

AGREEMENT FOR PURCHASE OF PROPERTY

This Agreement for Purchase of Property is between the **Santa Clara Valley Transportation Authority**, a California Special District (“**VTA**”) and the **City of Milpitas**, a municipal corporation, (“**Grantor**”) and is entered into as of _____, 2020 (“**Effective Date**”). For purposes of this Agreement, the aforementioned parties shall herein collectively be referred to as the “Parties.”

The Parties hereby agree as follows:

RECITALS

- A. Grantor is the owner of certain real property located in City of Milpitas, California, which property consists of a strip of land located within Parc Metro East Park (“**Grantor’s Property**”).
- B. VTA requires a portion of Grantor’s Property for construction and/or maintenance of the Silicon Valley Berryessa Extension Project, which is described in Section 1, below (“**Property**”).
- C. On or about April 16, 2013, Grantor and VTA entered into a Fifth Amendment to the Master Agreement between the Santa Clara Valley Transportation Authority and the City of Milpitas as Relating to the Silicon Valley Rapid Transit Program Berryessa Extension Project (“**Fifth Amendment**”). Said Fifth Amendment set forth the Parties’ agreement wherein City would convey the Property to VTA in the amount of **Two Thousand Five Hundred (\$2,500.00)**.

NOW THEREFORE, the Parties hereby agree as follows:

1. PROPERTY.

For use by VTA on the Silicon Valley Berryessa Extension Project (“**Project**”), Grantor agrees to grant to VTA, and VTA agrees to accept from Grantor, on the terms and conditions set forth in this Agreement, a fee interest in that certain real property more particularly described in the deed (“**Deed**”) attached hereto as **Exhibit “A,”** together with any other such property interests as may be specified herein (collectively the “**Property**”).

2. DELIVERY OF DOCUMENT.

Unless otherwise agreed by the parties in writing, the Deed shall be executed and delivered by Grantor to VTA for the purpose of placing such Deed into escrow. In no event shall VTA be deemed to have accepted delivery of the Deed described herein until such time as

the Deed is recorded in the Official Records of Santa Clara County, California as further set forth in Section 3.

3. PURCHASE PRICE AND TITLE.

- A. Compensation. In consideration for its acquisition of the Property, VTA shall pay to Grantor Two Thousand Five Hundred (\$2,500.00) ("Purchase Price"). VTA shall deposit the Purchase Price into escrow after the Deed has been delivered into escrow. Unless extended by VTA in its sole discretion, within ninety (90) days after the Effective Date ("Close of Escrow"), Grantor shall be prepared to deliver the Property free and clear of all exceptions to title, including, but not limited to, liens, encumbrances, taxes, assessments and leases recorded and unrecorded, except for the following "Permitted Exceptions."
- i. Covenants, conditions, restrictions and reservations of record, if any, unless otherwise specified by VTA.
 - ii. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any, unless otherwise specified by VTA.

Thereafter, at close of escrow, the escrow agent shall deliver the Purchase Price to Grantor when title to the Property vests in VTA, free and clear of all exceptions to title, including, but not limited to, liens, encumbrances, taxes, assessments and leases recorded and unrecorded except for the Permitted Exceptions. VTA shall pay all costs of escrow and recording fees incurred in this transaction.

- B. Close of Escrow. This transaction shall be handled through an escrow with Old Republic Title Company, under Escrow No. 0616018597-IM. At close of escrow, the Title Company shall record the Deed in the Official Records of Santa Clara County, California, free and clear of all exceptions to title except for those set forth in Section 3.A, and deliver the Purchase Price (as defined above) to the Grantor. Unless extended by VTA, in its sole discretion, escrow shall close within ninety (90) days after the Effective Date. Escrow shall not be deemed to have closed until the Deed has been recorded in the Official Records of Santa Clara County as further set forth in Section 2.

4. JUST COMPENSATION; WAIVER AND RELEASE.

- A. Complete Settlement/ Waiver and Release. Grantor agrees that the performance of this Agreement by VTA, including the payment of the Purchase Price, shall constitute a complete settlement of all rights of Grantor to just compensation and

to claim, assess, or receive severance, inverse condemnation or other eminent domain damages by reason of the acquisition, improvement, possession, use and occupancy of the Property, and Grantor hereby waives and releases any and all such rights and claims. This waiver and release shall survive the close of escrow. Grantor is aware of and understands all potential compensation to which he/she/it is otherwise entitled and has had the opportunity to discuss potential compensation with representatives of VTA and with legal counsel of his/her/its choice.

