

Grant Agreement

This Grant Agreement ("Agreement") dated as of June 18, 2019, sets forth the terms and conditions agreed to by the City of Cupertino, a municipal corporation of the State of California ("Grantee"), and Apple Inc., a California corporation ("Grantor").

1. **GRANT PROJECT.** Apple desires to fund various transportation infrastructure and safety projects in the City of Cupertino as more fully described in Exhibit A (each, a "Grant Project" and collectively, the "Grant Projects").
2. **FUNDING OF GRANT.** Grantor shall fund each Grant Project ("Grant Funds"): (a) in an amount not to exceed the amount specified in Exhibit A, and (b) in accordance with the funding schedule specified in Exhibit A. If payments of Grant Funds are conditioned upon achievement of particular milestones or other required documentation, delays may occur if the milestones are not met and/or documentation is not submitted as agreed. It is expressly understood that this Agreement does not obligate Grantor to provide any additional support to Grantee for any other project or purpose other than the Grant Projects expressly provided for in this Agreement.
3. **USE OF GRANT FUNDS.** Grant Funds are restricted for use on the particular Grant Projects for which they have been funded as detailed in Exhibit A. No Grant Funds may be used for City staff costs or overhead. Grantor will fund Grant Projects at their actual cost up to the not to exceed amount. Any grant funds not so used for the Grant Project for which they have been funded must be returned promptly to the Grantor, or may be applied to other Grant Projects as may be mutually agreed by Grantor and Grantee and documented in writing before any such modifications become binding.
4. **GRANT OVERSIGHT/AUDIT.** Grantee will exercise full control over each Grant Project and will administer, manage and use the Grant Funds solely for Grant Projects. Grantor's role will consist of reasonable evaluation of Grantee's expenditure of Grant Funds. Grantee agrees to permit the Grantor, at its request, to have reasonable access to all information necessary to make such program evaluations. Grantee agrees that Grantor shall have the right to audit Grantee at any time to determine its compliance with this Agreement. During an audit, Grantee agrees that it will disclose all relevant information other than attorney client communications to Grantor to allow Grantor to assess Grantee's compliance with this Agreement.

5. **GRANT REPORTING.** Grantee will provide Grantor a quarterly report covering the progress and financial status of each Grant Project ("Quarterly Report"). Each Quarterly Report will include a progress update of each Grant Project, including a description of activities performed to date, challenges encountered (if any), and plans for the next quarterly reporting period. The financial reporting portion of each Quarterly Report will include a summary of expenses against the budget for each Grant Project and any remaining balance. Upon request, Grantee will provide Grantor with informal program updates. For each completed Grant Project, Grantee will include a final accounting of how the Grant Funds were spent as compared to the applicable budget.
6. **RELATED PARTIES.** Grantee agrees that its staff, elected officials, agents, employees and contractors (or any related party) will not receive any financial benefit as a result of this Agreement.
7. **NO WARRANTY.** Grantor makes no representations or warranties about the quality, sufficiency or legal compliance of any Grant Project, including, without limitation, any plans or specifications for any Grant Project. Each Grant Project shall at all times be deemed to be a Grantee project and Grantor shall have no obligation to design, construct, maintain, repair or replace any portion of any Grant Project.
8. **INDEMNIFICATION AND HOLD HARMLESS.** Grantor shall not be liable for any acts or omissions in approving, reviewing, checking, correcting, constructing or modifying any Grant Project or any related specifications. In consideration of Grantor providing the Grant Funding, Grantee agrees to indemnify, hold harmless, release and forever discharge Grantor, its officers, agents, employees, contractors and affiliates from and against any and all judgments, actions, claims, suits, losses, damages, and expenses resulting from, related to or in any way connected with this Agreement, including, without limitation, any claims, actions, or demands arising out of the design, construction, maintenance and operation of any Grant Project. This indemnification obligation shall survive any termination of this Agreement.
9. **TERMINATION.** Either party may terminate this Agreement following a breach of a material provision of this Agreement, whether by action or inaction, which continues and is not remedied within thirty (30) days after the non-breaching party has given notice specifying the breach. Grantor may also terminate this Agreement at any time following Grantee's adoption of new fees or taxes that apply at different rates and/or amounts depending on the revenue or employee count of the business or property owner or that would have a disproportionate effect on Grantor. Grantor shall have no obligation to make any additional payments or provide any of the other benefits set forth in this Agreement following termination.

