

**-DRAFT**  
**FIRST AMENDMENT TO THE COOPERATIVE AGREEMENT**  
**BETWEEN THE CITY OF MILPITAS AND**  
**THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**  
**FOR THE CALAVERAS BOULEVARD WIDENING PROJECT STUDY REPORT**

THIS FIRST AMENDMENT TO THE COOPERATIVE AGREEMENT BETWEEN THE CITY OF MILPITAS AND THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE CALAVERAS BOULEVARD WIDENING PROJECT STUDY REPORT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2007 by and 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**

WHEREAS, on January 3, 2006, CITY and VTA entered into an agreement entitled “COOPERATIVE AGREEMENT BETWEEN THE CITY OF MILPITAS AND THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE CALAVERAS BOULEVARD WIDENING PROJECT STUDY REPORT” (herein referred to as “AGREEMENT”); and

WHEREAS, City and VTA now desire to amend the AGREEMENT to: increase the scope of work; increase the maximum contract amount; and extend the term of the AGREEMENT.

NOW, THEREFORE, the parties agree to amend the AGREEMENT as follows:

1. RECITALS, ARTICLE NO. “1” is amended to read as follows:

CITY and VTA contemplate widening Calaveras Boulevard (SR 237) as identified and conceptually developed in the I-680/I-880 Cross Connector Study recently completed by VTA. Improvements will include widening beginning at Town Center Drive in the east to Abbott Avenue in the west to accommodate six (6) through lanes, including replacement of the bridges over Main Street, the UPRR and the proposed BART extension, and conversion of the eastbound Calaveras Boulevard (SR237) on-ramp from Carlo Street to an off-ramp from eastbound Calaveras Boulevard (SR237) to Carlo Street. Additionally, auxiliary lanes will be added to the current six-lane facility between Able Street and Abbot Avenue.

2. RECITALS, ARTICLE NO. “2”, is amended to read as follows:

CITY and VTA mutually desire to set forth the terms and conditions of preparation of a Project Study Report (PSR) for the work specified about.

CITY and VTA further desire to set forth the terms and conditions of preparation of an additional final design document which would include data collection, topographic surveys, design submittals, traffic studies and plans, specifications and estimates for the Carlo Street Ramp Conversion (FINAL DESIGN DOCUMENT).

Such PSR and FINAL DESIGN DOCUMENT, known, collectively, as the PROJECT, and their funding shall be accomplished within the scope of this COOPERATIVE AGREEMENT.

3. RECITALS, ARTICLE NO. “3”, is amended to read as follows:

“The estimated cost to complete the PROJECT is \$600,000. The CITY will provide \$450,000 and the VTA will provide \$150,000 to initiate the project development phase of the PROJECT.”

4. SECTION I, ARTICLE NO. “1”, is amended to read as follows:

“To provide funding for the preparation of the PROJECT in a not-to-exceed amount of \$450,000, including payment for consultant services, and VTA project management and administrative staff costs.”

5. SECTION I, ARTICLE NO. “2”, is amended to read as follows:

“To deposit with VTA a maximum amount of \$450,000, following execution of this COOPERATIVE AGREEMENT and following receipt of invoice, into VTA’s account in order for work to proceed. This deposit will be drawn upon by VTA as costs are incurred.

6. SECTION I, ARTICLE NO. “3”, is amended to read as follows:

“To provide CITY staff oversight and participation throughout the PROJECT, and to provide the necessary and appropriate coordination with all departments of the CITY.”

7. SECTION II, ARTICLE NO. “1”, is amended to read as follows:

“To prepare and send invoices to the CITY, upon execution of this COOPERATIVE AGREEMENT, in a not-to-exceed amount of \$450,000. The total of all payments made by the CITY to VTA under this COOPERATIVE AGREEMENT will not exceed a total cost of \$450,000. The following expenses are reimbursable at the rates shown and shall be shown on all invoices 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 PROJECT. VTA will draw upon these funds as expenses related to the PROJECT are incurred."

8. SECTION II, ARTICLE "2", is amended to read as follows:

"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 PROJECT."

9. SECTION II, ARTICLE "4", is amended to read as follows:

"To provide CITY with monthly progress updates through trend meeting minutes and monthly cost reports showing expenditures for the PROJECT. CITY shall have the right to review, comment and approve the draft PROJECT prior to it being finalized by VTA."

10. SECTION II, ARTICLE "8", is amended to read as follows:

"To actively manage the PROJECT in order to maintain the costs within the budget of \$600,000 and to maintain the mutually approved schedule. In the event that the planned expenditures are projected to exceed \$600,000, VTA shall notify and meet with City to determine the appropriate course of action."

11. SECTION II, ARTICLE "10", is amended to read as follows:

"To use its best efforts to complete the PROJECT required by this COOPERATIVE AGREEMENT no later than December 31, 2008."

12. SECTION III, ARTICLE "3", is amended to read as follows:

"CITY has agreed to reimburse VTA for all direct expenses incurred for the PROJECT, in a not to exceed amount of \$450,000, unless amended in writing by both parties."

13. SECTION III, ARTICLE “12”, is amended to read as follows:

“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  
John H. Ristow, Acting Chief  
Congestion Management Agency  
3331 North First Street, Bldg. B-2  
San Jose, CA 95134-1906

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

14. SECTION III, ARTICLE “16”, is amended to read as follows:

“This COOPERATIVE AGREEMENT shall be effective on the date specified on the first page hereof and shall remain in effect until December 31, 2008 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.”

15. All other terms and conditions of the AGREEMENT not specifically modified by this FIRST AMENDMENT TO THE AGREEMENT shall remain in full force and effect.

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

“CITY”

City of Milpitas  
a municipal corporation

By: \_\_\_\_\_  
Charles Lawson  
City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Steve Mattas  
City Attorney

“VTA”

Santa Clara Valley Transportation Authority  
a public agency

By: \_\_\_\_\_  
Michael T. Burns  
General Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Counsel