CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

12/06/2011
Agenda Item No. 25

REVISED ATTACHMENT FOR AGENDA **ITEM NO. 25** AFTER AGENDA PACKET DISTRIBUTION

SECOND AMENDMENT TO THE MASTER AGREEMENT

BETWEEN THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

AND THE CITY OF MILPITAS RELATING TO THE SILICON VALLEY

RAPID TRANSIT PROGRAM BERRYESSA EXTENSION PROJECT

This Second Amendment to the Master Agreement Between the Santa Clara Valley Transportation Authority and the City of Milpitas Relating to the Silicon Valley Rapid Transit Program Berryessa Extension Project ("Second Amendment") is entered into this ____day of _____, 2011, by and between the City of Milpitas, a general law city of the State of California (hereafter referred to as "City") and the Santa Clara Valley Transportation Authority, a public transit district (hereafter referred to as "VTA") (collectively, the "Parties"). This Second Amendment becomes effective upon the date listed above.

RECITALS

WHEREAS, the Parties entered into a Master Agreement to memorialize the Parties' consultation and cooperation, define their respective rights and obligations, and ensure future cooperation between VTA and the City in connection with the Silicon Valley Berryessa Extension Project ("Project" or "SVBX"), on September 10, 2010 (hereafter referred to as the "Master Agreement") and the Parties entered into Amendment No. 1, on September 8, 2011 to refine and increase the workscope; and

WHEREAS, VTA has now performed sufficient design work on Piper Drive, to substantially define the work scope, right of way and easement acquisitions, necessary for the construction of the SVBX project portions in City and the needs of public and private utility relocations; and

WHEREAS, the City owns, operates and maintains critical municipal potable water and sewer utility lines, storm drainage, and public surface improvements, granted encroachment permits and exercised other easement rights and police powers in the area commonly known as Piper Drive, set forth in greater detail in the C610 drawings for Addendum No. 1, dated October 3, 2011, for many years in an open, continuous and uninterrupted manner, under both color of title and claim of right; and

WHEREAS, City desires to more clearly document and protect its easement rights in Piper Drive; and

WHEREAS, the Union Pacific Railroad ("UPRR") owns the underlying fee on Piper Drive property and operates on-going freight railroad services on a track that crosses Piper Drive; and

WHEREAS, the uninterrupted operation of City-owned water and sewer utility lines and Santa Clara Valley Water District facilities and the provision of public right of way access, parking,

travel and infrastructure construction and maintenance rights within Piper Drive are necessary for the maintenance of public health, safety, property access and the orderly development of properties adjacent to Piper Drive; and

WHEREAS, in order to construct the BART project, VTA needs to relocate City's utilities in Piper Drive, and north and south of Piper Drive; and

WHEREAS, VTA has determined that an early utility relocation project phase (titled Contract C610, or "Phase I") ahead of the design/build contract project phase (titled Contract C700, or "Phase II") in the Piper Drive corridor is necessary for VTA to maintain the overall Project schedule; and

WHEREAS, VTA has already awarded the early utility relocation project (C610), on November 3, 2011, and VTA has not yet obtained necessary right of ways for the early utility relocation project (C610); and

WHEREAS, VTA agrees to protect and maintain City's existing easements and obtain replacement easements from UPRR and others, in order to relocate City utilities; and

WHEREAS, in view of the aforementioned public health and safety and development concerns, the City would not engage in any conduct that might threaten or undercut its property and easement rights, absent the assurances and protections provided by VTA and set forth in this Second Amendment, which constitute material consideration for the City's execution of this Second Amendment; and

WHEREAS, VTA agrees to completely reconstruct Piper Drive, with new street surface improvements, from back of curb to back curb, including storm drain system (LID compliant); all new pavement surfacing, pavement subbase, and base materials; new curb and gutters; street lighting, sidewalks, bike/pathways, and landscaping on west side of Piper Drive, and as further defined in this Amendment; and

WHEREAS, in reliance on the material assurances set forth in this Second Amendment, the Parties now desire to amend the Master Agreement to define the Phase I and Phase II utility relocations, revisions to the existing rights of way and easements, final construction requirements, and the City coordination of private utility relocations within the Piper Drive area; and

WHEREAS, nothing in this Second Amendment and the actions taken hereunder may be interpreted or construed as an admission by the City of any liability or wrongdoing whatsoever or the validity or liability of any legal theory or cause of action.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Master Agreement as follows:

Section A. The Master Agreement is amended by adding a new Section 31 as follows:

SECTION 31. PIPER DRIVE UTILITY RELOCATION AND SURFACE IMPROVEMENTS

A. Piper Drive Scope of Work: This Section is intended to provide clarification and details to the Master Agreement and is not intended to supersede any requirements already stated

in the Master Agreement unless specifically noted. There are several existing utilities that must be relocated to accommodate the Project. Most will move easterly, which requires thoughtful placement to insure adequate clearances and sequencing to minimize utility outages. VTA, and the various utility owners have agreed, and the City of Milpitas has conditionally agreed upon horizontal and vertical alignments as shown in Exhibit E-1 and F-1, subject to receipt and City approval of final engineering drawings. The following work in Piper Drive is required:

1. Construct temporary and permanent City water and sewer utility relocation, and install temporary and permanent storm drain (610 project.)
2. Relocate Santa Clara Valley Water District (SCVWD) potable water transmission pipeline.
3. Relocate north UPRR spur track and remove south UPRR spur track. The scheduling of this work shall be contingent upon CPUC approval.
4. Relocate Chevron, MCI, Air Products and PG&E utilities (by owners).
5. Complete remainder of Piper Drive Utility Relocation work, including relocation of public utilities and final street surface and landscaping improvements as described in Section D below and elsewhere in this Amendment.

B. Advance Work – Contract C610

1. The Contract C610 - Advance Utility Construction work consists of the relocation of the City's 12-inch seismic backbone water pipeline (to be increased at City cost to an 18" diameter in accordance with Amendment No. 1), the City's 15-inch sanitary sewer pipeline, and installation of a section of the City's 36-inch temporary storm drain pipeline. This contract also includes the relocation of the Santa Clara Valley Water District's 42-inch transmission water pipeline. The design includes installation of casings for each utility under all existing and future railroad crossings.
2. The City of Milpitas receives 40% of its daily potable water supply through the SCVWD 42" pipeline. The scheduling of this work shall be contingent upon arrangements between SCVWD and San Francisco Public Utilities Commission (SFPUC) to provide alternate water supply through the Wholesale Intertie. SCVWD and SFPUC have already identified April 2012 as one opportunity for alternate water supply.
3. VTA authorized award of a construction contract on November 3, 2011. VTA will either conduct the construction phase under Contract C610 or, in the event that it awards the work to its Contract C700 design/build contractor, conduct the work under Contract C700.

4. VTA or its Contractor shall obtain a City transportation permit for delivery if oversize vehicles are used, and may apply for encroachment permit for laydown and storage of SCVWD steel pipe and appurtenances on City right of way. The City agrees to review the encroachment permit for material storage, and will consider approval if not deemed a hazard to public safety, or does not interfere with City maintenance operations, or the work of the adjacent property owners.

5. VTA shall change its C610 contract plans (through a contract change order) to show and construct the water and sewer utility horizontal and vertical spacing and construction materials and methods approved by CDPH in its waiver of Water Works Standards and direct its contractor to construct the utilities in accordance with the requirements of the CDPH waiver. VTA shall relocate all these temporary pipes to a permanent alignment meeting the City standards upon acquisition of additional right of way, in no event shall VTA allow this temporary condition to exist beyond December 31, 2013.

6. Third Party Utilities – Upon relocation of the City's utilities and SCVWD pipeline as described in Sections 31.A.1 and 31.A.2 above, Chevron, MCI, Air Products, and PG&E shall be required to relocate their utilities. VTA shall also obtain licenses, easements or franchise rights for any new or relocated private third party utilities affected by the Project along the Piper Drive corridor whether they are located in the public right of way or on private property.

VTA shall coordinate with each utility performing relocation within the area known as Piper Drive to provide relocation plans to the City prior to construction and request each private third party utility to perform their work in accordance with the following procedures, subject to the terms and conditions governing utility relocations under California Public Utilities Commission regulations and any applicable franchise agreements:

1. If the relocation of private third party utilities commences prior to VTA's conveyance of the public utility easement or equivalent rights set forth in Section 31.E, the City shall issue only coordination permits for the portions of their installations that lie within the Piper Drive area. Such permits shall explicitly disclaim any liability arising from or relating to the validity or right of authority to permit the encroachment of third party utilities within the area known as Piper Drive by entities other than the City. The City shall issue permits to each utility.

2. If the relocation of private third party utilities commences after VTA's conveyance of the public utility easement or equivalent rights set forth in Section 31.F., each third party private utility shall apply for an encroachment permit from the City for the portions of their installations that lie within City right-of-way or equivalent right. The City shall issue permits to each utility.

