



## Agenda Report

21-506

Agenda Date: 7/13/2021

### REPORT TO COUNCIL

#### SUBJECT

Action on Cooperative Agreement #1 with the VTA and Adoption of a Resolution Adopting the Findings of the Final Supplemental Environmental Impact Report Completed by VTA for the BART Silicon Valley Phase II Extension Project

#### COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

#### BACKGROUND

This Project is Phase II of the Santa Clara Valley Transportation Authority's (VTA) BART Silicon Valley Program to extend the BART system 16 miles, from the Warm Springs Station in Fremont into Santa Clara County, with six stations in Milpitas, San Jose, and Santa Clara. Phase II of the Program has been split into two segments. The first segment consisted of the 10-mile, two-station Berryessa Extension, with stations in Milpitas and Berryessa/North San Jose, which opened for revenue service in June 2020. The second segment consists of an approximately six-mile long extension of the BART system from the Berryessa/North San Jose BART Station in San Jose to the proposed Santa Clara BART Station.

The VTA had been in discussions with the City regarding the need for a Master Agreement between both parties and indicated it would require finalization by early 2021. However, in September 2020 the VTA notified the City that based on an application for Federal Transit Administration (FTA) funding, they were now required to have 10 critical third-party agreements in place, including with Santa Clara, by the end of October 2020. The FTA's Expedited Project Delivery (EPD) Pilot Program is a federal funding program that enables transit agencies to fast track the funding process for major projects like the BART extension. The FTA determined that the Master Agreement is a critical third-party agreement and must be submitted with the VTA's EPD application.

At an October 27, 2020 City Council meeting, the VTA and City staff provided Council with an update on the VTA's BART Silicon Valley Phase II Extension Project (Project) and an overview of the Master Agreement that would need to be put in place between the VTA and City to guide the design and construction of the Project.

After discussion of the Project, the City Council approved staff's recommendation to authorize the City Manager to negotiate and execute a Master Agreement with the Santa Clara Valley Transportation Authority Relating to VTA's BART Silicon Valley Phase II Extension Project (Master Agreement) and also directed staff to return with an informational report on the final terms included within the Master Agreement.

On December 15, 2020, staff provided the Council with the requested informational report.

The Master Agreement (Attachment No. 1) covers a broad range of topics and the overall purpose is to define and outline the interaction, consultation, and cooperation between the City and VTA for preliminary engineering, final design, and construction of the Project. This includes items such as: City reviews, inspections, permitting, reimbursement, warranties, and indemnification. The Master Agreement defines each agency's respective rights and obligations and ensures cooperation between the VTA and City in connection with the Project. The Master Agreement also provides the framework for ongoing interaction between the two parties to be supported by subsequent amendments or agreements for specific issues related to the Project.

## **DISCUSSION**

### **Cooperative Agreement #1**

In order to meet the FTA timelines for the Master Agreement, the City and VTA agreed to postpone several items for a follow up agreement because they were more complex issues and additional time was going to be needed. These issues were primarily related to project betterments, stormwater requirements, and funding services for project support. In January 2021, the VTA informed staff that based on feedback from the FTA on the VTA's EPD application, that they would like to start the process for entering into a subsequent agreement (i.e. Cooperative Agreement #1) with the City of Santa Clara to further clarify each agency's respective rights and obligations related to the Project. Based on this request, the VTA and staff have been working on Cooperative Agreement #1 (Attachment No. 2).

While the Master Agreement provides the overarching framework for ongoing interactions between the City and VTA on the Project, Cooperative Agreement #1 provides more details related to key items such as:

- Project betterments
- construction and post construction stormwater requirements
- funding for City services supporting VTA's pre-RFP Project activities
- document review milestones
- time periods for review
- construction standards
- traffic maintenance and detours

### **Project Betterments**

Project betterments are defined as City-requested Project upgrades to new or existing City facilities that are not attributable to the construction of the Project. These betterments would be made solely for the benefit, and at the election of the City and would exceed City Standards and Guidelines for such a facility. Project upgrades that would not fall under the definition of Project betterments would be those that do not result in increased costs; are a direct result from changes made by the VTA or its contractor; or are necessary due to standard replacements no longer being regularly manufactured. If it is determined that Project betterments are necessary, Cooperative Agreement #1 provides that the City and VTA will enter into a separate agreement(s) to address the inclusion and cost of the Project betterments.

### Stormwater Requirements

Regarding construction and post construction stormwater requirements, like Santa Clara, the VTA is regulated by the State Water Resources Control Board in relation to stormwater compliance. The VTA must ensure that during construction, stormwater protections are in place to mitigate the potential for construction storm water discharges. Additionally, the VTA must ensure that after construction is complete, stormwater treatment measures are installed and maintained to reduce long-term Project storm water pollutant discharge from entering the City's storm drain system. However, since the Project will discharge stormwater into the City's stormwater collection system, the City also needs an opportunity for additional oversight of the Project's stormwater compliance program during and after construction. Cooperative Agreement #1 provides the City with the opportunity to review, comment, and inspect the Project's stormwater improvements.