5. PRORATION OF TAXES.

- A. Date of Proration. Taxes assessed on the Property after the Effective Date shall be prorated in accordance with California Revenue and Taxation Code section 5081 et seq. If any taxes are assessed against the Property, said taxes shall also be prorated in accordance with California Revenue and Taxation Code section 5081 et seq.
- B. Payment of Delinquent Taxes and Bonds. Grantor authorizes VTA to deduct from the purchase price any amount necessary to satisfy any delinquent taxes, together with penalties and interest thereon, and any delinquent or non-delinquent assessments or bonds, which are to be cleared from the title to Property.

6. LEASE WARRANTY.

- A. Disclosed Leases. Grantor warrants that there are no oral or written leases on any portion of the Property. Grantor further agrees to hold harmless and reimburse VTA for any and all losses or expenses resulting or arising from any lease(s) on the Property not listed among the Disclosed Leases.
- B. Documentation from Lessees. Further, if there exist either recorded or unrecorded leases, the Parties agree that at VTA's sole discretion, escrow shall not close and this Agreement shall become all or in part null and void if escrow holder fails to receive adequate documentation (such as a quitclaim deed and/or Tenant Consent) establishing that lessee has agreed to claim no interest in the Property (including, but not limited to, improvements to realty) or any compensation for same and further enables VTA to obtain sufficient title insurance.
- C. Survival. The provisions of this Section shall survive the close of escrow and the recordation of the Deeds.

7. FAILURE OF CLOSE OF ESCROW.

In the event close of escrow does not occur as a result of Grantor's failure to meet its obligations under this Agreement, Grantor acknowledges and agrees to the following:

- i. VTA may take any and all legal actions necessary to enforce this Agreement including an action for specific performance. In addition, the VTA's Board of Directors (the "VTA Board") may consider and adopt a Resolution of Necessity to condemn the Property.

If the VTA Board adopts a Resolution of Necessity, such adoption shall not be deemed to terminate this Agreement, unless VTA elects to terminate this Agreement (in whole or in part) in writing; the terms of any provision not terminated shall thereafter continue in effect until either a settlement is reached or a final order of condemnation under Section 1268.030 of the California Code of Civil Procedure is entered by the court.

- ii. Further, in the event the VTA Board adopts the Resolution of Necessity, VTA, at its sole discretion, shall instruct the escrow agent to release the amount deposited in escrow to VTA. VTA thereafter shall deposit the Purchase Price with the State Condemnation Fund pursuant to CCP Section 1255.010 *et seq.* The date of valuation under California Code of Civil Procedure (CCP) Section 1263.110 *et seq.* will be deemed to be the date upon which VTA deposited the Purchase Price into escrow.

Notwithstanding the foregoing, nothing in this Agreement, shall be deemed to: (a) abrogate or limit the responsibility of any party hereto to comply with the terms of this Agreement and close escrow in a timely manner pursuant to the provisions hereof; (b) abrogate or limit the right of VTA to exercise any legal right or remedy it may have at law or in equity in order to enforce this Agreement or receive damages for breach thereof; and/or (c) dictate, preclude, or limit, in any way, the VTA Board's exercise of its discretion in determining whether or not to adopt a Resolution of Necessity in the event that Escrow does not close in a timely manner.

8. COST TO CURE AND DAMAGES TO REMAINDER.

The Parties agree that included in the Purchase Price of the Property set forth above is full compensation to Grantor for damages, if any, to the remainder of Grantor's Property.

9. SEVERABILITY.

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired or invalidated in any way.

10. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. PUBLIC PURPOSE.

VTA requires the Property, which is not now appropriated to a public use, for the Project, and VTA can acquire the Property through the exercise of the power of eminent domain.

Both Grantor and VTA recognize the expense, time, effort and risk to both Grantor and VTA in resolving a dispute over compensation for the Property by eminent domain litigation; and, the compensation set forth herein is in compromise and settlement, in lieu of such litigation.

12. AUTHORITY AND EXECUTION.

Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

13. EXHIBITS.

All exhibits attached hereto are incorporated herein by reference.

14. AMENDMENT.

This Agreement may be amended only by a writing signed by each of the Parties hereto.

15. INTERPRETATION OF AGREEMENT.

The Parties hereto acknowledge and agree that, although this Agreement has been drafted by VTA's legal counsel, Grantor or its legal counsel have reviewed and negotiated, or had an opportunity to review and negotiate, the terms of this Agreement. Consequently, the doctrine that ambiguities in an agreement should be resolved against the drafting party shall not be employed in connection with this Agreement and this Agreement shall be interpreted in accordance with its fair meaning.

