

DRAFT

**COOPERATIVE AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE ROUTE 237/880 – TASMAN AVENUE INTERCHANGES AND
MCCARTHY ROAD MEDIANS HIGHWAY PLANTING PROJECT**

THIS COOPERATIVE AGREEMENT, entered into on _____, 2007, is between the CITY OF MILPITAS, a municipal corporation of the State of California, referred to herein as "CITY", and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency referred to herein as "VTA".

RECITALS

1. CITY and VTA contemplate completion of the Landscape Construction for Route 237/880 Interchange, Route 880/Tasman Avenue Interchange, and McCarthy Ranch Road medians, known as the PROJECT. The scope of work includes landscape design, construction administration, landscape planting, irrigation and storm water management.

PROJECT detail is attached as Exhibit A.

2. Caltrans and CITY will enter into a separate agreement for the CITY to provide ongoing maintenance of the completed PROJECT improvements and for Caltrans to provide the CITY \$2.0 million which the CITY will rely upon to fund a significant portion of the PROJECT construction costs.
3. CITY and VTA do mutually desire to set forth the terms and conditions for design and construction of the PROJECT and its funding to be accomplished within the scope of this COOPERATIVE AGREEMENT.

SECTION I

CITY AGREES:

1. To provide funding for the PROJECT in a not-to-exceed amount of \$3,750,000 which includes payment for consultant services, VTA project management, administrative staff costs, and construction contract costs.
2. To deposit with VTA the amount of \$300,000, following execution of this COOPERATIVE AGREEMENT and following receipt of invoice, into VTA's account. This deposit will be drawn upon by VTA as costs are incurred for completing the final PS&E design and Caltrans Encroachment Permit application.

3. To provide written authorization for VTA to continue work past final PS&E design and start pre-construction contract administration work, if Caltrans enters into a separate agreement with the CITY to provide for the future maintenance of the PROJECT improvements and construction funds.
4. To deposit with the VTA an additional amount of \$535,000 following receipt of invoice into VTA's account. This deposit will be drawn upon by VTA as costs are incurred for pre-construction contract administration services.
5. Prior to award of the landscape construction contract, to deposit with the VTA the amount of \$2,915,000 following receipt of invoice into VTA's account. This deposit will be drawn upon by VTA as costs are incurred for work described herein.
6. To provide CITY staff oversight and participation throughout the PS&E and Construction process, and necessary and appropriate coordination with all departments of the CITY.
7. To provide timely reviews and approvals of submittals by VTA per an agreed schedule.
8. To reimburse VTA an amount not exceeding \$3,750,000 for completion of the PROJECT.
9. To undertake landscape maintenance responsibilities after the contract three -year plant establishment period (PEP).

SECTION II

VTA AGREES:

1. To complete final landscape PS&E design to approximately 65% complete utilizing 1996 MBTIP funding dedicated to the Route 237/880 Project.
2. To administer and provide all project management and construction administration including project inspection and material testing services, for the design and construction of the PROJECT.
3. To obtain necessary permits and approvals from State and local agencies governing the construction of the PROJECT improvements.
4. To prepare and send an invoice to the CITY, upon execution of this COOPERATIVE AGREEMENT, in the amount of \$300,000 to complete final PS&E design and for Caltrans Encroachment permit application.
5. Not to proceed with work past final design and permit stage without an executed cooperative agreement between CITY and Caltrans (a separate agreement which will provide the CITY with \$2.0 million for construction of the PROJECT and City authorization by Caltrans to maintain the completed PROJECT improvements.)
6. To request authorization from the CITY to advance work past final design/permit submittal and begin pre-construction administration work.
7. Upon receipt of authorization from CITY, prepare and send an invoice to the CITY in the

amount of \$535,000 for pre-construction administration services.

