture (Contractor) for the construction of City improvements as part of the BART extension to Berryessa, at no cost to the City.
- b. Negotiate and execute with VTA grants of easement to City for street, utility and other public purposes, together with agreements related thereto, as determined necessary for City's acceptance, operation and maintenance of City improvements constructed as part of the BART extension to Berryessa, which grants of easement shall be at no cost to the City.

## OUTCOME

The recommended actions will facilitate the construction of the BART extension to Berryessa. The Encroachment Permit and Construction Agreement between City, VTA and Skanska, Shimmick, and Herzog Joint Venture (Contractor) will allow for the construction of City improvements by VTA and Contractor as part of the BART extension project. The action will also allow the City Manager to accept and record public right-of-way and service easements and enter into any other agreements related to such easements which are necessary for City's acceptance, operation and maintenance of City improvements constructed as part of the project.

## BACKGROUND

On June 22, 2010, the City Council approved a Master Agreement between the City and VTA relating to the BART extension to Berryessa. The Master Agreement sets forth the framework for the parties to consult and cooperate on the planning, environmental review, preliminary engineering, final design, and construction of BART Berryessa Extension Project (BEP). The Master Agreement also provides the framework for subsequent agreements about specific project

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issues. On January 24, 2012, the City Council approved five subsequent agreements to further establish and define responsibilities on specific design, construction, and maintenance issues for major project elements and to provide the funding necessary for the project management, design review, permits, and construction inspection services.

Staff at this time is requesting Council authority to negotiate and execute a Three-Party Construction Agreement/Encroachment Permit between the City, VTA, and Contractor and authority to negotiate and execute easements from VTA for operations and maintenance of future City Improvements, such as, streets, storm drains and sanitary sewer systems constructed as part of the project.

The construction and planning of the project is progressing on schedule. The first phase of work is scheduled to start June of this year. The project is contemplated to be completed in 2017.

## ANALYSIS

### Project Description

The BART to San José project consists of a new 10 mile extension from Warm Springs to the Berryessa station (see attached project location map). The project will require expansion and reconstruction of existing City infrastructure within City right-of-way, as well as new City infrastructure that will be constructed on land acquired by VTA and dedicated by easement to the City for operation and maintenance. Most of the key City infrastructure elements of the BART project have been discussed in previous agreements between City and VTA and approved by Council. Those agreements were entered into for the purpose of assuring the design elements would be included in the design-build contract between the VTA and Contractor. The purpose of the proposed three-party agreement/encroachment permit is to set out the requirements in detail of the plans and specifications review process, bonds and insurance, and acceptance of City improvements. Below are highlights of the City improvements that will be constructed by VTA as part of the BART project and subject to the proposed three-party agreement/encroachment permit:

- Reconstruction of storm drains and sanitary sewers at Lundy Avenue and at Trade Zone Boulevard.
- Modification of existing traffic signals and construction of new signals located along the BART corridor.
- Construction of a new street named Berryessa Station Way at the Berryessa Station Campus including a new bridge over Penitencia Creek.
- Widening of the Berryessa and Mabury Roads.
- Construction within City properties including Mabury Yard and on Upper Penitencia Creek.
- Other improvements that may be required as part of the BART extension project.

### Construction Agreement/Encroachment Permit

The proposed Construction Agreement/Encroachment Permit discusses specific roles and responsibilities for construction of the BART project where the project will, at specific locations,

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cause changes to existing City infrastructure or construct new City infrastructure as a result of the BART project. The proposed agreement covers all City infrastructure work within City's right-of-way for the BART project. All BART related City infrastructure, construction, or modifications including new streets, utilities, grading, lighting, storm drains, sanitary sewers, and traffic signals will be designed and constructed by VTA and Contractor and maintained and operated by the City once the project is accepted. In addition all work within the City of San José right-of-way, as described in the Master Agreement, subsequent agreements, and outlined above, will go through a full plan review and inspection process. The Departments of Transportation and Public Works are partnering to facilitate the project's design and construction and are continuing to work with VTA and Contractor on the implementation of the project. Below are the key provisions of the proposed Construction Agreement:

- Establishes VTA and Contractor as the responsible party for the construction of all City infrastructure within City's right-of-way at no cost to City.
- If the VTA and Contractor do not complete the work per approved plans, VTA will be responsible for completion of the improvements.
- Agrees that VTA will, in the event of default or failure to timely complete the permitted improvements and upon request by City, use its available remedies including making claims against the Contractor's sureties to complete the improvements to the City infrastructure in accordance with the approved plans.
- The contractor has met the minimum City insurance requirements and has identified the City as additional insured under their policy

#### Construction Process

The Construction Agreement/Encroachment Permit will be subject to the terms, conditions, and obligations set forth in the Master Agreement unless expressly modified in the proposed agreement. The VTA and Contractor will be required to submit plans for review and approval prior to construction of any improvements within City's rights-of-way. All plans will be required to meet City of San José standards and specifications and will be approved by the Director of Public Works. Once the plans are completed, the Department of Public Works will provide a Notice to Proceed. During construction all improvements will be inspected by the City. The City may accept improvements at each completed construction phase of the project or possibly at the completion of the entire project. The City will be responsible for the operation and maintenance of City facilities upon acceptance of the completed work.

#### Property Dedications

As part of the project VTA will acquire a number of properties that will ultimately be dedicated by easement to the City. These properties are required to construct the BART project and in most cases include new City infrastructure. Most of the new City infrastructure that will be within the areas to be dedicated by easement to the City, as outlined below, were previously discussed in detail and approved by the City Council on January 24, 2012, as part Council approval of various actions related to the BART project. Below is a highlight of the primary City improvements that will be constructed as part of the BART project:

- Berryessa Station Way – This is the largest of all property dedications to the City. VTA will acquire and dedicate a new roadway easement that will connect the Berryessa Station Campus to Mabury and Berryessa Roads. The dedication and improvement consists of a four-lane roadway, median island, bridge structure, and associated improvements including sidewalks, lighting, and trees.
- Mabury Road Widening – As part of the project the VTA will widen, improve, and dedicate certain sections of Mabury Road to its ultimate configuration. Mabury Road is currently built as a two-lane roadway. The BART project will widen sections of Mabury Road the adjacent to the Berryessa Station to a four-lane facility with sidewalk, lighting, and streetlights.
- Berryessa Road Widening – As part of the project the VTA will widen, improve, and dedicate certain sections of Berryessa Road. Berryessa Road is currently built as a four-lane roadway. The BART project will widen sections of Berryessa Road adjacent to the Berryessa Station to a six-lane facility with sidewalk, lighting, and streetlights.
- Lenfest Road – As part of the project VTA will realign the intersection of Berryessa and Lenfest road across from the Berryessa Station. This will require a signal modification, new sidewalk, street lights, and other improvements.

The actions included in this memorandum will allow the City Manager to accept all easement dedications required for the entire extension of BART to Berryessa. This will include right-of-way easements for new road construction and widening and utility easement relocations required for construction of the BART guideway. Matters related to such easements to be negotiated and agreed to by the City Manager under the delegated authority are expected to include such subjects as the legal and physical condition of the easement properties as well as the form and content of the grants of easement.

### EVALUATION AND FOLLOW-UP

Progress reports on the BART project will be provided on a regular basis to the Transportation and Environment Committee.

### 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

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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 this project.

### **COORDINATION**

This item has been coordinated with the City Attorneys Office and the Department of Public Works.

### **FISCAL/POLICY ALIGNMENT**

Facilitating the BART extension to Berryessa supports the City's Envision 2040 goals to enhance public transit infrastructure and services.

### **COST SUMMARY IMPLICATIONS**

The design and construction of the projects will be fully funded by the BART project. Future maintenance and operations of City infrastructure will cost the City approximately \$40,000 a year.

### **CEQA**

Silicon Valley Rapid Transit Corridor CEQA #2002022004.

/s/

HANS F. LARSEN  
Director of Transportation

For questions please contact Manuel Pineda, Deputy Director for Transportation Planning and Project Delivery at, (408)975-3295.

Attachment

# Berryessa Extension