10. **EQUITABLE RELIEF.** Grantee agrees that Grantor will have the right to seek and obtain immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have.
11. **NO ASSIGNMENT.** This Agreement may not be assigned by Grantee by any means, including without limitation, by operation of law or merger. Any attempted assignment of this Agreement by Grantee in violation of this section will be void.
12. **PUBLICITY.** Grantee will not use (or permit its personnel to use) Grantor trademarks, service marks, trade names, logos or other commercial or product designations for any purpose without the express prior written approval of Grantor.
13. **GRANT RECORDS.** Grantee agrees to maintain records of receipts and expenditures and make its books and records available to Grantor at reasonable times upon its request, which shall be adequate to identify the use of the funds in compliance with this Agreement. Such records shall be retained for a period of at least four (4) years after the completion of the use of the payments received from Grantor.
14. **REQUIRED NOTIFICATION.** Any notices delivered pursuant to this Agreement and all other communications shall be in writing and shall be given to the appropriate party at the address set forth below or at such other designation as from time to time may be specified hereunder. All notices and other communications shall be deemed given: (a) upon personal delivery to the appropriate address; (b) three (3) business days after the date of mailing if sent by certified or registered mail; or (c) one (1) business day after the date of deposit with a commercial courier service offering next business day service with confirmation of delivery. Notices and other communications shall be addressed as follows (or to such other address as a party designates in writing from time to time):

To Grantor:

Apple Inc.
One Apple Park Way, MS 119-RE
Cupertino, CA 95014

Attention: Real Estate & Development
Phone:
Email: Corp RE Notices @ Apple.com

To Grantee:

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

Attention: Deborah Feng, City Manager
Phone: 408.777.2489
Email: DebF@cupertino.org

15. **GOVERNING LAW.** All questions of law which may arise in the administration of this Agreement shall be determined in accordance with the laws of State of California.

16. **MODIFICATION.** This Agreement sets forth all of the terms of this grant and replaces all prior understandings and agreements. This Agreement may only be changed or modified with the express written consent of the Grantor and Grantee.

Each signatory to this Agreement represents and warrants that he or she possesses all necessary capacity and authority to act for, sign and bind the party on whose behalf he or she is signing this Agreement.

IN WITNESS WHEREOF, Grantee and Grantor have signed this Agreement.

Grantee:

Grantor:

City of Cupertino

Apple Inc.

By: 

By: 

Name: Deborah Feng

Name: Melissa Schild

Title: City Manager

Title: Director, Global Real Estate

Date:

Date: 7/26/19

APPROVED AS TO FORM:



HEATHER M. MINER

Cupertino City Attorney

ATTEST:



GRACE SCHMIDT

City Clerk

8-1319

Exhibit A – Grant Projects

Project Name	Description	Not to Exceed Amount	Funding Schedule
McClellan Rd Protected Bikeway	Phase II: Construction of separated bikeway from Bryne Ave to Imperial Ave	\$1,000,000	Funding Schedule 1*
McClellan Rd Protected Bikeway	Phase III: Construction of separated bikeway from Stelling Rd to Torre Ave	\$1,000,000	Funding Schedule 1
Junipero Serra Trail	Construction Design	\$1,800,000	Funding Schedule 1
Bubb Road Project	Planning/Design: Class IV bike lanes, sidewalks, pedestrian refuges, enhanced striping etc.	\$136,590	Funding Schedule 1
Bubb Road Project	Construction & Contingency	\$1,843,965	Funding Schedule 1
Mary Ave Protected Bikeway	New concept: two-way on street bikeway/cycletrack from Stevens Creek Blvd. to Mary Ave Bike/Ped bridge.	\$165,000	Funding Schedule 1
McClellan Rd Sidewalk Improvements	Design & construct sidewalk improvements between Orange Avenue and San Leandro Avenue.	\$2,035,000	Funding Schedule 1
McClellan Rd Sidewalk Installation	Design & construct approximately 650 LF of sidewalk on the north side of McClellan between HWY 85 and Rose Blossom.	\$430,000	Funding Schedule 1
De Anza Blvd/McClellan Pacifica Signal Modification	Traffic signal upgrades.	\$160,000	Funding Schedule 1