C. Remaining Piper Drive Work – Some improvements are scheduled to occur after completion of Contract C610 and may occur after or simultaneously with some of the 3rd

party utility relocation work or Contract C700. This work consists of both underground utility work and surface improvements and is described as follows:

Utility Work: Relocate temporary utility pipelines described in Section 31.B5 to B7 above to their final positions.

Piper Drive surface improvements: VTA shall design Piper Drive in conformance to the Transit Area Specific Plan, as modified in this Amendment, Regional Water Quality Control Board - Low Impact Development (LID) requirements for roadway design, and City Engineering Standards and Design Guidelines.

Transit Area Specific Plan design exceptions: Given underlying utility, railroad track crossing, and BART traction power and pump station constraints on westerly side of Piper Road, certain TASP landscape and pedestrian facility design deviations will need to be granted to VTA, with the City's approval of the final design of these improvements. VTA will design and construct final Piper Drive surface improvements within an 80-foot public right of way.

In areas along Piper Drive where design exception from the Transit Area Specific Plan, VTA and the C700 contractor will work cooperatively with the City to develop alternatives that provide similar aesthetics, screening, and pedestrian separations, but the City shall have final approval of all design exceptions. The following street section descriptions provide guidance for these exceptions:

(Street sections described from east to center of street without RR track constraint)

- 5-foot landscape strip and curb
- 8-foot parking lane
- 12-foot northbound travel lane

(Street sections described from east to center of street with RR track constraint)

- 5-foot landscape strip
- 8-foot AC concrete shoulder
- 12-foot northbound travel lane

(Street sections described from center of street to west without RR track or BART facilities constraints)

- 12-foot southbound travel lane
- 8-foot parking lane
- 14-foot curb and planter strip with low level plantings, and pedestrian scale/street lighting compatible with TASP design guidelines
- 12-foot share use pedestrian/bicycle path
- 9-foot planter strip with low level plantings compatible with TASP design guidelines

(Street sections described from center of street to west for areas with BART pump station constraint)

- 12-foot southbound travel lane
- 8-foot parking lane
- 10-foot curb and planter strip with shallow root trees, low level plantings, and pedestrian scale/street lighting compatible with TASP design guidelines
- 12-foot share use pedestrian/bicycle path
- 3-foot Planter strip with landscape screening for BART traction station
- 5-foot BART fence and facilities

(Street sections described from center of street to west for areas with BART traction station constraint)

- 12-foot southbound travel lane
- 8-foot parking lane
- 10-foot curb and planter strip with shallow root trees, low level plantings, and pedestrian scale/street lighting compatible with TASP design guidelines
- 12-foot share use pedestrian/bicycle path
- 3-foot Planter strip with landscape screening for BART traction station
- 10-foot BART fence and facilities

(Street sections described from center of street to west for areas with RR track constraint)

- 12-foot southbound travel lane
- 8-foot AC concrete shoulder
- Curb and varying width planter strip
- 12-foot shared use pedestrian/bicycle path
- Varying width planter strip

D. Piper Drive Access – There will be other non-SVBX related concurrent construction work occurring with the Project. The City permits shall condition VTA and its contractors to coordinate and cooperate with the non-SVBX construction projects. The City shall also include a reciprocal requirement of cooperation with VTA's work in its permits for said other projects. VTA and its contractors will not have exclusive use of Piper Drive and need to maintain access to Piper Drive at all times unless otherwise approved in writing by the City. Temporary full road closure (short-term) of Piper Drive may be granted for construction activities that cannot be performed without closure based upon the condition that Piper Drive access may be only closed after regular business hours and shall have access restored for regular business hours on the next business day. No closure shall be allowed without written approval from the City Engineer.

E. Easements or Public Right of Way Acquisition Obligation –

1. VTA's Final Conveyance Obligations. VTA shall, in cooperation with the City, acquire and convey to the City grants of public right-of-way easement or

combination of roadway easement and utility easements for the area commonly known as Piper Drive as well as for the utility corridor lying in UPRR property northerly of Piper Drive, as set forth in Exhibit E-1 and F-1, within 12 months after VTA construction is completed or prior to the opening of the Milpitas BART Station, whichever is sooner. The intent of the Parties is that all City-owned utilities and third party public utilities affected by the Project in Piper Drive and in the aforementioned utility corridor north of Piper Drive will ultimately lie within defined utility easements. Such grants shall run with the land. The intent of the Parties is to pursue ultimate utility easements from UPRR that will not restrict the City's use of the easements and maintenance of its facilities except in the normal safety zone surrounding the railroad tracks (existing or relocated). VTA shall be responsible for all costs of acquisition.

