



**Council Meeting: October 27, 2009**

**SUBJECT: Reallocation of Federal Economic Stimulus Surface Transportation Program Funds for Local Streets and Roads Rehabilitation Projects – Resolution of Support, Cooperative Agreement with the City of Cupertino, and Approval of Budget Modification No. 10**

**DISCUSSION**

An allocation of an estimated \$2.7 million has been granted to the City through a Metropolitan Transportation Commission (MTC) allocation of Federal Surface Transportation Program funds. These are funds for transportation infrastructure rehabilitation authorized by the American Recovery and Reinvestment Act, otherwise known as the “economic stimulus” package. Funds were initially allocated to the Wolfe Road Caltrain Overcrossing Rehabilitation project. Bids came in much lower than the engineer’s estimate, resulting in a savings of approximately \$1.5 million. At this time, staff is recommending that these funds be reallocated to two pavement rehabilitation projects, the Homestead Road Asphalt Overlay and the Sunnyvale Avenue Asphalt Overlay.

The Homestead Road Asphalt Overlay Project will repair pavement on Homestead Road between Sunnyvale-Saratoga Road and Wolfe Road. This project will be managed by Sunnyvale. Staff proposes to partner with the City of Cupertino to complete this work and complete work on another section of Homestead between Mary Avenue and Franco Court. This work will be managed by Cupertino. The roadway jurisdiction in these two areas is shared by the two cities. Partnering will allow each agency to complete repairs on a segment of roadway, rather than having to coordinate repairs along each agencies’ City limit line.

The Sunnyvale Avenue Asphalt Overlay will repair pavement between Arques Avenue and Maude Avenue. The total cost of the two projects is estimated at \$1.7 million. Design of the projects has been initiated under the Sunnyvale Works program, and the projects are estimated to be bid ready by November 2009. This is a critical component of eligibility for the economic stimulus funds, as projects must be certified by Caltrans and the Federal Highway Administration by December 31, 2009. Economic stimulus funding will provide \$1.5 million of the two projects’ \$1.7 million total cost, with the remaining \$200,000 coming from Proposition 1B transportation infrastructure bond funding allocated to Sunnyvale.

The MTC requires that a resolution be approved authorizing application for grant funding and acknowledging the funding program and its requirements. Staff is recommending approval of the attached resolution (Attachment A).

### Cooperative Agreement with Cupertino

Responsibility for operations and maintenance of certain sections of Homestead Road is shared by the Cities of Sunnyvale and Cupertino. In the interest of efficient project management, Sunnyvale and Cupertino staffs have drafted a cooperative agreement (Attachment B). This agreement identifies project management responsibilities and a cost-sharing ratio based on square footage of pavements to be rehabilitated. In essence, two projects will be bid, one to be managed by Sunnyvale and one to be managed by Cupertino, which will affect repairs in the areas of shared jurisdiction. The areas to be repaired by asphalt concrete overlay are from Mary Avenue to Franco Court, and from Sunnyvale-Saratoga Road to Wolfe Road. The cooperative agreement calls for costs of the overall improvements to be equitably shared between the two cities. Sunnyvale will manage the repairs on the Sunnyvale-Saratoga to Wolfe Road segment.

### **BACKGROUND**

An allocation of Federal Surface Transportation Program funds has been made to the Bay Area and subsequently Santa Clara County for local street rehabilitation projects. Initial project allocations that have realized a savings from original cost estimates can be reallocated to other projects that are largely ready to be bid for construction and can meet required federal certifications by December 31, 2009.

Projects for reallocated funding will be screened for compliance with federal certification requirements by Caltrans and must be able to meet strict deadlines for design completion and award of contracts. Staff determined that two projects, the Homestead Road Asphalt Overlay and the Sunnyvale Avenue Asphalt Overlay, fit the eligibility, timing, and funding requirements. Staff has negotiated a cooperative arrangement with the City of Cupertino to provide for pavement repairs while recognizing shared responsibility for the roadway.

### **EXISTING POLICY**

Land Use and Transportation Element C3.4, Maintain roadways and traffic control devices in good operating condition.

Fiscal Sub-Element 7.1B.4d; Pursue and use intergovernmental assistance for projects in the Ten-Year Capital Improvement Plan.