### Funding for City-Provided pre-RFP Services

In an effort to support the VTA's contracting processes, the City will provide review services related to pre-RFP Project activities. The VTA has requested that the City review relevant VTA RFP documents to ensure that City requirements are addressed to avoid contracting issues with their designers/contractors. Cooperative Agreement #1 allows the VTA to reimburse the City for costs associated with these services.

### Document Review Milestones

Cooperative Agreement #1 provides that the VTA will submit relevant engineering drawings for City review at 60%, 85%, and 100% milestones. Including the City as a reviewer during the development of engineering drawings will ensure that City interests are addressed throughout plan development.

### Time Periods for City Plan Reviews

To provide predictability to the Project schedule and reasonable plan review timeline targets for the City, Cooperative Agreement #1 provides that the City's normal review period shall be 30 working days. The City will conduct a plan submittal completeness review within 10 working days for submittal and will indicate to the VTA whether 30 working days is sufficient for the City to complete its review.

### Construction Standards

Cooperative Agreement #1 provides information related to City Standards and Guidelines that the Project should adhere to relative to modifying or improving City infrastructure. As City Standards and Guidelines may be updated or modified during the timeframe for this large construction project, the Project will be required to adhere to City Standards and Guidelines in effect during the VTA's RFP process, with the exception of standards for traffic signals, in which the Project will adhere to the traffic signal standards 360 calendar days prior to final construction of those traffic signals. If City Standards and Guidelines, other than traffic signals, are updated or modified after the VTA's RFP process, the VTA will make good faith efforts to accept and incorporate the City's requested modifications.

### Traffic Maintenance and Detours

The Project's Traffic Control Plans will be submitted to the City for review and approval. Cooperative Agreement #1 includes a provision that the VTA will provide 45 calendar days advance notice to the City for any closure. Additionally, VTA will be responsible for distributing public notification of closures with 14 calendar days for any closure.

**Resolution Adopting the Final Supplemental Environmental Impact Report**

On April 5, 2018, the VTA, as lead agency under the California Environmental Quality Act (CEQA), certified the Project's Final Supplemental Environmental Impact Report (SEIR) and adopted findings as required by the CEQA. As a responsible agency under CEQA and pursuant to Sections 15091 and 15096 of the California Code of Regulations, the City of Santa Clara shall consider the Project's EIR and adopt findings related to the City's discretionary actions (i.e. approval of agreements) necessary for completion of the Project. Staff have reviewed the Project's EIR and have determined that the information and analyses contained in the Final SEIR are adequate for the City's use as a decision-making body related to its discretionary actions necessary to implement the Project within its jurisdiction. Consequently, staff recommends the adoption of a resolution (Attachment No. 3) adopting the findings of the Final SEIR for the Project.

In summary, the City of Santa Clara, as a partner agency with the VTA on the Project, has a vested interest to ensure that this regional transportation project is successful in obtaining federal funding. The Project represents a significant opportunity for the City as it will provide vital transit connections between Santa Clara and the rest of the Bay Area. Additionally, to strengthen the City's long-term collaborative relationship with the VTA, the Master Agreement and Cooperative Agreement #1 provide the framework and additional guidance for a successful partnership. Consequently, to support the VTA's EPD application and to ensure that the Project is designed and constructed in coordination with the City, staff recommends Council approval of Cooperative Agreement #1 and adoption of the findings of the Final SEIR. Future cooperative agreements may be needed to facilitate the Project and will be presented to Council for future consideration if necessary.

**ENVIRONMENTAL REVIEW**

On April 5, 2018, the VTA, as lead agency under the California Environmental Quality Act of 1970, certified the Project's Final Supplemental Environmental Impact Report (SEIR) and adopted findings as required by CEQA.

**FISCAL IMPACT**

The proposed Cooperative Agreement #1 will allow for staff costs related to the City's review of the Project to be reimbursed to the City by the VTA up to an amount not-to-exceed \$250,000. Future budget amendments may be necessary, if upon reimbursement, department appropriations are insufficient to fund the work included in this agreement.

**COORDINATION**

This report has been coordinated with the Finance Department, Community Development Department, and City Attorney's Office.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

1. Approve and authorize the City Manager to execute Cooperative Agreement #1 with the VTA for the BART Silicon Valley Phase II Extension Project and make minor modifications if needed; and
2. Adopt a resolution adopting the Findings of the Final Supplemental Environmental Impact Report completed by VTA for the BART Silicon Valley Phase II Extension Project.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. City and VTA Approved Master Agreement for BART Phase II
2. Cooperative Agreement #1
3. Resolution