

4-08-09  
Form I-2

04-SCL-880-PM 7.3 /8.9  
Rte 237/880 Interchange – Landscape  
Rte 880/Tasan Drive/Great Mall Parkway I/C  
04-341-EA 4A7600  
District Agreement No. 4-2029

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (“Agreement”), entered into effective on \_\_\_\_\_ (“Effective Date”), is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as “STATE”, and the CITY OF MILPITAS, a body politic and a municipal corporation of the State and of California, referred to herein as “CITY”.

RECITALS

WHEREAS, , the CITY wishes to construct and install landscaping in two areas of a state highway right of way commonly known as Route 880. Specifically, the CITY wishes to construct and install landscaping at the Route 237/880 Interchange, and the Route 880/Tasman Drive/Great Mall Parkway Interchange. The construction and installation of landscaping in those two areas of the state highway right of way shall be referred to herein as the "PROJECT"; and

WHEREAS, after the completion of the PROJECT, the CITY and the STATE wish to ensure that it is properly maintained; and

WHEREAS, pursuant to Streets & Highways Code Section 114, the STATE is authorized to enter into cooperative agreements and arrangements with local agencies like the CITY and allocate or contribute monies for the local agency’s improvement and/or maintenance of any portion of a state highway; and

WHEREAS, accordingly, the STATE wishes to set forth in this Agreement the terms and conditions for its payment of Two Million U.S. Dollars (\$2,000,000) in highway maintenance funds to the CITY for the performance of work to maintain the PROJECT or the pre-construction area of the PROJECT (“MAINTENANCE WORK”) for a twenty (20) year period; and

WHEREAS, the terms and scope of the MAINTENANCE WORK are governed by the Agreement for Landscape Maintenance Within State Highway on Route 880 Within the City of Milpitas (“Landscape Agreement”), dated \_\_\_\_\_, which shall be the executed concurrently with this Agreement.

NOW, THEREFORE, the Parties agree as follows:

SECTION I

CITY AGREES:

1. To perform MAINTENANCE WORK on Route 880 at the Route 237/880 and the Route 880/Tasman Drive/Great Mall Parkway interchanges, as set forth in greater detail in the Landscape Agreement.
2. To begin or cause partners, contractors, agents or other entities to begin construction of the PROJECT within two years of the execution of this Agreement.
3. To apply for necessary encroachment permits for required work within State highway rights of way, in accordance with STATE's standard permit procedures, as more specifically defined in Article 2 of Section III of this Agreement.
4. To account for all MAINTENANCE WORK, and, on a quarterly basis, to furnish STATE a complete history of MAINTENANCE WORK performed by CITY for that quarter and the associated costs.
5. To retain or cause to be retained for audit by STATE or other government auditors for a period of four (4) years from date of final maintenance activity, all records and accounts relating to MAINTENANCE WORK.
6. To provide to STATE a single point of contact who will respond to all inquiries and requests regarding MAINTENANCE WORK.
7. After completion of the MAINTENANCE WORK term, to consider in its sole discretion whether to extend the time for the provision of MAINTENANCE WORK at CITY's expense by separate contract beyond the timeframe set forth in this Agreement and the Landscape Agreement.

SECTION II

STATE AGREES:

1. To issue, at no cost to CITY and CITY's maintenance forces, the necessary encroachment permits for required work within the State highway right of way, as more specifically defined in the Landscape Agreement.
2. To provide, at no cost to CITY, a qualified STATE Representative who shall have authority to accept or reject work and materials or to order any actions needed for public safety or the preservation of property, and to assure compliance with all provisions of the encroachment permit(s) issued to CITY and CITY's forces.
3. To deposit with CITY within forty-five (45) days of the execution of this Agreement the amount of Two Million U.S. Dollars (\$2,000,000), which figure represents the lump sum total amount of STATE's contribution of the cost of MAINTENANCE WORK to be performed by CITY on STATE's behalf pursuant to the Landscape Agreement.

4. STATE's total obligation for cost under this Agreement is not to exceed Two Million U.S. Dollars (\$2,000,000).
5. After the expiration or termination of the Landscape Agreement and this Agreement, pursuant to the procedures stated therein, to assume all maintenance responsibilities for the PROJECT, at STATE's sole cost, in the event the CITY in its sole discretion chooses to not provide any additional MAINTENANCE WORK outside of the bounds of such agreements.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of the resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).
2. CITY shall obtain the aforementioned encroachment permit for MAINTENANCE WORK through the office of the State District Permit Engineer. Receipt by CITY of the approved encroachment permit shall constitute authorization from STATE to proceed with work to be performed by CITY or CITY representatives, agents, contractors or assigns within STATE rights of way, or where it affects STATE facilities, pursuant to work covered by this Agreement. The authorization to proceed with said work shall be contingent upon the permit-holder's compliance with all provisions set forth in said encroachment permit.
3. STATE and CITY shall execute the Landscape Agreement concurrently with or as soon as practical after execution of this Agreement.
4. In exchange for Two Million U.S. Dollars (\$2,000,000) in highway maintenance funds, CITY shall perform MAINTENANCE WORK for a twenty (20)-year period starting within thirty (30) days of the CITY's receipt of such funds pursuant to this Agreement, as set forth in the Landscape Agreement. Furthermore, the parties acknowledge that, as set forth in the Landscape Agreement, the City's costs to perform MAINTENANCE WORK shall be limited to \$100,000 per year.
5. Intentionally left blank.
6. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the PROJECT and other public facilities affected herein different from the standard of care imposed by law.
7. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY or arising under this Agreement. It is understood and agreed that CITY will fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
8. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or

in connection with any work, authority or jurisdiction conferred upon STATE or arising under this Agreement. It is understood and agreed that STATE will fully defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.

9. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

10. Prior to the dedication of the PROJECT to the STATE or the STATE's acceptance of it, the CITY shall have the right to terminate without penalty this Agreement for convenience. In such case, the CITY shall refund the unexpended portions of the Two Million U.S. Dollars (\$2,000,000) amount in contributed state highway funds, plus any accrued interest, to the STATE. Said interest shall be calculated according to the CITY's budget portfolio rate in effect at the time of the deposit of state highway funds with the CITY.

11. This Agreement shall terminate upon the earlier of:

- a. Twenty (20) years from the Effective Date of this Agreement;
- b. Upon the CITY's termination for convenience as set forth in Section III; or
- c. The termination of the Landscape Agreement.

STATE OF CALIFORNIA  
Department of Transportation

CITY OF MILPITAS

WILL KEMPTON  
Director of Transportation

By: \_\_\_\_\_  
Thomas C. Williams,  
City Manager

By: \_\_\_\_\_  
Deputy District Director

Attest: \_\_\_\_\_  
Mary Lavelle,  
City Clerk

Approved as to form and procedure:

Approved as to form:

By: \_\_\_\_\_  
Attorney  
Department of Transportation

By: \_\_\_\_\_  
Michael J. Ogaz,  
City Attorney

Certified as to funds:

By: \_\_\_\_\_  
District Budget Manager

Certified as to financial terms and policies:

By: \_\_\_\_\_  
Headquarters Accounting