**FISCAL IMPACT**

Currently, there is nearly \$3.3 million in federal stimulus funds and state Proposition 1B funds appropriated to the Wolfe Road Caltrain Overcrossing Project (825621). Because these funds are only available for roadway repair, staff proposes reallocating excess funds from the Wolfe Road Caltrain Overcrossing Project into the existing Homestead Road Pavement Overlay Project (828180) to cover Sunnyvale’s share of the Homestead Road rehabilitation project above the amount originally budgeted. This will allow the Homestead Road project to proceed as currently scoped without requiring the appropriation of any City funds. Staff also proposes creating a new Sunnyvale Avenue Asphalt Overlay Project and reallocating remaining funds currently appropriated to the Wolfe Road Caltrain Overcrossing Project to this new project.

Budget Modification No. 10 has been prepared to re-appropriate a total of \$1,170,000 from the Wolfe Road Caltrain Overcrossing Project into two projects, one existing project and one new project, to provide the necessary funds to complete these projects.

**Budget Modification No. 10  
 FY 2009/2010**

|   | <b>Current</b> | <b>Increase/<br/>(Decrease)</b> | <b>Revised</b> |
|---|----------------|---------------------------------|----------------|
| <b>Capital Projects Fund</b>                      |                |                                 |                |
| <u>Expenditures:</u>                              |                |                                 |                |
| Project 825621 - Wolfe Road Caltrain Overcrossing | \$3,284,025    | (\$1,170,000)                   | \$2,115,025    |
| Project 828180 – Homestead Road Pavement Overlay  | \$600,000      | \$455,000                       | \$1,055,000    |
| NEW PROJECT – Sunnyvale Avenue Asphalt Overlay    | \$ 0           | \$715,000                       | \$715,000      |

## **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

## **ALTERNATIVES**

1. Approve the attached Resolution of Support for Federal Surface Transportation Program Funds for Local Streets and Roads Rehabilitation Projects.
2. Authorize the City Manager to execute the Cooperative Agreement with the City of Cupertino for repairs to Homestead Road.
3. Approve Budget Modification No. 10 to re-appropriate funds from the Wolfe Road Caltrain Overcrossing Project to the Homestead Road Asphalt Overlay Project and a new Sunnyvale Avenue Asphalt Overlay Project.
4. Do not take action at this time and forfeit Federal Surface Transportation Program Funds for Local Streets and Roads Rehabilitation Projects.

**RECOMMENDATION**

Staff recommends Alternatives No. 1, 2 and 3: Approve the attached Resolution of Support for Federal Surface Transportation Program Funds for Local Streets and Roads Rehabilitation Projects; Authorize the City Manager to execute the Cooperative Agreement with the City of Cupertino for repairs to Homestead Road; and, Approve Budget Modification No. 10 to re-appropriate funds from the Wolfe Road Caltrain Overcrossing Project to the Homestead Road Asphalt Overlay Project and a new Sunnyvale Avenue Asphalt Overlay Project.

Approval of these actions will allow federal and state funding to be utilized for the repair of roadways, and will allow the City to work cooperatively with the City of Cupertino to efficiently make repairs to Homestead Road.

Reviewed by:

Marvin A. Rose, Director of Public Works  
Prepared by: Jack Witthaus, Transportation and Traffic Manager

Reviewed by:

Mary J. Bradley, Director of Finance

Approved by:

Gary M. Luebbbers, City Manager

**Attachment:**

- A. Resolution of Support
- B. Cooperative Agreement

**RESOLUTION NO. \_\_\_\_\_****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE EXPRESSING LOCAL SUPPORT FOR THE FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) FUNDING AND STATING THE ASSURANCE TO COMPLETE THE PROJECT**

WHEREAS, the City of Sunnyvale (herein referred as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for \$1,519,365 in funding from the federal American Recovery and Reinvestment Act of 2009 (ARRA) for the Homestead Road Asphalt Overlay Phase II Project and the Sunnyvale Avenue Asphalt Overlay Project (herein referred as PROJECTS) for the MTC Regional ARRA Program (MTC Resolution No. 3885) (herein referred as PROGRAM); and

