

AMENDMENT NO. 1 TO GRANT AGREEMENT

Between the City of Cupertino and Apple Inc.

This **Amendment No. 1 to the Grant Agreement** ("**Amendment**") is made and entered into as of _____, by and between the **City of Cupertino**, a municipal corporation of the State of California ("**Grantee**"), and **Apple Inc.**, a California corporation ("**Grantor**"), and hereby amends that certain Grant Agreement dated June 18, 2019 (the "**Original Agreement**").

RECITALS

WHEREAS, the Original Agreement sets forth the terms and conditions pursuant to which Grantor agreed to provide funding for various transportation and safety projects within the City of Cupertino as more fully described in Exhibit A thereto (each, a "**Grant Project**"); and

WHEREAS, the Grantee and Grantor wish to reallocate certain funds allocated under the Original Agreement which were applied to the projects originally listed in Exhibit A to the Original Agreement; and

WHEREAS, the Santa Clara Valley Transportation Authority, in partnership with the Grantee, have been preparing construction documents and obtaining environmental clearance for the I-280/Wolfe Road Interchange Project (the "**Interchange Project**"), a regional transportation infrastructure improvement expected to benefit the Grantee, the broader community, and the region as a whole; and

WHEREAS, although not obligated to do so, Grantor has voluntarily agreed to provide additional funding to aid in the completion of the Interchange Project.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. Additional Grant Funds

Grantor shall provide Grantee with additional grant funds in an amount not to exceed Two Million Six Hundred Thousand Dollars (\$2,600,000) ("**Additional Funds**") to support the construction of the Interchange Project. Such funds shall be subject to the terms and conditions of the Original Agreement, as modified herein.

2. Reallocation of Unused Grant Funds

Certain amounts funded by Grantor under the Original Agreement cannot be used for the originally designated Grant Projects ("**Original Grant Funds**") due to project infeasibility or other factors. The Original Agreement allows the parties to reallocate the Original Grant Funds to other mutually agreed-upon projects, including the Interchange Project.

Original Grant Funds in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000) are hereby reallocated to the Interchange Project from the following Grant Projects listed in Exhibit A of the Original Agreement:

- McClellan Road Protected Bikeway – Byrne Avenue to Imperial Avenue: \$1,000,000
- Various School Walk & Safety Projects: \$400,000

The School Walk & Safety Projects that will remain funded under the Original Agreement are listed in Exhibit 1 of this Amendment. All other School Walk & Safety Projects have either been completed or are hereby removed from the scope of the Original Agreement. Grantee shall retain a portion of the Original Grant Funds in the amount of Five Hundred Eleven Thousand Eight Hundred Sixty-Three Dollars (\$511,863) to complete the School Walk & Safety Projects listed on Exhibit 1.

3. Interchange Project Funds

The total amount of up to Four Million Dollars (\$4,000,000) (Original Grant Funds plus the Additional Funds) (“**Interchange Project Funds**”) shall be available to support construction of the Interchange Project.

4. Contingency for Project Non-Completion

If no contract for the construction of the Interchange Project has been executed by December 31, 2026, or if the Interchange Project is cancelled, the Grantee shall return the Interchange Project Funds to the Grantor within ninety (90) days of such cancellation or deadline.

5. Meet and Confer Requirement

Before returning the Interchange Project Funds as provided in Section 4, Grantee may make a written request to Grantor to initiate a meet and confer process (that shall last no longer than sixty (60) days) to discuss the potential reallocation of the Interchange Project Funds to other public infrastructure or transportation projects in the City of Cupertino. Grantor may elect to participate in such meet and confer process in its sole discretion. Any alternative use of the Interchange Project Funds must be mutually agreed upon in writing by both parties. The City Manager or their designee may approve any such written agreement to alternative uses of the Interchange Project Funds on behalf of Grantee.

6. No Obligation to Provide Additional Funds

The parties acknowledge and agree that Grantor has no obligation under the Original Agreement or this Amendment to provide any funding beyond the amount specified herein. Grantor is providing the Additional Funds on a voluntary basis for the potential benefit of the Grantee, the community, and the region.

7. Effect of Amendment

Except as expressly modified by this Amendment, all other terms and conditions of the Original Agreement shall remain in full force and effect. In the event of a conflict between the terms of this Amendment and the Original Agreement, the terms of this Amendment shall prevail.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

GRANTOR:

APPLE INC.

By: _____

Name:

Title:

GRANTEE:

CITY OF CUPERTINO

By: _____

Name:

Title:

APPROVED AS TO FORM:

By: _____

Floy Andrews, Interim City Attorney

ATTEST:

By: _____

Kirsten Squarcia, City Clerk

Exhibit 1

Remaining School Walk & Safety Projects

Sedgewick Elementary

- 1) Widen sidewalk on Tantau Avenue to match existing paint on street.
- 2) Realign high-visibility crosswalk on Barnhart Avenue to increase visibility (after sidewalk widening).

Stevens Creek Elementary

- 1) Vista Knoll Blvd/Bahl St: Install high-visibility crosswalk across Vista Knoll Boulevard and ADA-compliant curb ramp.

Eaton Elementary

- 1) Evaluate and consider installation of raised crosswalk.

Lincoln Elementary/Monta Vista High

- 1) Hyannisport Drive at Fort Baker Drive: Reconstruct intersection to close slip lane onto Fort Baker Drive.

Garden Gate Elementary

- 1) Close Sidewalk gaps along west side of Ann Arbor Ave.

Regnart Elementary

- 1) Install Flashing lights for crosswalk at Bubba Rd/Regnart Rd.

Lawson Middle

- 1) Mariani Ave/Infinite Loop: Work with Apple to develop multi-use path south of sidewalk along south side of Mariani, connecting De Anza Boulevard to Merritt Drive. If funding is available.
- 2) