

RESOLUTION NO. _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS TO DISPOSE OF PUBLIC PARK LAND AND ACCEPT VTA'S PROPOSAL FOR CURTIS PARK ACQUISITION AND MITIGATION BY AUTHORIZING AMENDMENT NO. 5 TO MASTER AGREEMENT BETWEEN VTA AND THE CITY**

WHEREAS, The Santa Clara Valley Transportation Authority's (VTA) BART Extension known as the Silicon Valley Berryessa Extension (SVBX) project will need to take a small portion of City land along the easterly edge of Curtis Park adjacent to the existing Union Pacific Railroad (UPRR) alignment to relocate the UPRR tracks; and

WHEREAS, VTA has submitted a proposal to the City in order to satisfy their federal environmental requirements to mitigate impacts to park lands by exchanging services of equivalent value; and

WHEREAS, the services VTA proposes to provide are assistance, including preliminary design, for a grant application to One Bay Area Governments (OBAG) for design of a pedestrian overcrossing at Montague Expressway from the planned parking garage for BART to the northeast corner of the intersection at Piper Drive; and

WHEREAS, the Transit Area Specific Plan calls for this pedestrian over crossing to connect the BART station to the Piper/Montague area and the Great Mall; and

WHEREAS, on September 10, 2010, the City entered into a Master Agreement with VTA relating to the Silicon Valley Rapid Transit Program Extension Project (SVBX); and

WHEREAS, Section 8D of said Master Agreement provides that VTA shall acquire right-of-way as needed for the SVBX project and shall pay for all costs associated with the acquisitions; and

WHEREAS, VTA's SVBX designer has prepared the plans for the UPRR track realignment along the easterly edge of Curtis Park and VTA has confirmed that the property to be acquired is sufficient for the intended purposes; and

WHEREAS, the City Engineering and Planning staff have found that the portion of Curtis Park that VTA proposes to acquire is not needed for public park land purposes nor any other City use; and

WHEREAS, on April 16, 2013, the City Council held a duly noticed public hearing regarding the disposition of public park land at Curtis Park.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council does hereby authorize disposition of the portion of public park land at Curtis Park VTA intends to acquire.

3. The City Council does hereby accept VTA's proposal for Curtis Park Mitigation and Acquisition by authorizing the City Manager to execute Amendment #5 to the Master Agreement between VTA and the City of Milpitas.

PASSED AND ADOPTED this ____ day of ____ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

FIFTH 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 Fifth 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 (“Fifth Amendment”) is entered into this ____ day of April, 2013, 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 Fifth 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 have subsequently entered into four Amendments to the Master Agreement; and

Whereas, on _____, VTA issued a draft Environmental Impact Statement for SVBX, and, after receiving comments from the City of Milpitas, published a Final Environmental Impact Statement (FEIS) for SVBX on _____; and

Whereas, Curtis Park is a public park in the City of Milpitas adjacent to the Union Pacific Railroad (UPRR) corridor; and

Whereas, VTA requires a strip of land within Curtis Park for the relocation of the UPRR tracks to create space required for SVBX facilities; and

Whereas, the FEIS disclosed said taking of park land and proposed several potential mitigation measures, which were identified in consultation with the City; and

Whereas, additionally the FEIS found that there were no feasible and prudent alternatives to use of the park land for relocation of the UPRR tracks.

Whereas, VTA provided advance notice to City of VTA’s intended property acquisition in Curtis Park, and City has planned for VTA’s acquisition so that VTA’s taking of the property does not require any adjustment of existing or proposed City facilities; and

Whereas, the Metropolitan Transportation Commission (MTC) has initiated a funding program known as the "One Bay Area Grant (OBAG)" program, to fund transportation improvements; and

Whereas, the OBAG program requires local match funding from the sponsoring agency(s); and

Whereas, the circumstances surrounding VTA's proposed property acquisitions in Curtis Park and the proposed mitigation therefore are more particularly described in the memorandum attached hereto as EXHIBIT F; and

Whereas, the Parties now wish to transfer the property rights required for SVBX and establish the appropriate mitigation for the taking of park land;

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

ARTICLE 1

The Master Agreement is amended by adding a new section (**SECTION 32**) and two new exhibits (designated as **EXHIBIT E** and **EXHIBIT F**) as follows:

SECTION 32: TRANSFER OF PROPERTY RIGHTS REQUIRED FOR CONSTRUCTION OF FREIGHT RAIL TRACKS.