*Note - Funding Schedule 1 is defined at the end of this Exhibit A

Exhibit A – Grant Projects

School Walk + Safety Projects

Abraham Lincoln Elementary School/Monta Vista High School

Grant Project	Description	Schedule
Bryne Ave @ McClellan Road	Add advance yield lines. Construct curb ramp and sidewalk in NW corner. Study sight lines and consider additional advance warning stencils if crosswalk is obstructed by slope	Funding Schedule 2*
McClellan Road at Orange Ave	Add advance yield lines (may require re-striping of KEEP CLEAR stencil). Review signal length and consider retiming or replacing with RRFB	Funding Schedule 2
Lincoln Elementary Uncontrolled Crosswalk	Review signal length and consider retiming or replacing beacons with RRFB	Funding Schedule 2
McClellan Road at Imperial Avenue	Implement high-visibility crosswalk in the eastern leg of the intersection with Assembly B & D signage	Funding Schedule 2
Widen sidewalk on west side Fort Baker Drive between Presidio Drive	Sidewalk widening (additional width 5'), retaining wall, and fence relocation	Funding Schedule 2
Hyannisport Dr at Fort Baker Drive	Reconstruct intersection to close slip lane onto Fort Baker Drive	Funding Schedule 2

Sam H. Lawson Middle School

Grant Project	Description	Funding Schedule
Mariani Avenue/Infinite Loop	Conduct traffic study along Mariani Avenue/Infinite Loop. Convert transverse crosswalk to yellow high-visibility crosswalk.	Funding Schedule 2
Merritt Drive/Larry Way/Vista Drive	Install in-street school crossing signs (R1-6) in the crosswalks across Merritt Drive.	Funding Schedule 2
Apple Tree Lane/Vista Drive	Install KEEP CLEAR markings in both northbound and southbound directions of the intersection. Install in-street school crossing sign in the crosswalk across Vista Drive.	Funding Schedule 2
Vista Drive	Install Class III Bike Route signage and marking (sharrows)	Funding Schedule 2

*Note - Funding Schedule 2 is defined at the end of this Exhibit A

Exhibit A – Grant Projects

Sedgewick Elementary School

Grant Project	Description	Funding Schedule
Phil Lane/Finch Ave	Shift crosswalk across Phil Lane to make x-walks perpendicular. Install ADA-compliant ramps. Remove and relocate stop bar	Funding Schedule 2
Tilson Avenue/Tantau Avenue	Install ADA-compliant curb ramps on western corners. Install high-visibility crosswalks. Remove stripe/legend	Funding Schedule 2
Phil Lane Drop-Off	Widen sidewalk on Phil Lane. Install Loading Zone During School Hours signs on south side of Phil Lane between western drop-off loop driveway and Tantau Avenue. Refresh red curb between driveways. Trim bushes on western side of drop-off loop and bus loop exit. Sidewalk widening by 4ft for 95 LF. Install loading zone sign	Funding Schedule 2
Phil Lane/Tantau Ave	Install ADA-compliant curb ramps. Install detectable warning surface at either end of median refuge	Funding Schedule 2
Tantau Ave/Barnhart Ave	Replace existing beacon with rectangular rapid flashing beacon or other LED flashing beacon. Install curb extension at intersection corners. Widen sidewalk on Tantau Avenue to match existing paint on street. Realign high-visibility crosswalk on Barnhart Avenue. Potentially re-work parking lot to alleviate on-street traffic	Funding Schedule 2

Hyde Middle School

Grant Project	Description	Funding Schedule
Shadygrove Drive/Hyde Avenue	Conduct stop sign warrant analysis for Hyde Avenue approach. Install yellow high-visibility crosswalk on east side of intersection. Trim vegetation around intersection	Funding Schedule 2
Disney Lane/Miller Avenue	Install yellow high-visibility crosswalk. Remove Stripe/Legend	Funding Schedule 2
Willowgrove Lane/Hyde Avenue	Install curb extensions with ADA-compliant curb ramps on both sides of intersection	Funding Schedule 2
Bollinger Road/Miller Avenue	Install yellow high-visibility crosswalks on all legs of intersection. Remove Stripe/Legend	Funding Schedule 2
Hyde Avenue/Bollinger Road	Trim vegetation on Bollinger Road	Funding Schedule 2

Exhibit A – Grant Projects

Garden Gate Elementary School

Grant Project	Description	Funding Schedule
School Drop-Off	Shift, extend, & raise pedestrian walkway through parking lot. Install ADA-compliant curb ramps at either end of walkway.	Funding Schedule 2
Greenleaf Drive School Frontage	Trim bushes along sidewalk. Unlock school access gate during drop-off/pick-up. Consider removing parking on the north side of curve.	Funding Schedule 2
Flora Vista Avenue/Greenleaf Drive	Install yellow high-visibility crosswalk across Greenleaf Drive. Install ADA-compliant curb ramp on southwest corner of intersection	Funding Schedule 2
Stelling Road/Greenleaf Drive	Study pedestrian signal timing	Funding Schedule 2
Castine Avenue/Greenleaf Drive	Conduct crossing guard warrant analysis for southbound Castine Avenue. Install yield markings on Castine Avenue	Funding Schedule 2
Ann Arbor Avenue/Greenleaf Drive	Install curb extension and ADA-compliant curb ramp at crosswalks	Funding Schedule 2
Ann Arbor Avenue	Install yellow high-visibility crosswalks and yield markings across Grenola Drive and Hazelbrook Drive. Trim landscaping. Conduct yield sign warrant analysis on Hazelbrook Drive. Install ADA-compliant curb ramps. Tighten turn radius at corners. Long term: Close sidewalk gaps	Funding Schedule 2

Homestead High School

Grant Project	Description	Funding Schedule
General	Install hi-viz x-walks at crossings. Reconstruct SW corner to tighten turning radius. Install new ramp approx. 25 feet west of intersection curb ramp. Add bike path behind bench shelter to connect to Mary Avenue Bridge path. Reduce vehicle lane widths to 11' to convert existing bike lanes to buffered bike lane. Add flexible delineators in buffer space. Consultant for all-red pedestrian phase-\$5,000. Make western driveway right-in, right out. Add exible delineators on Homestead Rd to	Funding Schedule 2

Exhibit A – Grant Projects

	block vehicles from turning left out of parking lot.	
Bicycle Safety	Pave informal path to allow for safer bicycle access.	Funding Schedule 2

L.P. Collins Elementary School

Grant Project	Description	Funding Schedule
Merritt Drive/Blaney Avenue	Install ADA-compliant curb ramps. Install high-visibility crosswalks. Conduct traffic signal warrant analysis and evaluate a roundabout.	Funding Schedule 2
Blaney Ave/Pear Tree Lane	Install ADA-compliant curb ramps. Install School Assembly B signage.	Funding Schedule 2
Forest Avenue/Plum Tree Lane	Install yellow high-visibility crosswalks on all legs of Intersection. Install yield sign and yield line on Toni Court. Install yield lines prior to crosswalks on Forest Avenue.	Funding Schedule 2
Forest Avenue/Blaney Avenue	Install curb extension on southwest corner.	Funding Schedule 2
School Frontage	Install green conflict striping in bikes lanes. Extend detectable warning surface along drop-off area.	Funding Schedule 2
Blaney Avenue/Twilight Court	Install yellow high-visibility crosswalk across Twilight Court. Install School Assembly B signage.	Funding Schedule 2
Bright Horizons Parking Lot/Portal Avenue	Install swing gate at "Staff Parking Only" marking area (to be closed during school hours). Install yellow high-visibility crosswalk at Portal Avenue/Amherst Drive. Install One Way signage at entry and exit driveways to mimic school frontage parking lot.	Funding Schedule 2

William Faria Elementary School

Grant Project	Description	Funding Schedule
Scofield Drive/Barbara Lane	Study feasibility of crossing guard	Funding Schedule 2
School Drop-Off	Reconstruct driveways to city standards. Install truncated domes on either side of driveway at sidewalks. Widen sidewalk at southern end to approximately 15 feet. Remove pole at exit driveway, south side. Remove red	Funding Schedule 2

Exhibit A – Grant Projects

	curb at southwestern corner. Install “Vanpool Parking Only” signs at southwestern corner.	
Pepper Tree Lane/Stelling Road	Install yellow high-visibility crosswalk across Pepper Tree Lane. Install Leading Pedestrian Interval with 5 second. Lead time for all legs of intersection	Funding Schedule 2
Pepper Tree Lane/Barbara Lane	Study feasibility of crossing guard. Install school assembly B signage. Install red curb from light pole to driveway.	Funding Schedule 2
Shelly Drive/Bonny Drive	Install high-visibility crosswalk across Shelly Drive. Conduct yield sign warrant analysis	Funding Schedule 2

Stevens Creek Elementary School

Grant Project	Description	Funding Schedule
Bahl Street/Ainsworth Drive	Conduct crossing guard study	Funding Schedule 2
Vista Knoll Boulevard/Bahl Street	Install high-visibility cross-walk across Vista Knoll Blvd. Install ADA-compliant curb ramp. Install KEEP CLEAR marking in intersection	Funding Schedule 2
Ainsworth Dr/Vista Knoll Blvd.	Install red curb between curb ramp and Varian Way. Conduct stop sign warrant analysis on Vista Knoll Blvd	Funding Schedule 2
Varian Way	Improve existing speed bump Ensure vehicle gates in Varian Park parking lot are closed at all times Install red curb north of parking	Funding Schedule 2

Regnart Elementary School

Grant Project	Description	Funding Schedule
General	Sidewalk widening by 5ft for 400LF. Install curb and gutter. Remove full size redwood trees. Repaint drop-off loop	Funding Schedule 2
Yorkshire Drive	Install concrete paths between sidewalk and gates	Funding Schedule 2
Regnart Road/Bubb Road	Install missing sidewalk. Install yield markings on both sides of crosswalk on Bubb Road. Install curb and gutter	Funding Schedule 2
Yorkshire Drive/Yorkshire Court	Widen sidewalk on eastern side of Yorkshire Drive by approximately 3 feet. Install curb extension for southern portion of driveway entrance. Install yellow high-visibility crosswalk across Yorkshire Drive. Install ADA	Funding Schedule 2

Exhibit A – Grant Projects

	-compliant curb ramp for high-visibility crosswalk. Install yield markings on both sides of crosswalk on Yorkshire Court. Install No Left Turn sign to discourage left turns into driveway.	
Belknap Drive/Yorkshire Drive	Install curb extension on southeastern corner	Funding Schedule 2

Cupertino High School

Grant Project	Description	Funding Schedule
Stevens Creek Boulevard/Finch Avenue	Reconfigure intersection to tighten radius on southeast corner to eliminate slip lane. Tighten radius and install ADA-compliant curb ramps on southwestern corner of intersection. Install yellow high-visibility crosswalks on east side and south side of intersection. Long term: Install protected intersection and bicycle signal with Lead Bicycle Interval when separated bikeway is installed along Stevens Creek Boulevard	Funding Schedule 2
Finch Avenue/Sorenson Avenue and Finch Avenue/Craft Drive	Install ADA-compliant curb ramps	Funding Schedule 2
Southern Parking Lot	Install raised pedestrian walkways across driveways and reconfigure curbs	Funding Schedule 2
Miller Avenue/Calle de Barcelona	Study traffic signal timing to add protected left-turn phase onto Calle de Barcelona from Miller Avenue	Funding Schedule 2
Finch Avenue	Widen sidewalk between Tilson Avenue and emergency access gate north of the baseball field to approximately eight feet	Funding Schedule 2
Calle de Barcelona/Finch Avenue	Install KEEP CLEAR marking in intersection. Move crosswalk/stop sign closer to Finch Avenue. Install curb extensions and ADA-compliant curb ramps at crosswalk across Finch Avenue (clearing and grubbing)	Funding Schedule 2

Eaton Elementary School

Grant Project	Description	Funding Schedule
Pacifica Drive/Whitney Way	Install speed limit sign east of Whitney Way Install sign	Funding Schedule 2
Suisun Drive/Farallone Drive	Replace school Assembly Sign with stop sign on Suisun Drive	Funding Schedule 2

