

FIRST AMENDMENT TO THE 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 FIRST AMENDMENT TO THE COOPERATIVE AGREEMENT (“FIRST AMENDMENT”) is made by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (“CITY”), and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency, (“VTA”) on this date of _____, 2009.

RECITALS

WHEREAS, the CITY and VTA executed the “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,” dated January 16, 2007 (“COOPERATIVE AGREEMENT”); and

WHEREAS, pursuant to the COOPERATIVE AGREEMENT, the CITY agreed to contribute up to \$3,750,000 to VTA for VTA’s design and construction management of certain landscape improvements at the Route 237/880 Tasman Avenue interchanges and at the McCarthy Road medians, in order to improve the appearance of such gateway entry points to the CITY; and

WHEREAS, separately, VTA has commenced the I-880 HOV Lane Widening Project (US 101 to SR 237), VTA Contract No. S07057 (“HOV Project”); and

WHEREAS, the parties now wish to amend VTA’s scope of work under the COOPERATIVE AGREEMENT, set forth in Exhibit A of that agreement, by splitting the work into two work areas, as set forth in the Exhibit A-1 hereto, and incorporating the second work area and its improvements into the HOV Project and eliminating VTA’s obligation as to that second work area under this COOPERATIVE AGREEMENT; and

WHEREAS, because of the reduction in the scope of work, the parties wish to eliminate some of VTA’s design and construction management obligations, reduce the overall not to exceed contribution by the CITY under this COOPERATIVE AGREEMENT to \$3,285,000, and to make pro-rata reductions and changes in various reimbursement payments hereunder; and

WHEREAS, furthermore, the CITY wishes to condition ongoing participation in this COOPERATIVE AGREEMENT on the California State Department of Transportation’s (“Caltrans”) provision of funding to the CITY for the later maintenance of the improvements subject to this COOPERATIVE AGREEMENT through the execution of the contracts called the Contribution Agreement, Caltrans District Agreement No. 4-2029, which was approved by the Milpitas City Council on May 5, 2009, and the Agreement for Landscape Maintenance Within State Highway Right of Way on Route 880 Within the City of Milpitas, which was approved by the Milpitas City Council on June 16, 2009; and

WHEREAS, the CITY is still awaiting Caltrans approval of the aforementioned agreements as of the date of the execution of this FIRST AMENDMENT.

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

1. The title of the COOPERATIVE AGREEMENT is amended and restated to read as follows:

“COOPERATIVE AGREEMENT BETWEEN THE CITY OF MILPITAS AND THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE ROUTE 237/880 INTERCHANGE AND MCCARTHY ROAD MEDIANS HIGHWAY PLANTING PROJECT.”

2. The existing Exhibit A is replaced with the new Exhibit A (Revised) and Exhibit A-1 attached to this First Amendment.

3. The first recital on the first page of the COOPERATIVE AGREEMENT is amended and restated in its entirety to read as follows:

“CITY and VTA wish to provide for the design and construction of landscape improvements for the Route 237/880 Interchange and the McCarthy Road medians. The scope of work includes landscape design, construction administration, landscape planting, irrigation and storm water management.

Overall scope of work and projects details are set forth in Exhibit A. The project construction area is further broken up into two work areas (Work Area No. 1 and Work Area No. 2), as set forth in greater detail in Exhibit A-1. The design, construction administration, landscape planting, irrigation, and storm water management by VTA of Work Area No. 1 shall henceforth be referred to in this COOPERATIVE AGREEMENT as the “PROJECT.”

4. SECTION I, ARTICLE 1, is amended and restated in its entirety to read as follows:

“To provide funding for the PROJECT in a not-to-exceed amount of \$3,285,000, which includes payment for consultant services, VTA project management, administrative staff costs, construction contract costs and remaining project contingency.”

5. SECTION I, ARTICLE 2, is amended and restated in its entirety to

read as follows:

“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/bid-ready PS&E design and Caltrans Encroachment Permit application.

To deposit with VTA an additional amount of \$125,000 following execution of the FIRST AMENDMENT and receipt of invoice for consultant PS&E design services.”

6. SECTION I, ARTICLE 4, is amended and restated in its entirety to read as follows:

“To deposit with the VTA an additional amount of \$250,000 following receipt of invoice into VTA's account. This deposit will be drawn upon by VTA as costs are incurred for VTA project management and design support contract administration services.”

7. SECTION I, ARTICLE 5, is amended and restated in its entirety to read as follows:

“Prior to award of the landscape construction contract, to deposit with the VTA the amount of \$2,610,000 following receipt of invoice into VTA's account. This deposit will be drawn upon by VTA as costs are incurred for construction and construction support services by VTA and consultant and for work described herein.”

8. SECTION I, ARTICLE 8, is amended and restated in its entirety to read as follows:

“To reimburse VTA an amount not exceeding \$3,285,000 for completion of the PROJECT.”

9. SECTION II, ARTICLE 1, is amended and restated in its entirety to read as follows:

“To complete final/bid-ready landscape PS&E design utilizing 1996 MBTIP funding dedicated to the Route 237/880 Project.”

10. SECTION II, ARTICLE 4, is amended and restated in its entirety to read as follows:

“To prepare and send an invoice to the CITY, upon execution of this COOPERATIVE AGREEMENT, for an amount not to exceed

\$300,000 to complete final/bid-ready PS&E design and for Caltrans Encroachment permit application.

To prepare and send an invoice to the CITY, upon execution of the FIRST AMENDMENT, for an amount not to exceed \$125,000 for consultant PS&E design services.”

11. SECTION II, Article 5, is amended and restated in its entirety to read as follows:

“Not to proceed with work past the final design and permitting stage without a written notice to proceed from the CITY.”

12. SECTION II, ARTICLE 7, is amended and restated in its entirety to read as follows:

“Upon receipt of authorization from CITY, prepare and send an invoice to the CITY in an amount not to exceed \$250,000 for VTA project management and design administration services.”

13. SECTION II, ARTICLE 9, is amended and restated in its entirety to read as follows:

“Prior to award of the construction contract, prepare and send an invoice to the CITY in the amount not to exceed \$2,610,000 for the construction and construction support services of the PROJECT, as described herein.”

14. The first two sentences of SECTION II, ARTICLE 10, are amended and restated in their entirety to read as follows:

“The total of all payments made by the CITY to VTA under this COOPERATIVE AGREEMENT will not exceed a total cost of \$3,285,000. 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:”

15. The existing Exhibit B is removed and replaced with the new Exhibit B (Revised) attached to this First Amendment. Furthermore, the last sentences of SECTION II, ARTICLE 10, is amended and restated in its entirety to read as follows:

“PROJECT Costs are identified in Exhibit B (Revised) that is attached to the First Amendment.”

16. SECTION II, ARTICLE 15, is amended and restated in its entirety to read as follows:

“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 \$3,285,000, VTA shall notify and meet with CITY to determine the appropriate course of action.”

17. A new SECTION II, ARTICLE 19 is hereby added that reads as follows:

“To incorporate the design and construction management of Work Area No. 2 improvements, as set forth in Exhibit A and A-1, into the HOV Project and to perform such work as part of the HOV Project. VTA agrees to perform such work only in the event of the availability of adequate funding for such work from the following sources: (a) the achievement of cost savings (i.e., surplus monies) remaining after VTA’s performance of its PROJECT obligations under this COOPERATIVE AGREEMENT and/or (b) the independent securing of funds from outside state, federal or local sources, which VTA and the CITY agree to work together in good faith to secure.”

18. SECTION III, ARTICLE 3 is amended and restated in its entirety to read as follows:

“CITY has agreed to reimburse VTA a not to exceed amount of \$675,000 for all direct expenses incurred for the final/bid-ready design of the PROJECT and a not to exceed amount of \$2,610,000 for construction and construction administration of the PROJECT, unless amended and restated in its entirety in writing by both parties.”

19. SECTION III, ARTICLE 4, is amended and restated in its entirety to read as follows:

“If an amount exceeding \$3,285,000 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 unless and until an amendment to this COOPERATIVE AGREEMENT is executed, adding funds to cover PROJECT completion. The CITY shall evaluate such requests in good faith, but shall be under no obligation to provide such additional funding.”

20. The VTA addressee in SECTION III, ARTICLE 12, is amended and restated in its entirety to read as follows:

“To VTA: Santa Clara Valley Transportation Authority
John. H. Ristow, Chief CMA Officer
Congestion Management Agency
3331 North First Street, Bldg. B-2
San Jose, CA 95134-1906”

21. A new SECTION III, ARTICLE 17 is hereby added to the COOPERATIVE AGREEMENT as follows:

“Continued CITY participation in this COOPERATIVE AGREEMENT is contingent upon Caltrans’ legal commitment to provide \$2.0 million in funding for maintenance of the landscape improvements contemplated herein via the execution of the Contribution Agreement, Caltrans District Agreement No. 4-2029, approved by the Milpitas City Council on May 5, 2009, and the Agreement for Landscape Maintenance Within State Highway Right of Way on Route 880 Within the City of Milpitas, approved by the City Council on June 16, 2009. In the event of written notice by the CITY to VTA of Caltrans’ refusal to sign said documents in a form acceptable to the CITY, this COOPERATIVE AGREEMENT shall terminate as of the date of said written notice and all funds returned to the CITY, less the funds detailed and invoiced as necessary to pay for serviced rendered prior to the effective date of the termination.”

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

WITNESS THE EXECUTION HEREOF the day and year set forth below.

“CITY”

City of Milpitas
a municipal corporation

“VTA”

Santa Clara Valley Transportation Authority
a public agency

By: _____

Thomas C. Williams
City Manager

By: _____

Michael T. Burns
General Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

Michael J. Ogaz
City Attorney

By: _____

Counsel

Date: _____

Date: _____

EXHIBIT A

Route 237/880 Interchange (West) 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 (City), 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 organic wood 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 of several months resulting in a landscape concept plan adopted by the City 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. A rescope in design was included in the 65% PS&E agency submittal on December 23, 2008.