WHEREAS, pursuant to ARRA, and any regulations and/or guidance promulgated thereunder, eligible project sponsors wishing to receive Regional ARRA funds for a project shall submit an application first with the appropriate Metropolitan Planning Organization (MPO) for review and inclusion in the MPO's Transportation Improvement Program (TIP); and

WHEREAS, the Metropolitan Transportation Commission (MTC) is the MPO for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) applicable to federal ARRA fund delivery and has adopted (or is scheduled to adopt) in MTC Resolution No. 3885 such additional requirements as are necessary or appropriate to meet the obligations/award deadlines in the ARRA; and

WHEREAS, APPLICANT is an eligible project sponsor for ARRA funds; and

WHEREAS, as part of the application for ARRA funding, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- a) that the sponsor understands that the ARRA funding is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional ARRA or other MTC-programmed funds; and
- b) that PROJECT will comply with the procedures specified in MTC's Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and with all project-specific requirements as set forth in MTC's Regional ARRA Program (MTC Resolution No. 3885); and PROJECT as described in the application, and if approved, as included in MTC's TIP; and
- c) that PROJECT will comply with all the project-specific requirements as set forth in the federal ARRA and appropriate applicable regulations or guidance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The City of Sunnyvale is authorized to execute and file an application for funding under the American Recovery and Reinvestment Act of 2009 for the Homestead Road Asphalt Overlay Phase II Project and the Sunnyvale Avenue Asphalt Overlay Project.

2. The APPLICANT, by adopting this resolution, does hereby state that:
  - a) APPLICANT understands that the ARRA funding for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional ARRA or MTC-programmed funds; and
  - b) APPLICANT understands the funding deadlines associated with these funds and will comply with the applicable provisions and requirements of the Regional ARRA Program (MTC Resolution No. 3885) and Regional Project Funding Delivery Policy (MTC Resolution No. 3606, as revised); and
  - c) PROJECT will be implemented as described in the complete application and in this resolution and, if approved, for the amount programmed in the MTC federal TIP; and
  - d) PROJECT will comply with all the project-specific requirements as set forth in the ARRA and appropriate applicable regulations or guidance.
3. There is no legal impediment to APPLICANT making applications for the funds.
4. There is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT.
5. APPLICANT authorizes its City Manager, or designee, to execute and file an application with MTC for ARRA funding for the PROJECT as referenced in this resolution.
6. A copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application.
7. The MTC is requested to support the application for the PROJECT described in the resolution and to include the PROJECT, if approved, in MTC's TIP.

Adopted by the City Council at a regular meeting held on \_\_\_\_\_, 2009, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David E. Kahn, City Attorney

**COOPERATIVE AGREEMENT BETWEEN THE CITIES OF  
CUPERTINO AND SUNNYVALE  
FOR PAVEMENT MAINTENANCE WORK ON  
VARIOUS PORTIONS OF HOMESTEAD ROAD**

**ATTACHMENT B  
DRAFT**

This agreement (herein "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, (herein the "Effective Date") by and between the City of Sunnyvale, a California municipal corporation (herein "SUNNYVALE") and the City of Cupertino, a California municipal corporation, (herein "CUPERTINO"). SUNNYVALE and CUPERTINO may be referred to herein individually as a "Party" or a "City" or collectively as the "Parties", "Cities" or the "Parties to this Agreement".

**RECITALS**

**WHEREAS:**

- A. SUNNYVALE and CUPERTINO find that it is in the public interest to perform pavement maintenance work on portions of Homestead Road over which the Cities have dual jurisdiction (hereinafter the PROJECTS); and
- B. It is in the public interest for CUPERTINO and SUNNYVALE to complete the -projects in a cooperative and economical manner by constructing both CUPERTINO and SUNNYVALE portions of the projects together; and
- C. Each Party has agreed to perform its obligations as described herein.

In consideration of the above referenced recitals and the following mutual covenants, agreements and obligations of the Parties, SUNNYVALE and CUPERTINO agree as follows:

**AGREEMENT PROVISIONS**

1. PROJECTS DESCRIPTION:

The work to be performed under this Agreement will consist of pavement rehabilitation and maintenance work, including approximately 233,000 square feet of Homestead Road between Mary Avenue and Franco Court. , and approximately 282,000 of Homestead Road between De Anza Boulevard and Wolfe Road. The work to be performed is more fully described in the document entitled "Scope of Work and Schedule of Performance" set forth in Exhibit A, attached and incorporated by reference.

