

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON \_\_\_\_\_, 2010,  
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 of  
California, referred to herein as "CITY."

RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code sections 114 and 130 are authorized to enter into a Cooperative Agreement for improvements to State Highways in the CITY.
2. CITY designed and constructed State Highway improvements consisting of the reconstruction of the Route 237/880 interchange including direct connectors and HOV lanes and the construction of a new interchange and auxiliary lanes on Route 880 at Tasman Drive in the City of Milpitas, referred to herein as "PROJECT", and is willing to fund one hundred percent (100%) of all capital outlay and staffing costs.
3. STATE is authorized to do all acts necessary, convenient or proper for the construction of improvement of all highways under its jurisdiction, possession or control.
4. CITY has requested and STATE is willing to provide reimbursed Right of Way Closeout work including professional surveying and right of way engineering services, referred to herein as "STATE SERVICES." STATE SERVICES are more particularly described in the Statement of Work as shown on Exhibit "A", attached to and made a part of this Agreement.
5. CITY will fund all expenses for STATE SERVICES performed by STATE using local funds.
6. STATE and CITY entered into a Letter of Understanding dated June 8, 2010 listing the obligations agreed upon for the right of way closeout and transfer of lands owned by the CITY to the STATE for PROJECT.
7. Project Development responsibilities for PROJECT were covered in prior Cooperative Agreements executed between STATE and CITY on May 19, 1998 (District Agreement No. 4-1685-C, Document No. 14092 and on May 19, 1992 (District Agreement no. 4-1330-C, Document No. 8194.)
8. The parties now define hereinbelow the terms and conditions under which STATE SERVICES is to be performed and financed.

SECTION I

STATE AGREES:

1. To provide and perform STATE SERVICES for PROJECT in accordance with STATE's laws, rules, regulations, policies, procedures, manuals, standard plans and specifications, and other standards including compliance with Federal Highway Administration (FHWA) requirements, and as further described in Exhibit A.
2. To submit an initial billing in the amount of \$100,000 to CITY immediately following execution of this Agreement. Said billing shall represent the first payment toward the total agreed fixed sum cost in the amount of \$177,000 to perform STATE SERVICES for PROJECT.
3. Upon completion of STATE SERVICES, to submit a final billing in the amount of \$77,000 to CITY. Said billing shall represent the final payment toward the total agreed fixed sum cost in the amount of \$177,000 to perform STATE SERVICES for PROJECT.

SECTION II

CITY AGREES:

1. To have STATE SERVICES for PROJECT performed by STATE and to reimburse STATE for all of said STATE SERVICES.
2. To provide STATE with all existing PROJECT related survey maps, data and right of way documents.
3. To bear the cost of STATE SERVICES for PROJECT, which is a fixed amount of \$177,000. Said costs of STATE SERVICES shall include costs of providing personnel resources and their equipment and all direct and indirect costs (functional and administrative overhead assessments directly attributable to STATE SERVICES applied in accordance with STATE's standard accounting procedures.
4. To deposit with STATE within twenty-five (25) days of receipt of billing therefor (which billing will be forwarded immediately following execution of this Agreement), the amount of \$100,000. Said figure represents CITY's initial payment toward the total cost of STATE SERVICES to be performed by STATE on CITY's behalf pursuant to this Agreement.
5. To deposit with STATE within twenty-five (25) days of receipt of billing therefor (which billing will be forwarded immediately following completion of STATE SERVICES), the amount of \$77,000. Said figure represents the final payment to STATE for the cost for performing STATE SERVICES for PROJECT.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).

2. STATE invoices support costs including all direct and applicable indirect costs. Applicable indirect costs are determined by the type of funds being used to pay for support. State and federal funds are subject to the Program Functional Rate. Local funds (Measure money, developer fees, special assessments, etc.) are subject to the Program Functional Rate and the Administration Rate. STATE establishes the Program Functional Rate and the Administration Rate annually according to State and Federal regulations.
3. If the expenses for STATE SERVICES goes beyond CITY's named contribution in this Agreement, STATE shall stop work on STATE SERVICES until additional funds are procured and made available for STATE SERVICES and this Agreement is amended accordingly.
4. Parties agree that each has the right to audit the other in accordance with generally accepted governmental audit standards regarding performance of STATE SERVICES. The examination of any records will take place in the offices and locations where said records are kept and will be accomplished during reasonable hours of operation. The audited party will review the preliminary audit, findings, and recommendations, and provide written comments within forty (40) business days of receipt. Any audit dispute not resolved by parties is subject to dispute resolution. Any costs arising out of the dispute resolution process will be paid within twenty (20) business days of the final audit or dispute resolution findings.
5. Nothing within the provisions of this Agreement is intended to create 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 SHS and public facilities different from the standard of care imposed by law.
6. 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 under this Agreement. It is understood and agreed that CITY shall 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.
7. 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 under this Agreement. It is understood and agreed that STATE shall 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.
8. 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.
9. Prior to completion of STATE SERVICES for PROJECT, CITY reserves the right to terminate this Agreement by written notice, provided CITY pays STATE for all STATE

SERVICES expenses incurred by STATE prior to termination. All engineering documents, including raw data, prepared up to the time of termination shall become property of CITY.

- 10. If termination of this Agreement is by mutual consent, STATE will bear zero percent (0%) and CITY will bear one hundred percent (100%) of all STATE SERVICES costs and related costs incurred by STATE prior to termination.
- 11. Except as otherwise provided in Articles 8 and 9 above, this Agreement shall terminate upon completion of STATE SERVICES for PROJECT by STATE, or on June 30, 2012, whichever is earlier in time, unless parties agree to an extension of time.

STATE OF CALIFORNIA  
Department of Transportation

CITY OF MILPITAS

CINDY MCKIM  
Director

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

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

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

Approved as to form and procedure:

  
\_\_\_\_\_  
Attorney  
Department of Transportation

Approved as to form:

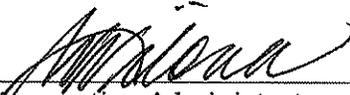
\_\_\_\_\_  
Michael J. Ogaz, Attorney

Certified as to budgeting of funds:

\_\_\_\_\_  
District Budget Manager

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of payment to the STATE stated in this Agreement.

Certified as to financial terms and Conditions:

  
\_\_\_\_\_  
Accounting Administrator

\_\_\_\_\_  
Fiscal Officer

## EXHIBIT A

## STATEMENT OF WORK

RIGHT OF WAY CLOSEOUT  
I-880/TASMAN DRIVE and SC1 237/I-880

<b>Item</b>	<b>Quantity</b>	<b>Estimated Hours</b>	<b>Estimated cost (\$)</b>
Project Management		30	4,500
Support Units		40	6,000
Cooperative Agreement	1	100	15,000
Section 83 parcel (Need to prepare exhibit map)	1	8	1,200
Fee Parcels (need to prepare transfer documents)	4	32	4,800
CCUA Parcels (need to prepare plats and legal descriptions)	7	80	12,000
Record Maps (about 3 sheets at 50 scale)	3	120	18,000
Record of Survey map		80	12,000
Unforeseen Work		50	7,500
Monumentation	1 survey crew	14 days	56,000
PG&E Utility (JUA)		160	24,000
Sub-Total			161,000
10% Contingency			16,000
<b>Total</b>			<b>\$177,000</b>