A. ACQUISITION OF PROPERTY INTERESTS IN CURTIS PARK

- 1) VTA has identified the area of a proposed permanent fee acquisition and temporary construction easement within Curtis Park required for installation of new tracks for UPRR, as shown on the plat attached hereto as **Exhibit E**.
- 2) The Parties agree that the property to be acquired is of nominal value.
- 3) City agrees to convey the requested property interests as shown on **Exhibit E** to VTA, subject to the terms and conditions contained in this Amendment, for the amount of \$2,500, with the understanding that VTA may subsequently transfer the fee area to UPRR. See Attachment 1 to this amendment for a professional opinion validating the nominal market value of the property to be transferred.

B. PEDESTRIAN BRIDGE OVER MONTAGUE EXPRESSWAY

- 1) The Parties both desire a pedestrian bridge to be constructed across Montague Expressway in the vicinity of the proposed Milpitas station of the SVBX project, however funding for such a bridge has not been secured, nor have plans been prepared.
- 2) The planning and construction of a pedestrian overcrossing over Montague Expressway will advance the City's community planning and recreational goals, as described more fully in **Exhibit F**.

- 3) VTA will provide preliminary engineering services for a pedestrian overcrossing on the east side of Piper Drive, to connect to the proposed parking structure at the Milpitas station. VTA will prepare and process a grant application to MTC under the OBAG 2013 grant program, seeking funding for final design and environmental documentation of the overcrossing. The cost of providing these services is estimated at \$240,000, as described in **Exhibit F**. VTA will also prepare and process a grant application, construction schedule and cost estimate for the 2017 OBAG grant cycle for construction of the pedestrian overcrossing.
- 4) City will provide a minimum of \$100,000 toward the final engineering and environmental documentation costs, to serve as the required local match under the rules of the OBAG program.
- 5) VTA will design the parking structure at the Milpitas station to serve as the southerly terminus of the proposed pedestrian overcrossing.
- 6) City will attempt to secure property rights for the northerly landing of the overcrossing as a condition of approval of development permits for the area on the north side of Montague Expressway, east of Piper Drive.
- 7) After completion of the final engineering, the Parties agree to work cooperatively to attempt to secure additional funding for construction of the overcrossing.

C. MITIGATION FOR TAKING OF PARK LAND

- 1) The Parties acknowledge that Section 4(f) of the National Environmental Policy Act (NEPA) requires mitigation for taking of dedicated parkland by Federally-sponsored projects.
- 2) VTA's services to advance the development of the pedestrian overcrossing as described in **Section 32.B** above are deemed by City and VTA to be an appropriate and sufficient mitigation for the taking of park land as described in **Section 32.A** above, for reasons that are more fully described in **Exhibit E**.

ARTICLE 2

All other provisions of the Master Agreement shall remain in full force and effect.

ARTICLE 3

Each person signing this Fifth Amendment represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Fifth Amendment. Each party represents and warrants to the other that the execution and delivery of the Fifth Amendment and

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

WITNESS THE EXECUTION HEREOF on the day and year first herein above written.

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: _____
Michael T. Burns
General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Victor Pappalardo
Senior Assistant Counsel

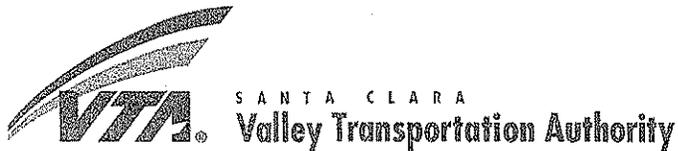
CITY OF MILPITAS

By: _____
City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney



MEMORANDUM

Writer's Direct Telephone: 321-5623

To: Kathleen Phalen, Acting Public Works Director, City of Milpitas

From: Carolyn M. Gonot, Chief SVRT Program Officer, VTA

A handwritten signature in black ink that reads 'Carolyn M. Gonot'. The signature is written in a cursive style and is positioned to the right of the typed name in the 'From:' field.

Date: April 2, 2013

Subject: SVBX Recommended Approach to Curtis Park Mitigation and Acquisition.

Recently, VTA and the City of Milpitas had several discussions to develop a mutually beneficial arrangement for mitigating SVBX impacts on Curtis Park, receiving an encroachment permit from the City in time to meet the SVBX construction schedule, and acquiring the required right-of-way for the BART extension. Below describes the background and proposed approach for moving forward on this aspect of the SVBX project.