8. To prepare the construction documents, advertise, award and administer the construction contract for the PROJECT.
9. Prior to award of the construction contract, prepare and send an invoice to the CITY in the amount not to exceed \$2,915,000 for the construction of the PROJECT, as described herein.
10. The total of all payments made by the CITY to VTA under this COOPERATIVE AGREEMENT will not exceed a total cost of \$3,750,000. The following expenses are reimbursable and shall be effective throughout the term of this COOPERATIVE AGREEMENT:
 - a. VTA cost at actual cost of salaries, benefits, and overhead.
 - b. Billings for VTA labor will be computed based on VTA's prevailing fixed labor prices, which are composed of direct labor costs and overhead, for the appropriate job categories.
 - c. Consultant costs at actual cost with no markup.
 - d. Project specific mileage, postage, and printing and reproduction costs for plans and documents at actual cost with no markup.

Any expenses not listed above are not reimbursable unless approved in writing by the CITY's Public Works Director.

Supporting documentation for reimbursable expenses shall be included with the monthly cost reports. VTA shall use these funds for the exclusive purpose of completing the final PS&E design, pre-construction, construction and construction support administration services for the PROJECT. VTA will draw upon these funds as expenses related to the PROJECT are incurred.

PROJECT Costs are identified in Exhibit B.

11. To set aside funds deposited by CITY into an interest bearing account. Any interest earned on the funds shall be applied by VTA to completing the final design for the PROJECT.
12. To provide CITY with monthly progress updates through trend meeting minutes and monthly cost report showing expenditures for the final design. CITY shall have the right to review, comment and approve the draft final design prior to being finalized by VTA.
13. To process PROJECT final design to facilitate delivery of PROJECT, and to take the lead in coordinating State's review and approval of any documents.
14. To incorporate CITY within VTA's project management process as an active participant, and to hold periodic meetings for assessing the progress of the PROJECT development and address issues as they arise.
15. To actively monitor, as part of the monthly reports, the actual versus the planned expenditures to assure that CITY deposits pursuant to this COOPERATIVE AGREEMENT will be sufficient to pay for expenditures. In the event that the planned expenditures are projected to exceed \$3,750,000, VTA shall notify and meet with City to determine the appropriate course of action.

16. Within 120 days after completion of all work associated with the PROJECT, submit a final report of expenditures to the CITY, including reimbursement of unexpended funds.
17. To use its best efforts to complete the final design and construction of the PROJECT required by this COOPERATIVE AGREEMENT no later than the schedule shown on EXHIBIT A.
18. Provide a three-year plant establishment (maintenance) period (PEP). The plant establishment period shall begin after landscape contract work, inspections and acceptance.

SECTION III

IT IS MUTUALLY AGREED:

1. VTA has agreed to serve as the lead agency for PROJECT, and upon execution of this COOPERATIVE AGREEMENT will meet with CITY and form a Project Team consisting of CITY and VTA staff in order to maintain close coordination and interaction between the two agencies throughout the scope of work covered by this agreement.
2. In accomplishing VTA responsibilities, VTA may retain qualified consultants and contractors, approved, in writing, by CITY to perform the final design, construction and construction administration as VTA determines to be necessary.
3. CITY has agreed to reimburse VTA for all direct expenses incurred for the final design of the PROJECT, in a not to exceed amount of \$300,000 and \$3,450,000 for construction and construction administration of the PROJECT, unless amended in writing by both parties.
4. If an amount exceeding \$3,750,000 is required to complete PROJECT, VTA shall notify CITY in writing that additional funds are needed and VTA shall not perform any work beyond the amount of funds provided in Section I, Articles 1, 2, 4 and 5 until an amendment to this COOPERATIVE AGREEMENT is executed, adding funds to cover PROJECT completion.
5. In the event that PROJECT does not proceed for any reason, VTA will immediately refund to CITY any funds (including interest) remaining in the account after all expenditures incurred have been paid. CITY and VTA will meet to determine any further course of action required.
6. The final design and construction of PROJECT shall comply with all CITY, VTA and State specifications and requirements applicable to the engineering and construction of improvements such as those to be undertaken in the PROJECT.
7. CITY reserves the right to audit the expenses incurred in the performance of this COOPERATIVE AGREEMENT. VTA shall retain all records related to the PROJECT for three (3) years after the completion of the PROJECT. During this period, VTA shall make these records available within a reasonable time to the CITY for inspection upon the CITY's request.
8. The General Manager of VTA or his designee is hereby made the representative of VTA for all purposes under this COOPERATIVE AGREEMENT.