2. CUPERTINO'S OBLIGATIONS:

CUPERTINO agrees as follows:

For the portion of Homestead between Mary Avenue and Franco Court:

- A. To act as the lead agency to administer the design and construction of the project. Administration shall include preparation of plans, specifications, contract documents and cost estimate; notification of local businesses; coordination with various agencies; preparation of all necessary environmental document; obtaining permits; obtaining bids; awarding the construction contract; administering the construction contract; providing materials control and inspection services; secure performance, labor/material and warranty bonds and making progress payments to the contractor.
- B. To provide SUNNYVALE with final plans and specifications for the PROJECT.
- C. To pay CUPERTINO's share of the project cost. The project cost is defined as the actual amount paid to the project design consultant and the construction contractor. CUPERTINO's share of the Cost is 100% of the project cost for the CUPERTINO owned portion of the road.

- D. CUPERTINO agrees to cooperate with SUNNYVALE should SUNNYVALE raise any issues concerning the work in SUNNYVALE's jurisdiction that requires correction prior to acceptance or within the warranty period. Each party to provide notice to the other party for opportunity to inspect the work supervised by the other party prior to acceptance of the work.
  
- E. The designated project manager for CUPERTINO for the duration of the project is Glenn Goepfert (phone number (408) 777-3244). CUPERTINO's project manager shall have all the necessary authority to direct technical and professional work within the scope of the Agreement and shall serve as the principal point of contact with SUNNYVALE. The CUPERTINO project manager shall consult with and obtain the approval of SUNNYVALE point of contact on any change orders affecting areas within the City of Sunnyvale.

For the portion of Homestead Road between De Anza Boulevard and Wolfe Road:

- A. To pay SUNNYVALE CUPERTINO's share of the project cost, as defined in Section 2.C. CUPERTINO's share of the Cost is 100% of the project Cost for the CUPERTINO owned portion of the road.
- B. To pay its share of the project cost within forty-five (45) days of receiving an invoice from SUNNYVALE, provided that the following conditions are met:
  - 1. The project has been completed and CUPERTINO has approved that portion of the work in its jurisdiction; and
  - 2. The detailed invoice sets forth the cost of construction of all project work based on the actual contract unit prices paid and negotiated change order, if any.
- F. C. The designated project manager for SUNNYVALE for the duration of the project is Chuck Neumayer (phone number: 408-730-7834). SUNNYVALE's project manager shall have all the necessary authority to review and approve and accept technical and professional work within the scope of the Agreement and shall serve as the principal point of contact with CUPERTINO. SUNNYVALE may request documentation of such cost, and may review the original invoices and weight certificates or request copies of same, which shall be provided within a reasonable time. The SUNNYVALE project manager shall consult with and obtain the approval of CUPERTINO point of contact on any change orders affecting areas within the City of Sunnyvale.

For the purposes of this Agreement, Cupertino's share of the pavement maintenance cost of both portions of Homestead Road, based on the estimated square footage of the areas proposed for maintenance, shall be 36% of the cost of the two projects.

3. SUNNYVALE'S OBLIGATION:

SUNNYVALE agrees as follows:

For the portion of Homestead between Mary Avenue and Franco Court:

- A. To pay CUPERTINO SUNNYVALE's share of the project cost, as defined in Section 2.C. SUNNYVALE's share of the Cost is 100% of the project Cost for the SUNNYVALE owned portion of the road.
- B. To pay its share of the project cost within forty-five (45) days of receiving an invoice from CUPERTINO, provided that the following conditions are met:
  - 1. The project has been completed and SUNNYVALE has approved that portion of the work in its jurisdiction; and

2. The detailed invoice sets forth the cost of construction of all project work based on the actual contract unit prices paid and negotiated change order, if any.

