

AMENDMENT NO. 3 TO AGREEMENT

THIS AMENDMENT NO. 3 TO THE AGREEMENT, ENTERED INTO AND EFFECTIVE ON _____, 2014, 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 entered into Cooperative Agreement No. 4-2338 on December 27, 2010, to define the terms and conditions under which STATE, at CITY's request, is to provide right of way closeout services ("STATE SERVICES") to CITY on a highway improvement project, ("PROJECT") in Santa Clara County previously designed and constructed by CITY. PROJECT consisted of reconstruction of the Route 237/880 interchange, including direct connectors and HOV lanes, and construction of a new interchange and auxiliary lanes on Route 880 at Tasman Drive in CITY and was funded 100% by CITY. STATE SERVICES included professional surveying and right of way engineering services and were described in detail in the Statement of Work shown on Exhibit "A" of the Agreement. Under the Agreement, CITY had agreed to fund all expenses for STATE SERVICES using local funds. The Agreement was set to terminate on June 30, 2012.
2. STATE and CITY entered into a Letter of Understanding dated June 8, 2010, listing the obligations agreed upon for the right of way closeout. Included in said Letter of Understanding were the obligations for transferring to STATE the PROJECT lands owned by CITY.
3. It was determined that the Joint Use Agreements (JUAs) and Consent to Common Use Agreements (CCUAs) with the utility companies, as well as the remaining right of way close-out work on PROJECT, including the transfer of said PROJECT lands, would not be completed prior to the termination date of the Agreement. The parties hereto entered into Amendment No. 1 to the Agreement (District Agreement No. 4-2338-A1) on June 26, 2012, to extend the Agreement until December 31, 2013, to allow sufficient time for preparing the various JUAs and CCUAs with the utility companies and completing the remaining right of way close-out activities on PROJECT.
4. The parties hereto then entered into Amendment No. 2 to the Agreement (District Agreement No. 4-2338-A2) on December 30, 2013, to extend the Agreement until June 30, 2014, to allow sufficient time for completing the remaining right of way close-out activities on PROJECT.
5. It has now been determined that the right of way close-out on PROJECT, specifically preparation of the transfer documents, will not be completed for another two years. The parties hereto now wish to enter into Amendment No. 3 to the Agreement (District

Agreement No. 4-2338-A3) to extend the Agreement until June 30, 2016, to allow sufficient time for completing the remaining right of way close-out activities on PROJECT.

IT IS THEREFORE MUTUALLY AGREED:

1. The termination date specified in Article 11, Section III (titled It Is Mutually Agreed) of said Agreement, as revised under Amendment No. 2, shall now be June 30, 2016, instead of June 30, 2014.
2. The other terms and conditions of said Agreement (District Agreement No. 4-2338), as amended under Amendment 2, shall remain in full force and effect.
3. This Amendment No. 3 to said Agreement is hereby deemed to be a part of the original Agreement (District Agreement No. 4-2338), as amended under Amendment 2.

STATE OF CALIFORNIA
Department of Transportation

CITY OF MILPITAS

MALCOLM DOUGHERTY
Director

By: _____
Thomas C. Williams
City Manager

By: _____
Deputy District Director

Attest: _____
Mary Lavelle, City Clerk

Certified as to budgeting of funds:

Approved as to form:

District Budget Manager

Michael J. Ogaz, Attorney

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.

Fiscal Officer