9. The City Manager for CITY or her/his designee is hereby made the representative of CITY for all purposes under this COOPERATIVE AGREEMENT.
10. Pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify, defend and hold the other party, its officers, employees and agents, harmless from any damage or liability imposed for injury (as defined in Government Code §810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such party under this COOPERATIVE AGREEMENT. Neither party, nor any officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other party under this COOPERATIVE AGREEMENT.
11. The failure of either party to insist upon the strict performance of any of the terms, covenant and conditions of this COOPERATIVE AGREEMENT shall not be deemed a waiver of any right or remedy that either party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.
12. Any notice required to be given by either party, or which either party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority
Carolyn M. Gonot, Chief Development Officer
Development & Congestion Management Division
3331 North First Street, Bldg. B
San Jose, CA 95134-1906

To CITY: City of Milpitas
Greg Armendariz, Public Works Director
455 East Calaveras Boulevard
Milpitas, CA 95035

13. If a question arises regarding interpretation of this COOPERATIVE AGREEMENT or its performance, or the alleged failure of a party to perform, the party raising the question or making the allegation shall give written notice thereof to the other party. The parties shall promptly meet in an effort to resolve the issues raised. If the parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation or binding arbitration, may be pursued by mutual agreement. It is the intent of the parties to the extent possible that litigation be avoided as a method of dispute resolution.
14. This COOPERATIVE AGREEMENT constitutes the entire AGREEMENT between the parties pertaining to the subject matter contained therein and supersedes all prior or contemporaneous agreements, representations and understandings of the parties relative thereto.
15. Future amendments to this COOPERATIVE AGREEMENT shall be processed by mutual agreement of the parties. Mutual consent shall be reached through negotiations. Notice to

amend this COOPERATIVE AGREEMENT shall be provided ninety (90) calendar days prior, when possible, to the desired effective date of such amendment.

16. This COOPERATIVE AGREEMENT shall be effective on the date specified on the first page hereof and shall remain in effect until June 30, 2011, or until earlier termination. The parties may terminate the COOPERATIVE AGREEMENT upon mutual, written consent. Either party may terminate this COOPERATIVE AGREEMENT at any time, for any reason, upon giving thirty (30) days written notice to the other party. Upon termination, all funds (including interest) provided by the CITY and unexpended as of the effective date of the termination shall be returned, less the funds detailed and invoiced as necessary to pay for services rendered prior to the effective date of the termination. All such funds shall be returned within 30 calendar days of the effective date of the termination.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

“CITY”
City of Milpitas
a municipal corporation

By: _____
Thomas C. Williams
City Manager

APPROVED AS TO FORM:

By: _____
Steven T. Mattas
City Attorney

“VTA”
Santa Clara Valley Transportation Authority
a public agency

By: _____
Michael T. Burns
General Manager

APPROVED AS TO FORM:

By: _____
Counsel

EXHIBIT A

ROUTE 237/880 -Tasman Ave. Interchanges and McCarthy Road Medians Highway Planting Project

SCOPE

The project's scope includes landscape planting, automatic irrigation and storm water erosion elements. The planting project is sponsored by the City of Milpitas, Santa Clara Valley Transportation Authority (VTA), and Caltrans.

CONCEPT

The landscape concept is a simple, bold representation of naturalistic, free form plantings and a supporting base of gravel mulch and rock blanket accents. The design integrates a unique visual display and provides for efficiency and ease of landscape maintenance.

