

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MILPITAS AND
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE
CALERA CREEK WATERLINE CASING**

THIS Memorandum of Understanding Between the City of Milpitas and the Santa Clara Valley Transportation Authority for the Calera Creek Waterline Casing (referred to herein as the “MOU” or the “Memorandum of Understanding”) 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 _____, 2010.

RECITALS

WHEREAS, the City has a 14-inch waterline that crosses beneath the UPRR and VTA rights of way near Calera Creek in Milpitas, California;

WHEREAS, according to the Letter of Understanding and Conditions of Approval—Freight Railroad Relocation, Contract C210 Berryessa Creek Crossing, et al., dated March 10, 2009, from Jim Constantini, Santa Clara Valley Transportation Authority Deputy Director of Engineering and Construction Services, to Fernando Bravo, Milpitas Principal Engineer of Land Development (“Letter of Understanding”), and the current scope of work and contract documents for the VTA’s Freight Railroad Relocation/Lower Berryessa Creek Project (C210 Project), the placement of a split steel casing around said City waterline is the sole responsibility of VTA; and

WHEREAS, it has been determined through the potholing performed by the C210 contractor, that placement of the split steel casing is not desirable because the pipeline is located deeper than expected and the pipeline was constructed with asbestos cement pipe (ACP);

WHEREAS, VTA and the City of Milpitas acknowledge that the installation of the split steel casing would be problematic because the pipeline may be damaged beyond repair due to brittle nature of the pipeline material, and would then require complete removal and replacement;

WHEREAS, VTA and the City desire to eliminate VTA’s obligation to install said split steel casing and instead, install a new steel casing for a future pipeline by the City under a separate City contract;

WHEREAS, VTA and the City wish to execute this MOU in order to outline the duties and obligations of the parties with respect to work involved in the placement of the Calera Creek waterline casing within Union Pacific Railroad (UPRR) and VTA rights of way in Milpitas, California.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. VTA will prepare the design of the 24-inch steel casing to meet UPRR Standards and submit to the City for review. Upon City's approval of the design, VTA will issue a Contract Change Order to eliminate the split steel casing (C210 bid item) and add the new 24-inch steel casing to be installed by its Contractor. The new 24-inch steel casing will meet UPRR and BART design criteria and be placed by open trench method, spanning the entire width of the UPRR and VTA rights of way.
2. VTA will apply for and secure a License Agreement in the name of the City from UPRR for the installation of the 24-inch steel casing. VTA will issue a License Agreement to the City at no cost for that portion of the 24-inch steel casing within VTA right of way. City understands that License Agreement from UPRR covers only the installation of steel casing and does not grant rights to City for future installation of water pipeline. City will be solely responsible for securing all rights required for water pipeline installation in both UPRR and VTA rights of way, including paying all fees that may be required.
3. VTA will coordinate with UPRR for track outage required for installation of the 24-inch steel casing. VTA will notify City of planned date and time of installation so that City can, at its own expense, provide inspection services during the installation.
4. VTA will mark the endpoints of the casing in a manner so specified by City.
5. The City shall accept ownership and maintenance of the steel casing at the same time all infrastructure is accepted by the City of Milpitas City Council for all dedicated public improvements constructed as part of the C210 Project contingent upon compliance with UPRR and BART standards and as approved by the City.
6. VTA will provide one year warranty for the steel casing after acceptance by the City.
7. VTA will initially pay for the design, construction and construction administration for the installation of the new 24-inch steel casing. VTA will pay for the cost of the License Agreement to be issued by UPRR for that portion of the 24-inch steel casing within UPRR right of way. City will pay to VTA a lump sum amount not to exceed \$80,000 within 30 days after the completion of the steel casing as its fair share cost of the improvement.
8. Any notices which either party may desire to give to the other party under this MOU must be in writing and may be given (i) by personal service; (ii) by delivery by a reputable document delivery service such as, but not limited to, Federal Express, that provides a receipt showing date and time of delivery; or (iii) by mailing in the United States Mail, Certified Mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice.

To Milpitas:

City of Milpitas
Attention: Greg Armendariz, P.E.
Director of Public Works/City Engineer
455 E. Calaveras Blvd
Milpitas, CA 95035-5411

To Owner:

Santa Clara Valley Transportation
Authority
Attention: Jim Costantini, P.E.
Deputy Director - Engr. & Constr. 3331
North First Street, Building A, San Jose,
CA 95134-1927

9. This MOU shall become effective on the date specified on the first page hereof and shall remain in effect until _____ or until earlier termination.
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 Section 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 MOU. 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 MOU.
11. The failure of either party to insist upon the strict performance of any of the terms, covenant and conditions of this MOU 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. If a question arises regarding interpretation of this MOU 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.
13. Each person whose signature appears hereon represents and warrants that he or she has been duly authorized and has the full authority to execute this MOU on behalf of the entity that is a party.

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

“CITY”

City of Milpitas
a municipal corporation

By: _____
Thomas C. Williams
City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Michael J. Ogaz
City Attorney

Date: _____

“VTA”

Santa Clara Valley Transportation Authority
a public agency

By: _____
Michael T. Burns
General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Counsel

Date: _____

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	400-2970	\$80,000	400-910-4237	\$80,000
<input type="checkbox"/> Budget Transfer				

Explain the reason for the budget change:

Background: The Santa Clara Valley Transportation Authority (VTA) is relocating utilities and the Union Pacific Freight Railroad (UPFRR) tracks for the new BART. The existing Calera pipeline crossing has a limited design life remaining. Staff evaluated a proposal to install a future 24" Steel Casing for a future water pipeline replacement project. This pipeline is a critical facility part of the Seismic Backbone water distribution system and critical for system reliability.

Staff and VTA have negotiated a license agreement for the proposed new Steel Casing with UPRR. This Memorandum of Understanding Agreement (MOU) has been negotiated with VTA for cost sharing and to construct the new steel casing as part of the C210 Project. Staff recommends that the City Council Approve the MOU and authorize the City Manger to execute said agreement and appropriate funds to perform this work.

Fiscal Impact: There is no general fund impact for this project. The proposed funds will be appropriated from the Water Fund into to the Non-departmental Fund 400-910-4237, in an amount not to exceed \$80,000.

Recommendation: Authorize City Manager to Execute Memorandum Of Understanding with Santa Clara Valley Transportation Authority For Calera Creek Waterline Casing; Approve a Budget Appropriation For The City's Cost Share

Check if City Council Approval required. Meeting Date: October 19, 2010

Itemization of funds, if needed:	Amount

Requested by:	Division Head:	Date:
	Department Head: <i>Kathleen Phelan for G. Armendariz</i>	Date: 10/11/10
Reviewed by:	Finance Director: <i>Flora Jung for E.K.</i>	Date: 10/11/2010
Approved by:	City Manager:	Date:

Date approved by City Council, if required: Confirmed by: