

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY
OF SAN JOSE RELATED TO THE APPLICATION OF MICROSURFACING ON
SPECIFIED ROADS IN UNINCORPORATED POCKETS IN CONJUNCTION
WITH ANNEXATION BY CITY**

THIS AGREEMENT is made effective this _____ day of _____, 2012 by and between the County of Santa Clara, a political subdivision of the State of California, hereinafter referenced to as "COUNTY" and the City of San Jose, a municipal corporation of the State of California, hereinafter referred to as "CITY".

RECITALS

WHEREAS, CITY has pursued annexation of unincorporated pockets as required by the settlement agreement related to the North First Street litigation between the CITY and COUNTY; and

WHEREAS, COUNTY is not required to improve roads in unincorporated pockets prior to annexation by CITY; and

WHEREAS, COUNTY, at its own expense, voluntarily implemented various road maintenance treatments, including chip seal and overlay, on specified roads within the five (5) unincorporated pockets shown on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, specified roads within the five (5) unincorporated pockets annexed by the CITY have been designated for improvements involving microsurfacing or some other rehabilitation as shown in Exhibit B attached hereto and incorporated herein by reference (hereinafter "PROJECT"); and

WHEREAS, COUNTY is willing to voluntarily pay CITY a fixed lump sum to implement the PROJECT and CITY desires to accept payment from COUNTY and assume full responsibility for performing the PROJECT using the COUNTY funding; and

WHEREAS, COUNTY requires a written agreement with CITY to effectuate payment;

NOW, THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions, and provisions hereinafter set forth, the parties hereto agree as follows:

AGREEMENT

1. COMPENSATION

COUNTY shall pay CITY and CITY shall accept from COUNTY a not to exceed payment of a lump sum of Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) for the estimated costs related to the PROJECT. The not to exceed lump sum amount of Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) shall cover all necessary materials and labor needed to complete the PROJECT.

2. COMPLETION OF PROJECT

CITY shall have full responsibility for completion of the PROJECT at CITY discretion. COUNTY will have no responsibility to perform the work. COUNTY shall incur no liability for the implementation or the nonimplementation of the PROJECT by CITY.

3. INVOICE AND PAYMENT

Within thirty (30) calendar days of the effective date of this AGREEMENT, CITY shall forward to COUNTY a written invoice for the not to exceed lump sum amount specified by COUNTY. The invoice shall be delivered to the individual designated to receive notice on behalf of COUNTY as set forth in Section 5 below. The COUNTY shall pay the invoice within 30 days.

4. HOLD HARMLESS/INDEMNIFICATION

Neither of the respective Parties, their respective governing body, 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 PROJECT.

It is understood and agreed that pursuant to California Government Code Section 895.4, the respective Parties 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 COUNTY or SAN JOSE in connection with any work, authority or jurisdiction delegated to the respective Party under this Agreement. This hold harmless and indemnification provision shall apply to any activities, error or omission of the respective 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.

//

//

//

//

5. NOTICES

All correspondence relating to the AGREEMENT, including all notices required shall be delivered by first class mail addressed to the appropriate party at the following addresses:

COUNTY: Michael Murdter, Director
Roads and Airports Department
101 Skyport Drive
San Jose, CA 95110-1302

CITY: Hans Larsen, Director
Department of Transportation
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

6. ADDITIONAL PROVISIONS

(a) If any term, condition or covenant of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this AGREEMENT shall be valid and binding on COUNTY and CITY.

(b) This AGREEMENT shall be governed and construed in accordance with the laws of the State of California.

(c) Any change to this AGREEMENT must be in writing in the form of an amendment and approved by both parties.

(d) 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.

(e) This Agreement shall not be construed or deemed 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.

(f) 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.

(g) This Agreement contains the entire agreement between CITY and COUNTY related to the Project. Any prior agreements, promises, negotiations, or representations not expressly set forth in this agreement are of no force or effect.

IN WITNESS WHEREOF, the parties have executed the AGREEMENT the day and year set forth above.

CITY:

CITY OF SAN JOSE, a municipal corporation

By: _____ Date: _____
Norberto Duenas,
Deputy City Manager

APPROVED AS TO FORM:

By: _____ Date: 9/5/12
Johnny V. Phan
Deputy City Attorney

COUNTY:

COUNTY OF SANTA CLARA

By: _____ Date: _____
Michael Murdter, Director
Roads and Airports Department

By: _____ Date: _____
Sylvia Gallegos
Office of the County Executive

APPROVED AS TO FORM AND LEGALITY:

By: _____ Date: _____
Elizabeth G. Pianca
Deputy County Counsel

Attachments to Agreement—

Exhibit A—Map of Roads

Exhibit B—Microsurfacing Treatment

Exhibit B

Microsurfacing Totals for 2010 City of San Jose Annexations

Road Names	Street ID	Begin Location	End Location	PCI	Length	Road Width	Area of Section	Pocket Name
GRAND AVE	74127C	0009N SAN CARLOS ST	PARK	65	317	37	11729	Sunol 82
SOUTH CLEAVES AVE	74035A	PARK	END	20	475	29	13775	Sunol 82
SOUTH MORRISON AVE	74034A	PARK	END	32	475	30	14250	Sunol 82
SUNOL ST	7434A	PARK	SAN CARLOS	41	845	36	30420	Sunol 82
LINCOLN AVE	7418A	PARK AVE	SAN CARLOS	55	1003	33	33099	Sunol 82
PACIFIC AVE	74096A	SUNOL	LINCOLN	56	792	32	25344	Sunol 82
PARKINSON CT	74097A	LINCOLN	END	59	528	39	20592	Sunol 82
PARK AVE	7326B1	0007E LINCOLN	SUNOL	32	370	38	14060	Sunol 82
PARK AVE	7326B	0009 E RACE	0006 E LINCOLN	51	264	45	11880	Sunol 82
PARK AVE	7326A3	RACE	.06 E RACE	61	317	45	14265	Sunol 82
PARK AVE	7326A	MERIDIAN	RACE	62	739	45	33255	Sunol 82
RACE ST	7426I	PARK	SAN CARLOS	34	845	29	24505	Sunol 82
WEST SAN CARLOS ST	7320H	E.L.DUPONT	0001 E	64	53	35	1855	Sunol 82
WEST SAN CARLOS ST	7320E	0007E MERIDIAN ROAD	RACE ST	45	316	58	18328	Sunol 82
WEST SAN CARLOS ST	7320F	RACE STREET	0007 W SUNOL	44	1109	47	52123	Sunol 82

Total Area = 319,480