



# Memorandum

**TO:** BUILDING BETTER  
TRANSPORTATION COMMITTEE

**FROM:** James R. Helmer  
Katy Allen

**SUBJECT:** VTA MASTER AGREEMENT  
FOR CONSTRUCTION IMPACT  
MITIGATION

**DATE:** 08-30-04

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Approved

Date

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## **RECOMMENDATION**

Approve the Cooperative Agreement between the Santa Clara Valley Transportation Authority and the City of San José in Connection with Transit Improvements in the City of San José in accordance with the, "Construction Impact Mitigation Plan", of the San José Municipal Code (SJMC) and forward this recommendation for City Council action on September 28, 2004.

## **BACKGROUND**

On October 7, 2003, the City Council approved Ordinance No. 26996 amending the San José Municipal Code to set forth a requirement that a Construction Impact Mitigation Plan (CIMP) be prepared for all major construction projects; generally described as being over \$10 million in improvements in the public right-of-way with other specified impacts. Exempted from the ordinance are any projects for which a San José City Council-approved cooperative agreement has been developed and executed that provides for the mitigation of project-related construction impacts. It is noted that the requirements within the ordinance serve as the basis for the development of the cooperative agreement.

Because many Santa Clara Valley Transportation Authority (VTA) projects would be considered "major projects," as defined by the above referenced ordinance, VTA has requested to enter into a cooperative agreement with the City. The intent of the cooperative agreement is to define the terms, conditions, approval processes and general understandings between the City and VTA related to the development of project-specific CIMP's.

## **ANALYSIS**

Under the proposed agreement, the VTA agrees to prepare a CIMP for all qualifying projects the VTA constructs. A qualifying project is defined as one for which the encroachment permit

application, the plans submitted with such application, and any other relevant information indicates that the applicant's construction cost estimate or the engineer's estimate for the improvements in the public right-of-way for the entire project, including the portion for which the encroachment permit is requested, will total \$10 million dollars or more and at least one of the following conditions will exist:

1. The project will impact two or more signalized intersections;
2. Sidewalk access will be precluded for the length of a block; or
3. The project is located within the lesser of five hundred feet or one block of another project located in the right-of-way.

As outlined in the cooperative agreement, VTA will begin preparation of a draft CIMP for each project during the preliminary engineering phase of project development. The draft CIMP will be cooperatively developed between the City and VTA in the spirit of the CIMP Ordinance. The solutions developed toward the identification of impacts and their mitigations will be reviewed through the City's Director of Public Works in coordination with the Department of Transportation, the San José Redevelopment Agency and other City departments as appropriate. In addition to documenting construction-related mitigation activities, the draft CIMP will also include a detailed description of the community outreach and communications activities to be conducted during the final design phase of the project.

As the design of the project continues toward completion, additional refinements will be made toward the development of the final CIMP. Upon approval of the final CIMP by the Director of Public Works, the CIMP will be forwarded to the City Council for approval prior to the beginning of construction of the project. Attachment A reflects the items to be covered in both the draft and final versions of the CIMP's.

One item included in the agreement that needs to be acknowledged is the potential limitation of VTA's ability to implement mitigation activities. This limitation is based on the VTA's ability to fund only those mitigation activities that comply with the eligibility requirements of the established funding sources for the project. At this time, the activities that fall into this category are unknown and can only be identified through the course of continued project development and discussions among the project stakeholders. This is specifically pointed out to raise the awareness of the City Council to this potential limitation and to address future expectations as to what will be included in the project-specific CIMP.

Some of the upcoming major VTA projects in San Jose for which a CIMP will be prepared include the Silicon Valley Rapid Transit Corridor (BART) and the Downtown/East Valley Transit Improvement Program.

**COORDINATION**

This report has been coordinated with the Santa Clara Valley Transportation Authority, the City Attorney's Office, the San José Redevelopment Agency and the Department of Planning, Building and Code Enforcement.

**CEQA**

Exempt, PP03-09-304

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Attachment