Exhibit A – Grant Projects

	Remove "State Law Yield to Pedestrians in Crosswalk" sign	
Farallone Drive	Raised Crosswalk	Funding Schedule 2
Farallone Drive Parking Lot	Convert some eastern parking spaces to loading zone	Funding Schedule 2
John Drive/Farallone Drive	Install red curb on east side of Farallone Drive south of parking lot driveway	Funding Schedule 2
La Roda Drive/Suisun Drive	Install yield sign on La Roda Drive. Install high-visibility crosswalk on La Roda Drive	Funding Schedule 2
Blaney Avenue/Suisun Drive	Install ADA-compliant Type F curb ramp north of driveway and south of re hydrant Pivot eastern end of southern crosswalk to connect to new ramp	Funding Schedule 2

John F. Kennedy Middle School

Grant Project	Description	Funding Schedule
Presidio Drive and Bubb Road	Conduct STOP sign warrant analysis on Bubb Rd at Presidio Dr.	Funding Schedule 2
Shannon Court, Bubb Road, Hyannisport Drive	Trim overgrown tree on west side of Bubb Rd. Install yellow high-visibility cross-walk w/ advance stop line across Shannon Court	Funding Schedule 2
Holly Oak Drive/Bubb Road	Install yellow high-visibility crosswalk with advance stop line across Holly Oak Drive.	Funding Schedule 2
Eastern School Drop-Off	Install Pull Forward signage at driveway entrance. Repave & widen pathway from sidewalk to school entrance to at least eight feet. Trim landscaping on Bubb Rd at driveway exit.	Funding Schedule 2
Pumpkin Drive/Bubb Road	Install yellow high-viz xwalks with advance stop lines	Funding Schedule 2

"Funding Schedule 1" shall be as follows:

Grantor shall fund Grant Projects being funded pursuant to Funding Schedule 1 as follows:

(a) the first one-third (1/3) of the Not to Exceed Amount shall be funded within sixty (60) days from the date that: (1) Grantee has obtained all applicable approvals for this Agreement, (2) this Agreement has been mutually executed, and (3) Grantee certifies to Grantor that the Grant Project for which funds are being requested has been approved by the City Council;

Exhibit A – Grant Projects

(b) the next one-third (1/3) of the Not to Exceed Amount shall be funded within sixty (60) days following commencement of construction on the applicable Grant Project; and

(c) the final one-third (1/3) of the Not Exceed Amount shall be funded sixty (60) days from the date that: (1) the applicable Grant Project has achieved substantial completion, and (2) Grantor has received reasonable back-up documentation evidencing such completion as well as the total amount spent for the specific Grant Project for which funding is being sought.

For the final one-third of any Not to Exceed Amount for any Grant Project being funded pursuant to Funding Schedule 1, if Grantee spends less than the total Not to Exceed Amount for such project, Grantor shall fund Grantee the lesser amount necessary to reimburse Grantee, or the unused funds may be applied to other Grant Projects as mutually agreed by Grantor and Grantee and documented in writing before any such modifications become binding.

"Funding Schedule 2" shall be as follows:

Grantor shall fund an amount not to exceed One Million Two Hundred Twenty-One Thousand Eight Hundred Sixty-Three Dollars (\$1,221,863) for the School Walk and Safety Grant Projects listed in this Exhibit A (the "SWSGP Not to Exceed Amount").

Grantor shall fund the SWSGP Not to Exceed Amount as follows:

(a) one half (1/2) of the SWSGP Not to Exceed Amount (\$610,931) within sixty (60) days from the date that: (1) Grantee has obtained all applicable approvals for this Agreement, and (2) this Agreement has been mutually executed, and (3) Grantee certifies to Grantor that a School Walk and Safety Grant Project has been approved by the City Council; and

(b) up to the second one-half (1/2) of the SWSGP Not to Exceed Amount (\$610, 932) within sixty (60) days from the date that: (1) all of the School Walk and Safety Grant Projects listed above have achieved substantial completion, and (2) Grantor has received reasonable back-up documentation evidencing such completion as well as the total amount that Grantee actually spent for the School Walk and Safety Grant Projects.

For the second one-half of the SWSGP Not to Exceed Amount, if Grantee spends less than the total SWSGP Not to Exceed Amount, Grantor may fund Grantee the lesser amount necessary to reimburse Grantee, or the unused funds may be applied to other Grant Projects at the discretion of the Grantor. In addition, from time to time, Grantor and Grantee may discuss adjustments to the School Walk and Safety Grant Projects listed in this Exhibit A with any changes or modifications to be mutually agreed by Grantor and Grantee and documented in writing before any such modifications become binding.