I. Background

The Parc Metro East Park (also known as Curtis Park) is approximately 80,000 square feet in size at the eastern terminus of Curtis Avenue in Milpitas, adjacent to the Parc Metro residential community. It is a neighborhood park that was originally dedicated as city park land through the subdivision process. The park is developed as an open lawn area with benches, swings, and other play equipment for use by Milpitas residents. It fronts (for approximately 200 feet) the railroad corridor in which BART Silicon Valley is being constructed.

A small area at the east edge of the park, adjacent to the Union Pacific Railroad (UPRR) corridor, is expected to be used for other purposes: The city has constructed a water well at the east side of the park, with the intent to construct a pump station and to use the well as an additional source of water for city residents. The city has already prepared final construction documents and site plans for the proposed pump station.

VTA is in the process of constructing the Silicon Valley Berryessa Extension (SVBX) of the Bay Area Rapid Transit (BART) system along the UPRR corridor. The UPRR segment adjacent to Curtis Park is expected to continue in operation after construction of SVBX, serving industrial customers in Milpitas. In preparation for construction of the BART guideway, VTA is relocating the existing UPRR freight tracks further west, to clear a sufficient width of right-of-way for BART. In the area of Curtis Park, an additional strip of land approximately 20 feet wide is required to accommodate the relocated UPRR tracks. The relocated UPRR tracks will be above the existing grade of the park and will be supported by a retaining wall.

VTA proposes to acquire the necessary 20-foot (+/-) strip of land from the City. The acquisition would affect only 0.1 acres (2.5 percent of the total area of the park). (See Attachment B.) The remainder of the park would not be affected by this acquisition except for a 10-foot wide strip adjacent to the proposed area of acquisition during construction. This 10-foot strip would be a temporary construction easement used during the track relocation and construction of the retaining wall.

During the planning for the Curtis Well pump station, city staff was aware of VTA's need for the additional right-of-way, and a 20' strip was set aside at the rear of the parcel for VTA's eventual acquisition and use. This taking was disclosed and environmentally cleared in VTA's Environmental Impact Reports and federal Environmental Impact Statement for SVBX. Because the taking is consistent with city plans and environmentally cleared as being necessary for SBVX, the only remaining issue to be resolved prior to conveyance of the property is appropriate compensation for the taking.

The relocation of UPRR needs to occur before construction can begin on this portion of the BART guideway, therefore it needs to be an early phase of SVBX construction. To avoid delaying the SVBX construction schedule, VTA needs to receive an Encroachment Permit for the Curtis Park work **no later than April 22, 2013**. Actual conveyance of the land title could occur at a later date as long as VTA has effective possession or permission to construct by this date.

II. VTA's Mitigation Requirement

While VTA's proposed acquisition is minimal, Federal guidelines pertaining to projects undertaken by agencies within the Department of Transportation (DOT), including the Federal Transit Administration (FTA), require that special efforts are to be made to protect dedicated public park and recreation lands, wildlife and waterfowl refuges, and historic sites (Section 4(f)) and that no feasible and prudent alternatives to taking of the dedicated parkland exist. VTA met with the City of Milpitas early in the planning of SVBX to discuss the acquisition of the right-of-way prior to the development of the park and the parties are in agreement that there is no feasible and prudent alternative to use of this strip of parkland for the SVBX project. As a result of this coordination effort, the City of Milpitas developed and constructed the park with only landscaping and no active-use facilities in the area to be acquired, allowing the right-of-way to be acquired without affecting the public use of the park. As 4(f) mitigation, one or a combination of the following measures, suggested by the City of Milpitas, were included in VTA's BART Silicon Valley Environmental Impact Statement *to mitigate the acquisition and reduce harm*.

- Pay an in-lieu fee equivalent to the cost of replacement parkland;
- Fund expansion of a nearby park;
- Provide additional amenities at the affected parkland site; and/or
- Assist in funding a pedestrian crossing over the railroad corridor that would link and facilitate access to the affected park, possibly at Curtis Avenue.

III. Recommended Approach to Mitigation and Acquisition

In developing the approach to move forward on the Curtis Park mitigation, the desire is to meet the following goals:

- Satisfy federal mitigation requirements for impacts on Curtis Park;
- Receive encroachment permit for construction by April 22, 2013; and,
- Acquire required right-of-way for SVBX project.

The most critical element is solving the mitigation requirement as this action paves the way for the encroachment permit and transfer of property. In an effort to fulfill the above-mentioned mitigation measure, VTA and City of Milpitas staffs have initiated development of the Montague Expressway Pedestrian Overcrossing Project. This overcrossing would provide pedestrian access to the Milpitas BART station safely across the high-volume Montague Expressway. The southern landing would be at the Milpitas BART station plaza area and would likely be integrated with the parking garage. The northern landing would be located on property anticipated to be developed as high-density residential with mixed-use elements. The City has indicated that it will commit to including property rights needed for the footprint of the northern landing in the planned development's Conditions of Approval.