C. The designated project manager for SUNNYVALE for the duration of the project is Chuck Neumayer (phone number: 408-730-7834). SUNNYVALE's project manager shall have all the necessary authority to review and approve and accept technical and professional work within the scope of the Agreement and shall serve as the principal point of contact with CUPERTINO. SUNNYVALE may request documentation of such cost, and may review the original invoices and weight certificates or request copies of same, which shall be provided within a reasonable time. The SUNNYVALE project manager shall consult with and obtain the approval of CUPERTINO point of contact on any change orders affecting areas within the City of Sunnyvale.

For the portion of Homestead Road between De Anza Boulevard and Wolfe Road:

- A. To act as the lead agency to administer the design and construction of the project. Administration shall include preparation of plans, specifications, contract documents and cost estimate; notification of local businesses; coordination with various agencies; preparation of all necessary environmental document; obtaining permits; obtaining bids; awarding the construction contract; administering the construction contract; providing materials control and inspection services; secure performance, labor/material and warranty bonds, and making progress payments to the contractor.
- B. To provide CUPERTINO with final plans and specifications for the project.
- C. To pay SUNNYVALE's share of the project cost. The project cost is defined as the actual amount paid to the project design consultant and the construction contractor. SUNNYVALE's share of the Cost is 100% of the project cost for the SUNNYVALE owned portion of the road.
- D. SUNNYVALE agrees to cooperate with CUPERTINO should CUPERTINO raise any issues concerning the work in CUPERTINO's jurisdiction that requires correction prior to acceptance or within the warranty period. Each party to provide notice to the other party for opportunity to inspect the work supervised by the other party prior to acceptance of the work.
- E. The designated project manager for CUPERTINO for the duration of the project is Glenn Goepfert (phone number 408-777-3244). CUPERTINO's project manager shall have all the necessary authority to direct technical and professional work within the scope of the Agreement and shall serve as the principal point of contact with SUNNYVALE. The SUNNYVALE project manager shall consult with and obtain the approval of CUPERTINO point of contact on any change orders affecting areas within the City of Sunnyvale.

For the purposes of this Agreement, Sunnyvale's share of the pavement maintenance cost of both portions of Homestead Road, based on the estimated square footage of the areas proposed for maintenance, shall be 64% of the cost of the two projects.

#### 4. TERM OF AGREEMENT:

- A. Unless otherwise modified by a written amendment to this Agreement, the term of this Agreement shall be (1) until acceptance of all covered projects by both parties and final payments of all outstanding balances or (2) one year if no work on the projects has commenced within one year of the Effective Date.

- B. In case of any defect in the work, materials, apparatus or equipment, whether latent or patent, revealed to CUPERTINO or SUNNYVALE, as administrator of a construction contract, within one (1) year of the date of acceptance of completion of the projects by Cupertino, the contractors awarded the projects construction contracts will forthwith remedy such defects without cost to CUPERTINO or SUNNYVALE, pursuant to Section 20, Contractor's Guarantee, of the project contract documents.

5. OWNERSHIP AND MAINTENANCE:

- A. Upon completion of all work under this Agreement, ownership and title to all materials, equipment and appurtenances installed as a part of the projects within the city limits of SUNNYVALE will automatically be vested in SUNNYVALE, and all materials, equipment and appurtenances installed as a part of the projects within the city limits of CUPERTINO will be vested in CUPERTINO, and no further agreement will be necessary to transfer ownership.
- B. This Agreement does not change any authority or responsibility between CUPERTINO and SUNNYVALE with regard to maintenance, operation or future repair responsibility.

6. CONTRACTOR SHALL BE AN INDEPENDENT CONTRACTOR:

Any contractor(s) hired by either Party to perform the work included in the projects shall not be an agent or employee of either Party and will perform such work as independent contractor. All persons employed by or contracted with such contractor(s) to furnish labor and/or materials in connection with the work in the projects shall not be employees of either Party in any respect.

7. TERMINATION:

- A. The Agreement can be terminated only upon the mutual written consent and terms acceptable to both parties.

8. NO PLEDGING OF EITHER CITY'S CREDIT:

Under no circumstances shall either SUNNYVALE or CUPERTINO have authority or power to pledge the credit of the other public entity or incur obligation in the name of the other public entity.

9. NO THIRD PARTY BENEFICIARY:

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

10. AMENDMENTS:

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties and incorporated into this Agreement.

11. NOTICES:

Notices are to be sent as follows:

To SUNNYVALE: Chuck Neumayer  
Senior Engineer  
City of SUNNYVALE

456 West Olive Avenue  
SUNNYVALE, CA 94088-3707

To CUPERTINO: Glenn Goepfert  
Assistant Director of Public Works  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014

12. SEVERABILITY CLAUSE:

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

13. ENCROACHMENT PERMITS:

Both Parties to this Agreement will cooperate and/or provide access to its consultants, engineers and contractors for the projects in the jurisdictional boundaries of each Party. Contractors shall obtain an encroachment permits from SUNNYVALE and CUPERTINO, as required by encroachments necessary to complete the work, and both cities shall provide such permits at no cost.

14. HOLD HARMLESS/INDEMNIFICATION:

Neither of the respective Parties, their respective City Council, employees, officers, agents and assigns shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the other Party in connection with the projects.

It is understood and agreed that pursuant to California Government Code Section 895.4, the each Party shall fully indemnify and hold the other harmless from any liability imposed for injury (as defined in Government Code Section 810.8) by reason of anything done or omitted to be done by the indemnifying Party in connection with any work, authority or jurisdiction delegated to the indemnifying Party under this Agreement. This hold harmless and indemnification provision shall apply to any activities, error or omission of each Party and/or the Party's officers, employees, agents, consultants or contractor or any person or entity acting or omitting to act for or on behalf of said City or such person or entities as are specifically authorized and empowered by the respective Party to act for the Party.

15. CAPTIONS:

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation of this Agreement.

16. INSURANCE REQUIREMENTS:

It is mutually understood and agreed that during the term of the construction activities on the projects, Both cities will require the contractor(s) which performs any work on the projects to carry commercial general liability insurance policy with policy limits in an amount not less than Two Million Dollars (\$2,000,000); automobile liability insurance policy with policy limits in an amount not less than One Million Dollars (\$1,000,000); and, a Workers' Compensation Insurance policy with policy limits in an amount not less than One Million Dollars (\$1,000,000). Both cities shall require that both SUNNYVALE and CUPERTINO, their officers, employees, and agents shall be named as additional insureds on such policy.

17. STATUTES AND LAW GOVERNING CONTRACT:

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

18. WAIVER:

The parties' waiver of any term, condition or covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition or covenant or breach of any other term, condition or covenant.

19. ENTIRE AGREEMENT:

This Agreement contains the entire Agreement between CUPERTINO and SUNNYVALE relating to the projects. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

20. OTHER AGREEMENTS:

This Agreement shall not prevent either Party from entering into similar agreements with others. The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the effective date.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective date:

**CITY OF SUNNYVALE, CALIFORNIA**

APPROVED AS TO FORM:

\_\_\_\_\_  
DAVID KAHN  
City Attorney

By: \_\_\_\_\_  
GARY M. LUEBBERS  
City Manager  
City of SUNNYVALE  
456 W. Olive Avenue  
SUNNYVALE, CA 95070

ATTEST:

\_\_\_\_\_  
Kathleen Franco-Simmons  
City Clerk

**CITY OF CUPERTINO, CALIFORNIA**

APPROVED AS TO FORM:

\_\_\_\_\_  
CHARLES KILIAN  
City Attorney

\_\_\_\_\_  
RALPH A. QUALLS, Jr  
Director of Public Works  
10300 Torre Avenue  
Cupertino, CA 95014  
Telephone: (408) 777-3200

ATTEST:

\_\_\_\_\_  
KIM SMITH  
City Clerk – Cupertino

## **EXHIBIT "A"**

### **SCOPE OF WORK AND SCHEDULE OF PERFORMANCE**

The work to be performed under this Agreement will include pavement overlay of approximately 233,000 square feet of Homestead Road roadway between Franco Court and De Anza Blvd. and associated activities. The project shall include traffic control, replacing of all traffic striping, crack sealing, as well as incidental associated work that may be discovered during the project, as required.

