

04-SCL-85-PM 1.4/4.8  
In the City of San Jose on Route 85  
From Miyuki Drive to 0.9 Miles  
West of Blossom Hill Road

## **FREEWAY AGREEMENT**

THIS AGREEMENT, made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the STATE OF CALIFORNIA acting by and through the Department of Transportation (herein referred to as "STATE"), and the City of San José, a municipal corporation of the State of California (herein referred to as "CITY"),

WITNESSETH:

WHEREAS, California Streets and Highways Code Section 100.2 authorizes the State of California through the Department of Transportation to enter into written agreements with local agencies having jurisdiction over the streets affected by a state freeway project; and

WHEREAS, the highway described above has been declared to be a freeway by Resolution of the California Highway Commission on February 20, 1947; and June 11, 1952, and

WHEREAS, STATE and CITY have entered into a Freeway Agreement dated June 14, 1988, relating to that portion of State Highway Route 85 from Miyuki Drive to 0.4 miles east of Route 87; and

WHEREAS, a revised plan map for such freeway identified above has been prepared showing the proposed plan of the STATE as it affects streets of the CITY as depicted In Exhibit A; and

WHEREAS, it is the mutual desire of the parties hereto to enter into a new Freeway Agreement in accordance with the revised plan of said freeways and in accordance with Section 100.2 of the California Streets & Highways Code;

NOW, THEREFORE, IT IS AGREED:

1. This Agreement supersedes in its entirety said Freeway Agreement dated June 14, 1988 from Miyuki Drive to 0.4 miles east of Route 87, and

2. CITY agrees and consents to the closing of CITY streets, relocation of CITY streets, construction of frontage roads and other local streets, and other construction affecting CITY streets, all as shown on the plan map attached hereto, marked Exhibit A, and made a part hereof by reference.

3. The obligations of STATE and CITY with respect to the funding and construction of the freeway project will always be dealt with in separate Cooperative Agreement(s) between the parties, and any amendments thereto, or Encroachment Permits issued to CITY. The parties

responsible for the construction of the freeway shall make any changes affecting CITY streets only in accordance with the plan map attached hereto, marked Exhibit A.

4. The obligations of STATE and CITY with respect to the acquisition of the rights of way required for the construction, reconstruction, or alteration of the freeway and CITY streets, frontage roads, and other local streets will always be dealt with in separate Cooperative Agreement(s) between the parties, and any amendments thereto or Encroachment Permits issued to CITY.

5. It is understood between the parties that the rights of way may be acquired in sections or units, and that both as to the acquisition of right of way and the construction of the freeway project, the obligations of STATE and CITY hereunder shall be carried out at such time and for such unit or units of the project as funds are budgeted and made lawfully available for such expenditures.

6. STATE will provide CITY with the opportunity to participate in the development of the design for the freeway project. STATE will obtain CITY approval of the final design for the freeway project with respect to the relocated or reconstructed CITY streets, and the frontage roads, and other STATE constructed local roads over which CITY will assume control and maintenance upon project completion. CITY will accept control and maintenance over each of the relocated or reconstructed CITY streets, and the frontage roads, and other STATE constructed local roads following written confirmation by STATE and determination by CITY that the work thereon has been completed in accordance with the plans and specifications, except for any portion which is adopted by STATE as part of the freeway proper. CITY will notify STATE within 30 days of the date of the notification of any necessary corrective action to meet the requirements of the plans and specifications. CITY will accept title to the portions of such roads lying outside the freeway limits, upon completion of corrective action by STATE, or pursuant to a mutual agreement of CITY and STATE regarding a schedule of corrective action, and upon relinquishment by STATE.

7. This Agreement may be modified at any time by the mutual consent of the parties hereto, as needed to best accomplish, through STATE and CITY cooperation, the completion of the whole freeway project for the benefit of the people of the STATE and of the CITY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

STATE OF CALIFORNIA  
Department of Transportation

THE CITY OF SAN JOSE  
By

MALCOLM DOUGHERTY, Director  
Department of Transportation  
By

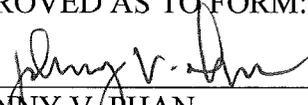
\_\_\_\_\_  
TERRY ABBOTT  
Chief Design Engineer

\_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney (State)

  
\_\_\_\_\_  
JOHNNY V. PHAN  
Deputy City Attorney