PROCESS

The landscape concept was developed by agency collaboration and consensus through a City sponsored design charette started on November 18, 2004. The design charette included several meetings over a period on several months resulting in a landscape concept plan adopted by the City Council on October 18, 2005. VTA consultant developed preliminary plans based upon the adopted landscape concept. The landscape design development is currently underway and designed and completed through 35% development. The landscape 35% plans, specifications and estimate (PS&E) were submitted for agency review on November 8, 2005. Agency PS&E review comments were completed and submitted by January 6, 2006.

SCHEDULE

The following is the tentative milestone schedule for the PROJECT:

| | |
|--|---------------|
| 65% PS&E Caltrans, City submittal | March 2007 |
| 100% PS&E Caltrans, City submittal | May 2007 |
| Final-Permit PS&E Caltrans submittal | July 2007 |
| Construction Contract Advertisement | August 2007 |
| Contract Bid Opening | October 2007 |
| VTA Board Award of Construction Contract | November 2007 |
| Construction Start | November 2007 |
| Construction Finish | November 2008 |
| Contract Completion (3-year Plant Establishment) | November 2011 |

EXHIBIT B

**Route 237/880 – 880/Tasman Avenue Interchanges
McCarthy Road Medians**

Highway Planting Project

COST SUMMARY

| Item | Description | Cost |
|-------------|--|--------------------------|
| 1. | Design & Contract Administration | |
| | a. Consultant Final Design | \$ 300,000 |
| | b. VTA Pre-Construction & Construction Management/Administration (4-year construction schedule, including 3-year Plant Establishment Period) | \$ 475,000 |
| | c. Consultant Design Support Construction | <u>\$ 60,000</u> |
| | | Subtotal \$ 835,000 |
| 2. | Construction | |
| | a. 237/880, 880/Tasman Interchanges | \$ 2,500,000 |
| | b. McCarthy Rd medians | \$ 150,000 |
| | c. Construction contingency (10%) | <u>\$ 265,000</u> |
| | | Subtotal \$2,915,000 |
| 3. | Total Cost | Total \$3,750,000 |

City of Milpitas, California

BUDGET CHANGE FORM

| Type of Change | From | | To | |
|--|----------|-----------|-------------|-----------|
| | Account | Amount | Account | Amount |
| Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer | 310-2940 | \$300,000 | 310-9104720 | \$300,000 |

Explain the reason for the budget change:

Currently there are two major transportation projects in the City of Milpitas that are in need of landscaping work. The first project is the landscape work under the light rail viaduct (LRT) in the median of Great Mall Parkway, from Abel Street to San Jose City limits. This project is estimated at \$3,500,000 and is to be cost shared between VTA and Milpitas. The second landscape project is the 237/I-880 Interchange project and is estimated at \$ 3,750,000 million. These two projects are important because one is in the MidTown Specific Plan area and the other is a major gateway into the City of Milpitas.

Funding Concept:

Caltrans, VTA and City staff have discussed and agreed on a funding concept, which combines the available partial funding of the LRT median landscape project and partial funding for the 237/I880 interchange, to fully fund the 237/I880 interchange in 2007. Later, the LRT funding would be replenished in 2009 with the STIP funding designated for 237/I880. VTA is agreeable to the use of the \$1.5 million designated to the LRT project, if the City Council is interested in prioritizing 237/I880 over LRT Landscaping.

The City's initial share for completion of the design is \$300,000. A budget appropriation from the Street Fund of \$300,000 is requested.

Approve a budget appropriation of \$300,000 from the Street Fund for landscape design.

Check if City Council Approval required.

Meeting Date: January 16, 2007

| Itemization of funds, if needed: | | | Amount |
|---|-------------------|---------------|--------|
| Requested by: | Division Head: | Date: | |
| | Department Head: | Date: | 1/8/07 |
| Reviewed by: | Finance Director: | Date: | 1/8/07 |
| Approved by: | City Manager: | Date: | |
| Date approved by City Council, if required: | | Confirmed by: | |