The work to be performed under this agreement will also include pavement overlay of approximately 282,000,000 square feet of Homestead Road roadway between De Anza Blvd and Wolfe Road. and associated activities. The project shall include traffic control, replacing of all traffic striping, crack sealing, as well as incidental associated work that may be discovered during the project, as required.

The work to be performed is fully described in the contract documents.

The contract documents are incorporated into this Agreement by reference.

| Item | Item Description                                | Unit | Unit Price | Cupertino Quantity | Cupertino Extension | Sunnyvale Quantity | Sunnyvale Extension | Total Quantity | Total Extension |
|------|---|------|------------|--------------------|---------------------|--------------------|---------------------|----------------|-----------------|
| 1    | Traffic Control                                 | LS   | ***        | ***                | \$ 44,096.76        | ***                | \$ 44,096.76        | ****           | \$ 88,193.52    |
| 2    | Rubberized Hot-Mix Asphalt                      | TN   | \$ 135.00  | 1,520              | \$ 205,261.13       | 1,781              | \$ 240,453.58       | 3,302          | \$ 445,714.70   |
| 3    | 5" Digout                                       | SF   | \$ 6.50    | 5,590              | \$ 36,334.35        | 6,548              | \$ 42,563.95        | 12,138         | \$ 78,898.30    |
| 4    | Cold Plane & Remove 2" HMA                      | SY   | \$ 4.00    | 12,422             | \$ 49,688.00        | 14,552             | \$ 58,207.11        | 26,974         | \$ 107,895.11   |
| 5    | PCC Sidewalk/ADA Ramp                           | SF   | \$ 14.00   | 1,424              | \$ 19,936.00        | 906                | \$ 12,684.00        | 2,330          | \$ 32,620.00    |
| 6    | PCC Curb & Gutter                               | LF   | \$ 35.00   | 262                | \$ 9,170.00         | 345                | \$ 12,075.00        | 607            | \$ 21,245.00    |
| 7    | PCC Spandrel/Cross Gutter                       | SF   | \$ 30.00   | 84                 | \$ 2,520.00         | 0                  | \$ -                | 84             | \$ 2,520.00     |
| 8    | Detectable Warning Surface                      | SF   | \$ 65.00   | 198                | \$ 12,870.00        | 81                 | \$ 5,265.00         | 279            | \$ 18,135.00    |
| 9    | Lower Manhole Cover Before Cold Planing         | EA   | \$ 350.00  | 22                 | \$ 7,700.00         | 13                 | \$ 4,550.00         | 35             | \$ 12,250.00    |
| 10   | Lower Waver Valve Cover Before Cold Planing     | EA   | \$ 250.00  | 33                 | \$ 8,250.00         | 38                 | \$ 9,500.00         | 71             | \$ 17,750.00    |
| 11   | Lower Survey Monument Cover Before Cold Planing | EA   | \$ 300.00  | 2                  | \$ 600.00           | 2                  | \$ 600.00           | 4              | \$ 1,200.00     |
| 12   | Adjust Manhole Cover to Finish Grade            | EA   | \$ 400.00  | 22                 | \$ 8,800.00         | 13                 | \$ 5,200.00         | 35             | \$ 14,000.00    |
| 13   | Adjust Water Valve Cover to Finish Grade        | EA   | \$ 275.00  | 33                 | \$ 9,075.00         | 38                 | \$ 10,450.00        | 71             | \$ 19,525.00    |
| 14   | Adjust Survey Monument Cover to Finish Grade    | EA   | \$ 325.00  | 2                  | \$ 650.00           | 2                  | \$ 650.00           | 4              | \$ 1,300.00     |
| 15   | Type A Traffic Signal Loop                      | EA   | \$ 775.00  | 11                 | \$ 8,525.00         | 59                 | \$ 45,725.00        | 70             | \$ 54,250.00    |
| 16   | Type C Traffic Signal Loop                      | EA   | \$ 700.00  | 0                  | \$ -                | 5                  | \$ 3,500.00         | 5              | \$ 3,500.00     |
| 17   | Type D Traffic Signal Loop                      | EA   | \$ 825.00  | 3                  | \$ 2,475.00         | 15                 | \$ 12,375.00        | 18             | \$ 14,850.00    |
| 18   | Install Detector Pullbox                        | EA   | \$ 350.00  | 0                  | \$ -                | 5                  | \$ 1,750.00         | 5              | \$ 1,750.00     |
| 19   | Blue RPM @ Fire Hydrant                         | EA   | \$ 20.00   | 6                  | \$ 120.00           | 8                  | \$ 160.00           | 14             | \$ 280.00       |
| 20   | "KEEP" Pavement Legend (Thermo)                 | EA   | \$ 100.00  | 0                  | \$ -                | 2                  | \$ 200.00           | 2              | \$ 200.00       |
| 21   | "CLEAR" Pavement Legend (Thermo)                | EA   | \$ 125.00  | 0                  | \$ -                | 2                  | \$ 250.00           | 2              | \$ 250.00       |
| 22   | "YIELD" Pavement Legend (Thermo)                | EA   | \$ 125.00  | 0                  | \$ -                | 1                  | \$ 125.00           | 1              | \$ 125.00       |
| 23   | Bike Lane Legend (Paint)                        | EA   | \$ 200.00  | 5                  | \$ 1,000.00         | 6                  | \$ 1,200.00         | 11             | \$ 2,200.00     |
| 24   | "35" Pavement Legend (Thermo)                   | EA   | \$ 75.00   | 4                  | \$ 300.00           | 4                  | \$ 300.00           | 8              | \$ 600.00       |
| 25   | Type III Turn Arrow                             | EA   | \$ 200.00  | 4                  | \$ 800.00           | 6                  | \$ 1,200.00         | 10             | \$ 2,000.00     |
| 26   | Type IV Turn Arrow                              | EA   | \$ 125.00  | 1                  | \$ 125.00           | 0                  | \$ -                | 1              | \$ 125.00       |
| 27   | Detail 10 (RPM's)                               | LF   | \$ 1.00    | 1,228              | \$ 1,228.00         | 1,018              | \$ 1,018.00         | 2,246          | \$ 2,246.00     |
| 28   | Detail 12 (Thermo & RPM's)                      | LF   | \$ 0.85    | 2,846              | \$ 2,419.10         | 2,040              | \$ 1,734.00         | 4,886          | \$ 4,153.10     |
| 29   | Detail 22 (Thermo & RPM's)                      | LF   | \$ 2.00    | 578                | \$ 1,156.00         | 650                | \$ 1,300.00         | 1,228          | \$ 2,456.00     |
| 30   | Detail 30 (RPM's)                               | LF   | \$ 3.60    | 233                | \$ 838.80           | 0                  | \$ -                | 233            | \$ 838.80       |