SCHEDULE

The following is the milestone schedule for the (Rescope) PROJECT:

65% PS&E Caltrans, City submittal (completed)	December 23, 2008
95-100% PS&E Caltrans submittal	Aug 5, 2009
Final-Bid Ready submittal	Sep 23, 2009
Permit (submittal)	Nov 5, 2009
Advertisement (30 days)	Nov 27, 2009
Bid Opening	Dec 28, 2009
VTA Board Award	Feb 04, 2010
Construction Start	Feb 25, 2010
Construction Finish	Nov 26, 2010
Contract Completion (3-year Plant Establishment)	Nov 26, 2013

EXHIBIT A-1

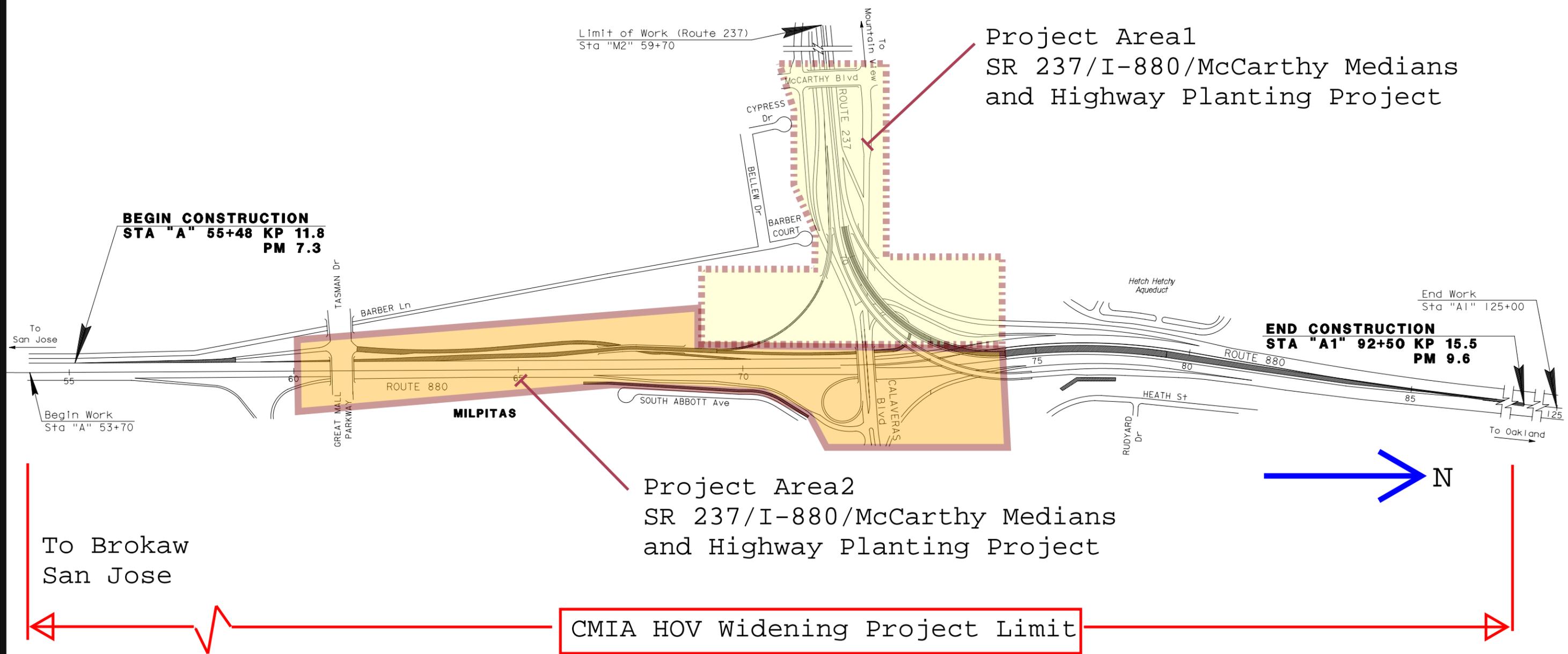


EXHIBIT B
AMENDED

EXHIBIT B (REVISED)

Route 237/880 Interchange (West)
McCarthy Road Medians
Highway Planting Project

COST SUMMARY

Item	Description	Cost
1.	Design & Contract Administration	
	a. Consultant Final/ Bid Ready Design	\$ 425,000
	b. VTA Project Management Design / Pre Construction	\$ 250,000
	c. Construction Management/ Administration (4-year construction schedule, including 3 year Plant Establishment Period)	\$ 550,000
	d. Consultant Design Support Construction	<u>\$ 60,000</u>
		Subtotal \$1,285,000
2.	Construction	
	a. 237/880 Interchange	\$1,600,000
	b. McCarthy Road Medians	\$ 150,000
	c. Construction contingency	<u>\$ 250,000</u>
		Subtotal \$2,000,000
3.	Total Cost	Total \$3,285,000