16. ENTIRE AGREEMENT.

This Agreement represents the full and complete understanding of the Parties with respect to the Property and the Project. Any prior or contemporaneous oral or written agreements by and between the Parties or their agents and representatives with respect to the Property or the Project are revoked and extinguished by this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as follows:

**SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY
(VTA), a California Special District**

**GRANTOR: City of Milpitas, a
municipal corporation**

By: _____
Raj Srinath, Deputy General Manager/CFO,
By Delegation of Authority for:
Nuria I. Fernandez, General Manager/CEO

By: _____
Steven G. McHarris, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

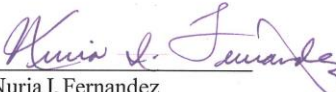
Uzma Saeed
Assistant Counsel

Christopher J. Diaz
City Attorney

DELEGATION OF AUTHORITY

Pursuant to Sec. 1-6 of the Santa Clara Valley Transportation Authority Administrative Code adopted December 20, 1994, I hereby delegate to Raj Srinath, VTA Chief Financial Officer, the authority to execute all property acquisition and possession and use agreements, and other related real estate activity within my authority for the SVBX Project, as authorized by action of the Board of Directors on November 4, 2010, effective on the date below.

Dated: 12/22/15


Nuria I. Fernandez
General Manager

APPROVED AS TO FORM:



Victor Pappalardo
Senior Assistant Counsel

EXHIBIT "A"

*Recorded at the request of and when
recorded return to:*

**SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY**
Real Estate & Transit-Oriented Development
3331 North First Street, Bldg A
San Jose, CA 95134-1906

Record Without Fee

Government Code §6103 & §27383

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

Silicon Valley Berryessa Extension (SVBX) Project
Project Parcel No: B2023-01
APN: 086-49-050 (Portion)
Santa Clara County, California

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **City of Milpitas**, a municipal corporation, hereinafter referred to as "Grantor," grants to the **Santa Clara Valley Transportation Authority**, a California Special District, its assigns and successors, hereinafter referred to as "Grantee," that certain real property and interests therein, situated in the City of Milpitas, County of Santa Clara, State of California, more particularly described in Exhibit "A" attached hereto and made a part hereof.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.

Dated this _____ day of _____, 2020.

City of Milpitas, a municipal corporation

By: _____

Name: Thomas C. Williams

Title: City Manager

EXHIBIT "A"

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____

County of _____

On _____ before me, _____ a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Name: _____
(typed or printed)

(Seal)

EXHIBIT "A"

Silicon Valley Berryessa Extension (SVBX) Project
Parcel No.: B2023-01
Grantor: City of Milpitas
Deed Type: Grant Deed

CERTIFICATE OF ACCEPTANCE (Govt. Code, Section 27281)

This is to certify that the interest in real property conveyed by the within and foregoing deed or grant to the Santa Clara Valley Transportation Authority (VTA), State of California, is hereby accepted by the undersigned officer on behalf of the Santa Clara Valley Transportation Authority, in accordance with Section 5-3 of the Administrative Code of the Authority adopted December 20, 1994, and the Grantee consents to recordation thereof by its duly authorized officer.

Executed this _____ day of _____, 2020.

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a California special district

By _____
Raj Srinath, Deputy General Manager/CFO
By Delegation of Authority for:
Nuria I. Fernandez, General Manager/CEO
Santa Clara Valley Transportation Authority

EXHIBIT "A"

EXHIBIT "A"

Parcel 2023-1
10/29/2010

LEGAL DESCRIPTION FEE APN 086-49-050

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

Being a portion of that certain parcel of land designated as Lot B, as said Lot is shown on that certain map entitled "TRACT NO. 9147 FOR CONDOMINIUM PURPOSES PARCMETROPOLITAN" filed May 10, 1999 in Book 715 of Maps at Pages 1 through 23, Official Records of said County, being more particularly described as follows:

BEGINNING at the southeasterly corner of said Lot B;

1. Thence South $66^{\circ}58'43''$ West 14.03 feet along the southerly line of said Lot B;
2. Thence leaving last said line, North $24^{\circ}20'57''$ West 59.78 feet;
3. Thence North $24^{\circ}45'39''$ West 75.00 feet;
4. Thence North $24^{\circ}51'17''$ West 101.21 feet to the northerly line of said Lot B;
5. Thence North $66^{\circ}59'12''$ East 20.96 feet along last said line to the easterly line of said Lot B;
6. Thence South $23^{\circ}00'49''$ East 235.89 feet along last said line to the **POINT OF BEGINNING**.

Containing 4,079 square feet more or less.

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors Act. All bearings and distances are based on the North American Datum of 1983 (NAD83), Zone III, epoch 1998.5. All distances are grid distances. To convert grid distances to ground distances, multiply expressed distances by 1.00005333.



10.29.10
Dan S. Scott III, PLS 7840
My License Expires on 12/31/2010



EXHIBIT "A"