|    |  |    |         |       |             |       |             |       |             |
|----|--|----|---------|-------|-------------|-------|-------------|-------|-------------|
| 31 | Detail 32 (Thermo & RPM's)                           | LF | \$ 2.60 | 1,281 | \$ 3,330.60 | 0     | \$ -        | 1,281 | \$ 3,330.60 |
| 32 | Detail 33 (RPM's)                                    | LF | \$ 3.00 | 619   | \$ 1,857.00 | 0     | \$ -        | 619   | \$ 1,857.00 |
| 33 | Detail 38 (Thermo & RPM's)                           | LF | \$ 1.40 | 399   | \$ 558.60   | 369   | \$ 516.60   | 768   | \$ 1,075.20 |
| 34 | Detail 39 (Thermo)                                   | LF | \$ 1.00 | 2,207 | \$ 2,207.00 | 3,888 | \$ 3,888.00 | 6,095 | \$ 6,095.00 |
| 35 | Detail 39A (Thermo)                                  | LF | \$ 0.80 | 778   | \$ 622.40   | 600   | \$ 480.00   | 1,378 | \$ 1,102.40 |
| 36 | Detail 40A (RPM's)                                   | LF | \$ 0.75 | 180   | \$ 135.00   | 0     | \$ -        | 180   | \$ 135.00   |
| 37 | 12" White/Yellow<br>Crosswalk/Limit Line<br>(Thermo) | LF | \$ 3.00 | 876   | \$ 2,628.00 | 945   | \$ 2,835.00 | 1,821 | \$ 5,463.00 |

\$ 445,276.74

\$ 524,852.00

**Total  
Estimated \$  
Cost : 970,128.74**