

RESOLUTION NO. 7718

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
AUTHORIZING EXECUTION OF PERFORMANCE AGREEMENT  
BETWEEN THE SANTA CLARA COUNTY TRAFFIC AUTHORITY  
AND THE CITY OF CUPERTINO, IN CONJUNCTION WITH  
ROUTE 85 WITHIN THE CITY OF CUPERTINO

WHEREAS, there has been presented to the City Council a "Performance Agreement" between the Santa Clara County Traffic Authority and the City of Cupertino in conjunction with the construction of that certain segment of Route 85 within the City of Cupertino; and

WHEREAS, the City Council has heard said Agreement read in full and is familiar with the contents thereof;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino hereby approves the "Performance Agreement" and authorizes the Mayor and the City Clerk to execute said agreement in behalf of the City of Cupertino.

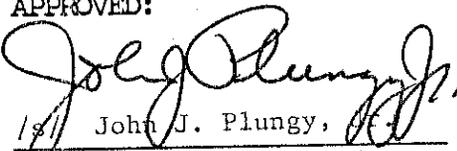
PASSED AND ADOPTED at a regular adjourned meeting of the City Council of the City of Cupertino on the 24th day of January, 1989, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
AYES:	Gatto, Johnson, Koppel, Rogers, Plungy
NOES:	None
ABSENT:	None
	None

ATTEST:

/s/ Dorothy Cornelius  
City Clerk

APPROVED:

  
/s/ John J. Plungy,  
Mayor, City of Cupertino

## PERFORMANCE AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of February 1989, by and between the SANTA CLARA COUNTY TRAFFIC AUTHORITY (herein referred to as "TRAFFIC AUTHORITY"), and the CITY OF CUPERTINO (herein referred to as "CITY"),

### WITNESSETH:

WHEREAS, in 1984 the voters of Santa Clara County passed Measure A on the ballot, authorizing a one-half of one percent sales tax in the County for a period of ten years, to fund major highway improvements on State Routes 85, 101, and 237; and

WHEREAS, the TRAFFIC AUTHORITY was created to administer the program and see that specific identified improvements were implemented; and

WHEREAS, through the development of Freeway Agreements, it became evident that a separate Agreement was appropriate between the CITY and the TRAFFIC AUTHORITY which would outline mitigation standards, establish specific design guidelines, and specify CITY participation in the design process; and

WHEREAS, the TRAFFIC AUTHORITY intends to provide equitable application of policies and measures for all Corridor cities, in the implementation of the Route 85 freeway project; and

WHEREAS, it is the mutual desire of the parties hereto, to enter into this Performance Agreement in accordance with the attached information;

### NOW, THEREFORE, IT IS AGREED:

1. This Agreement is executed in conjunction with the separate Freeway Agreement between the CITY and the CALIFORNIA DEPARTMENT OF TRANSPORTATION (herein referred to as "CALTRANS").

2. This Agreement, by reference, incorporates the following documentation: the TRAFFIC AUTHORITY'S Strategic Plan, August 1988; the Route 85 Environmental Impact Statement, July 1987; the Mitigation Plan, December 1987; and the Route 85 Bicycle Corridor Plan, November 1988. Commitments made by this Agreement shall be an extension of these documents.

3. The general alignment of Route 85, along with street closures and interchange locations will be addressed in the Freeway Agreement between the CITY and CALTRANS.

4. Route 85 through the CITY will be a 6 through-lane facility with a median width of 46', except where auxiliary lanes are required at the Route 85/280 interchange; and a vertical profile as shown in Attachment "A".

5. The CITY has participated in the development of corridor visual design guidelines, through a committee composed of representatives from Route 85 communities. From this effort, a general design theme will be specified and design guidelines prepared. These guidelines address prospective visual aesthetics of design features such as retaining walls, sound walls, bridges, pump stations, community walls, landscaping and related amenities. The guidelines will be followed in the final design of freeway facilities. Attachment "B" represents alternative surface treatments to be selected by the CITY for use in final design of the features listed herein.

6. Attachment "C" defines tentative locations and heights for sound attenuation along the Route 85 corridor, as shown in the Mitigation Plan. Sound walls will generally be designed and constructed in accordance with Federal and State guidelines. The CITY will have the opportunity to provide input during the design process through community meetings and review of design documents.

7. The TRAFFIC AUTHORITY will provide levels of landscaping over and above those required by Federal and State standards. Specific types and locations will be determined in the design process, with input from the Aesthetics Review Committee and approval by the CITY. Landscaping design will seek to maximize local aesthetics, and minimize long-term maintenance costs, within the available budget.

The TRAFFIC AUTHORITY'S allowance for landscaping is \$ 25,000 per landscaped acre, and community input will determine the design emphasis. Attachment "D" provides graphic representation of 5 major areas of typical freeway landscaping: 1. Depressed profile 2. Elevated profile 3. At-grade profile 4. Local street interchange 5. Major freeway-to-freeway interchange. These displays demonstrate typical densities and general layouts of ground cover. The CITY will direct the allocation of the landscaping allowance within their boundaries, consistent with the Visual Design Guidelines.

8. CALTRANS has developed a visual theme for the Route 85 bridges, which utilizes a tapered, rounded box structure and piers. The CITY may include aesthetic, non-structural changes which may enhance a preferred local theme. Bridges will be designed and constructed in a manner not to preclude future mass transit development in the freeway median.

9. Local historic, archaeological and cultural resources impacted by the freeway project will be assessed and dealt with in accordance with the Environmental Impact Statement and the Mitigation Plan. A separate Bicycle Plan has been developed in cooperation with CALTRANS and the CITY. Attachment "C" defines potential pedestrian and bicycle facilities and impacted historic sites in the Route 85 corridor through the CITY.

Overcrossing bridges will be designed to accommodate bicycle facilities, in accordance with the Route 85 Bicycle Plan.

10. The TRAFFIC AUTHORITY is committed to promoting the preservation of existing housing within the CITY. Should surplus housing become available, the buildings will be offered to the CITY, at fair market value, for disposal.

11. The CITY will participate in the final design process through attendance at regularly scheduled meetings. These meetings are held to coordinate the efforts of the design team; to allow affected agencies to express their interests and concerns; and to ensure consistency with current State and local standards, and the Visual Design Guidelines.

12. The TRAFFIC AUTHORITY agrees to phase construction of the freeway in such a manner that minimum segments to be opened to traffic are as follows:

- o Route 280 to Route 17
- o Route 17 to Route 87
- o Route 87 to Monterey Highway
- o Monterey Highway to Route 101

In the event that this schedule becomes unattainable, if one or more corridor cities fail to execute a Freeway Agreement in a timely manner, or if construction of the freeway segment through the CITY is completed in excess of six months prior to the completion of the freeway to Route 17, the TRAFFIC AUTHORITY agrees to request an Amendment to this Agreement and to revise the schedule in a manner acceptable to both parties. Attachment "E" is the current Strategic Plan construction schedule for Route 85.

13. Wherever feasible, soundwalls will be designated as early construction.

14. The TRAFFIC AUTHORITY agrees to provide local impact studies for the loss of existing access from northbound Route 280 to Route 85/Stevens Creek Boulevard in the CALTRANS' proposed Route 85/280 interchange modifications.

The TRAFFIC AUTHORITY agrees to provide funding not to exceed \$ 3.0 Million, for related local street improvements to replace the loss of access from northbound Route 280 to Route 85/Stevens Creek Boulevard, in a mutually acceptable manner.

15. The TRAFFIC AUTHORITY agrees to fund an interchange at Saratoga-Sunnyvale Road, after the CITY approves the proposed interchange configuration. The TRAFFIC AUTHORITY also recognizes that the CITY currently supports a full-diamond interchange at this location.

16. Construction noise control and working hours will be consistent with or exceed the requirements of local regulations and ordinances. Should a conflict arise, the TRAFFIC AUTHORITY and CITY will evaluate the circumstances and propose conditions that are acceptable to both parties.

17. The TRAFFIC AUTHORITY agrees to only provide funding for the design and construction of Route 85 in accordance with this Agreement. The TRAFFIC AUTHORITY will provide final plans and specifications to the CITY for review.

On the CITY's acceptance that the documents are consistent with this Agreement, the project will be advertised for construction. If any concerns are raised during this review, the TRAFFIC AUTHORITY agrees to withhold funding of the project until these issues can be resolved.

18. The CITY will have the opportunity to enter into a separate Cooperative Agreement, committing local funds to enhance the design commitments made in this Agreement.

19. This Agreement may be modified at any time by the mutual consent of the parties hereto, as may become necessary for the best accomplishment, through TRAFFIC AUTHORITY and CITY cooperation, of the whole freeway project for the benefit of the people of Santa Clara County. If unforeseen cost increases, or significant environmental impacts arise beyond those anticipated by this Agreement, each party reserves the right to request an Amendment to this Agreement.

20. TRAFFIC AUTHORITY agrees to defend, indemnify, and hold CITY harmless against any and all claims, damages, losses, demands, or causes of action arising out of any negligence or intentional misconduct on the part of the TRAFFIC AUTHORITY, its agents, employees, attorneys, assignees, or contractors in the course of performing this Agreement. The indemnity provided by this paragraph shall include reimbursement of all reasonably incurred costs and attorney's fees.

21. CITY agrees to defend, indemnify, and hold the TRAFFIC AUTHORITY harmless against any and all claims, damages, losses, demands, or causes of action arising out of any negligence or intentional misconduct on the part of CITY, its agents, employees, attorneys, assignees, or contractors in the course of performing this Agreement. The indemnity provided by this paragraph shall include reimbursement of all reasonably incurred costs and attorney's fees.

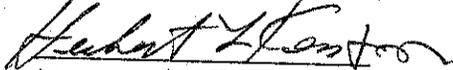
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

SANTA CLARA COUNTY  
TRAFFIC AUTHORITY

By

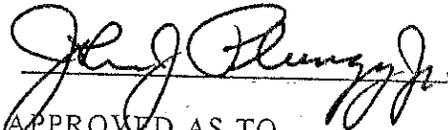


APPROVED AS TO  
FORM AND LEGALITY:

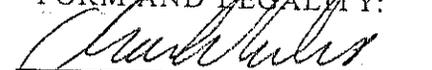
  
Attorney (AUTHORITY)

CITY OF CUPERTINO

By



APPROVED AS TO  
FORM AND LEGALITY:

  
Attorney (CITY)

Deputy City Clerk

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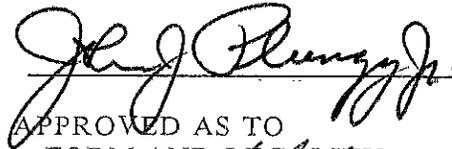
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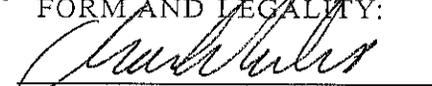
SANTA CLARA COUNTY  
TRAFFIC AUTHORITY  
By

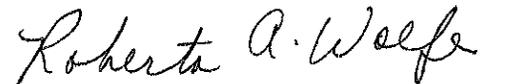
CITY OF CUPERTINO  
By

\_\_\_\_\_  
APPROVED AS TO  
FORM AND LEGALITY:

\_\_\_\_\_  
Attorney (AUTHORITY)

  
APPROVED AS TO  
FORM AND LEGALITY:

  
\_\_\_\_\_  
Attorney (CITY)

  
\_\_\_\_\_  
Deputy City Clerk



**SANTA CLARA COUNTY  
TRAFFIC AUTHORITY**

Zoe Lofgren  
Chairperson

Jim Beall  
Vice Chairperson

David Moyles

Tom McEnery

Brian Toole

**PUBLIC WORKS**

Will Kempton, Executive Director

**FEB 15 1989**

February 10, 1989

Mr. Bert J. Viskovich  
Director of Public Works  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014

**SUBJECT: ROUTE 85 PERFORMANCE AGREEMENT**

Dear Mr. *W* Viskovich:

Please find enclosed for signature, four (4) copies of the Route 85 Performance Agreement, as approved by the City on January 24, 1989, and by the Traffic Authority on February 6, 1989.

The Agreement will subsequently be signed by the Traffic Authority, and a fully executed copy will be returned to you for your records.

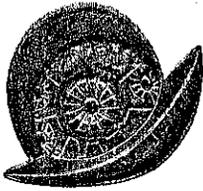
If you have any questions or concerns, please call.

Sincerely,

WILL KEMPTON  
Executive Director

WK/JJB  
cuper.ltr

*City Clerk: 2/16/89  
Please follow through.  
Dennis*



## City of Cupertino

10300 Torre Avenue  
Cupertino, California 95014  
Telephone: (408) 252-4505

P.O. Box 580  
Cupertino, California 95015

DEPARTMENT OF THE CITY CLERK  
March 3, 1989

Mr. Will Kempton, Executive Director  
Santa Clara County Traffic Authority  
1754 Technology Drive  
Suite 224  
San Jose, CA 95110

Dear Mr. Kempton:

We are enclosing to you four (4) fully executed copies of the Route 85 Performance Agreement, along with four (4) certified copies of Resolution No. 7718, which was enacted by the City Council of the City of Cupertino, at their regular meeting of Tuesday, January 24, 1989.

After completion would you please return a fully executed copy to this office.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dorothy Cornelius".

DOROTHY CORNELIUS  
CITY CLERK  
CITY OF CUPERTINO

DC/so  
encl.

cc: Department of Public Works