The recommended mitigation is for VTA to prepare preliminary engineering for the pedestrian overcrossing and support efforts to secure funding of the environmental clearance and final design of the pedestrian overcrossing. These activities would position the project for grant funding when the right-of-way is acquired. The following section provides the rationale for this project as a suitable and desirable mitigation.

IV. Linkage of Proposed Overcrossing to City's Goals for Recreational Facilities

The proposed bike/pedestrian crossing over Montague Expressway is a key component in several of the City's planning documents for recreational and park facilities:

1. **Transit Area Specific Plan (TASP).** The TASP identified a total of four pedestrian bridges to provide bike/ped linkages across major roadways or flood channels that would otherwise create barriers or gaps in the city's trail network. The overcrossing discussed in this document is one of the locations specifically identified.

The TASP land use plan includes three community parks and two linear parks south of Montague Expressway. North of Montague, four community parks and four linear parks are planned. The Montague Expressway overcrossing would provide a direct linkage between these recreational areas north and south of Montague. The TASP document further states: "This Specific Plan builds on these [planning] policies to ensure that pedestrian access is pervasive, with multiple links to the trail system and bridges to provide safe crossings over regional arterial roads."

The TASP bicycle/pedestrian circulation recommendations include a trail along the west side of the UPRR/BART corridor from Montague Expressway to Calaveras Blvd., as well

as a Class II bikeway along the S. Milpitas Blvd. extension. The proposed Montague Expressway overcrossing would provide a linkage between these two planned facilities.

2. **Midtown Specific Plan.** The Midtown planning area includes the adjacent area immediately to the north of Curtis Park. Policy 4.13 of the Midtown Plan calls for an interconnected system of sidewalks and paths to provide safe and convenient access between transit stations and destinations within the Midtown area, saying that: “As new development occurs around the [transit] stations, linkages through new development between the trail and stations should be made to provide an attractive bicycle and pedestrian entry.”
3. **Bikeway Master Plan.** The City’s Bikeway Master Plan (June 2009) establishes several key goals that would be advanced by construction of the proposed overcrossing, including:
 - Connect Milpitas’ bikeways to the regional bicycle system.
 - **Enhance bicycle access to public transit** and increase the number of people who bike to public transit in Milpitas. (Emphasis added)
 - Promote bicycling as an integral mode of transportation in Milpitas.
 - Improve bicycle connections to Milpitas’ community amenities, parks, and schools.

The construction of the bike/pedestrian overcrossing would directly complement these stated goals established by the City, by providing a safe and convenient linkage across Montague Expressway. Another stated goal in the Bikeway Master Plan is to “identify funding sources to design, construct and maintain Milpitas’ bikeways” by applying for bikeway grants from local, regional and state funding sources (*Objective 8-1*). By assisting Milpitas with the OBAG grant process, VTA will be helping to advance the City’s Bikeway Master Plan, which specifically identifies the Montague overcrossing at Piper Drive as a needed improvement in the City’s bicycle/pedestrian recreational trail network.

In addition, the Bikeway Master Plan and other City planning documents call for future multi-use trails along Berryessa Creek and East Penitencia Channel. The proposed overcrossing would provide a safe and convenient linkage to both of these planned facilities, as well as to recreational facilities south of Milpitas in the City of San Jose.

Because it advances the city’s stated goals for recreational and bicycle/pedestrian facilities within the Midtown and Transit Area specific planning areas, VTA’s assistance with the Preliminary Engineering phase of the Montague overcrossing should be considered to mitigate the parkland impact of the SVBX property taking in Curtis Park.

IV. Activities Moving Forward

VTA believes that the Montague Expressway overcrossing provides a direct linkage between the recreational areas north and south of Montague. VTA proposes that VTA fund preliminary engineering for the pedestrian overcrossing that would span Montague Expressway and connect with the Milpitas BART Station via the station’s parking structure to the south. In addition, VTA

will prepare and submit grant application materials for OBAG funding in 2013 as well as a future grant cycle in 2017 to seek construction funding. VTA believes that providing this engineering support, which is financially commensurate with the in-lieu fee equivalent to the cost of replacement parkland, would satisfy the 4(f) mitigation for the Curtis Park impact.