2. VTA's Interim Conveyance Obligations. Prior to the final conveyance of public right of way or equivalent rights in Piper Drive referenced in Section 31.E.1, the City hereby agrees to accept an interim license or other agreement from UPRR for the relocation of City and SCVWD facilities and the continued use, operation, improvement and maintenance by the City of Piper Drive on behalf of the public, contingent upon the terms, conditions and assurances contained in this Second Amendment. The parties acknowledge that the acceptance of such interim license or other agreement is agreed to by the City solely for the purposes of accommodating the award of the Contract C610 project by VTA to a construction contractor at its November 3, 2011 meeting of the VTA Board of Directors and the performance of said construction contract.

3. Location Within Piper Drive. VTA shall locate all City utilities within the Piper Drive public right-of-way or, if this is infeasible, shall obtain and convey to the City public utility easements from property owners for any portion of City utilities located outside of the Piper Drive right-of-way in accordance of Section 8 of the Master Agreement.

4. Quitclaim. VTA desires to purchase certain sections of the Piper Drive for location of the BART Traction Power Substation (TPSS) and BART storm pump station as shown on the C-700 Right of Way plans, SHT R335 & R337, dated July 22, 2011, Addendum 6, and City agrees to quitclaim its easements rights over these sections to VTA at such time as the permanent utility easements set forth in Section 31.E.1. are conveyed to the City.

F. City Permit Process –

1. The City shall work cooperatively with VTA, and the VTA shall incorporate those City plan review comments into the C610 final conformed Construction Documents. This permit will be limited to the portion of the scope of work defined by the Contract C610 design package and this Amendment that affect City infrastructure or lie within City easements, and will define the specific conditions by which VTA, as the project owner, will comply with the City's encroachment requirements and regulations for working in the Piper Drive Right-of-Way and constructing the City's water, sewer, and storm drain utilities and

SCVWD's water pipeline. Section 8 of the Master Agreement requires VTA to ensure its contractor applies to the City for an encroachment permit for the construction work in the Piper Drive right-of-way. The City will issue this encroachment permit to VTA's contractor upon review and approval of the final conformed construction plans which shall incorporate all City plan review comments. VTA and Contractor shall coordinate the Piper Drive Plans for review and comments to SCVWD and provide the City with a concurrence letter as it relates to the SCVWD 42-inch transmission water line design.

2. The permit process shall consist of:

   a. Permit shall include flow restrictions for discharges into the City sewer system;

   b. City shall review the final Conformed construction documents, including construction change orders issued to incorporate City's comments provided prior to bidding, and if approved, shall issue an encroachment permit to the Contractor. The Contractor must also comply with City encroachment permit requirements, including bonding and insurance.

   c. City shall issue the City Encroachment Permit to VTA within five business days following execution of this amendment or the approval of a waiver from the California Department of Public Health, or approval of 2.b above, whichever is later.

G. Indemnification - VTA shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, contractors and agents, from and against any and all losses, liability, claims, suits, actions, damages, and causes of action related to an alleged lack of legal authority or right of the City to operate, maintain, or permit the relocation of the existing City-owned and third party public utilities that are relocated for the Project within the area commonly known as Piper Drive , more particularly described in Exhibit E-1 and F-1 and C610 plans, Addendum No.1, dated October 3, 2011, during the interim period set forth in Section 31. E.2. It is understood that the duty of VTA to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. This duty to indemnify, defend and hold harmless shall survive the termination of this Master Agreement, unless the final conveyance obligations of Section 31. E.1 have been satisfied by VTA. By signing the document of which this Section is a part, VTA acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

Section B. All other provisions of the Master Agreement shall remain in full force and effect. This Second Amendment is made and entered into as of the date set forth above.

Section C. Representation of Authority of Parties/Signatories. Each person signing this Second Amendment represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Second Amendment. Each party represents and warrants to the other that the execution and delivery of the Second Amendment and the performance of such party's

obligations hereunder have been duly authorized and that the Second Amendment is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: _____

Michael T. Burns

General Manager

APPROVED AS TO FORM:

By: _____

General Counsel

CITY OF MILPITAS

By:_____

City Manager

APPROVED AS TO FORM:

By:_____

City Attorney