At a staff level, the two agencies have agreed that the Preliminary Engineering element of this project would be completed by VTA. The estimated cost for Preliminary Engineering and preparation of grant applications is \$240,000 (refer to Attachment A). The cost of this effort is greater than an in-lieu fee equivalent to the cost of replacement parkland based on recent comparable land values in this area. In addition, the VTA funding of preliminary engineering efforts would also serve as a set-off to the cost to acquire the portion of Curtis Park shown in Attachment A. (As dedicated parkland, the proposed acquisition has a nominal value of \$2,500.)

Upon completion of Preliminary Engineering, funding for Environmental Clearance and Final Engineering of the overcrossing is being sought through the One Bay Area Grant funding program (OBAG) through an application being co-sponsored by VTA and the City of Milpitas. The OBAG Program is a new funding program being implemented by the Metropolitan Transportation Commission that better integrates the region's federal transportation program with California's climate law and the Sustainable Communities Strategy. The competitive program is being implemented within Santa Clara County by VTA. Upon completion of Final Engineering, both agencies intend to fund construction of the project through the pursuit of future cycles of OBAG funding and development or infrastructure fees collected by private development built within the City's Transit Area Specific Plan.

VI. Next Steps

To move forward with the SVBX project, VTA requests that by April 16, 2013 the City of Milpitas concurs that the preliminary engineering effort would satisfy the 4(f) mitigation to Curtis Park and would allow for transfer of the required right-of-way (in fee and an easement) at Curtis Park. This critical step would allow the project to receive an encroachment permit by April 22, 2013 for construction in the vicinity of Curtis Park.

I appreciate the attention you and other City management staff have given to this matter.

Attachment A

Preliminary Engineering Fee Estimate		
Scope Item	Fee Estimate	Work Scope
Project Management – Prime Consultant	\$30,000	General Coordination / Project Administration
Engineering		
Structural	\$50,000	Bridge structure
Architect	\$30,000	Overcrossing, stair, elevator tower
Mechanical, Electrical, and Plumbing (MEP)	\$5,000	Elevator, lighting, drainage
Civil	\$35,000	Grading, utilities, constructability reviews
Landscape	\$5,000	At and around stair and elevator
Additional Survey	\$5,000	
Geotech	N/A	Use preliminary data available from Station Site
Revision to current Parking Structure Design	\$10,000	Modifications to parking structure designed without POC connection
Meetings/Presentations	\$20,000	General meetings with key stakeholders
2013 OBAG Grant Preparation	\$20,000	Complete OBAG grant application, concept plans and cost estimate
2017 OBAG Grant Preparation	\$20,000	Complete OBAG grant application, construction schedule and cost estimate
Expenses/Travel	\$10,000	
Total	\$240,000	

MEMORANDUM

To: Bijal Patel, Valley Transportation Authority
From: Darin Smith and Walter Kieser
Subject: Curtis Park Property Acquisition; EPS #131001
Date: March 5, 2013

The Economics of Land Use



Economic & Planning Systems (EPS) has been asked by VTA to provide an opinion on the market value of land to be acquired at Curtis Park to facilitate the SVBX project. While EPS is not an appraisal firm, we have assisted both VTA and the City of Milpitas with parcel valuation estimates in the past, and offer our professional judgment hereunder.

We understand that roughly 4,000 square feet of land (roughly 200 feet by 20 feet) in Curtis Park adjacent to the UPRR tracks will be acquired to enable relocation of the UPRR tracks that will then make room for the BART extension. The area to be acquired has not been improved for public use to the same level as the bulk of Curtis Park, and is partially "behind" an area intended by the City to be a water pump station. EPS understands that VTA and City staff are working on financial agreements to offset the loss of the park area and address the impact on the pump station design, if necessary. This review is limited to an estimate of the market value of the portion of Curtis Park to be acquired.

In EPS's professional opinion, the land to be acquired at Curtis Park has only nominal market value. Basic economic theory holds that land's value depends on what economic activity it can support, whether it is for agricultural, residential, employment, or recreational use. In this case, it appears that the land to be acquired cannot be used for any economic purpose other than as public open space or transportation right-of-way, because it is limited in size (only 20 feet deep), is physically inaccessible except through the existing park or rail corridor, and is zoned and used for open space. For these reasons, revenue-generating use is highly unlikely on this site. Moreover, the site has no value as an area to be acquired and dedicated to the City's parkland supply – another potential "economic use" for land given the City's park dedication policies for new residential development – because it has already been improved for this use and would not count as net new park acreage.

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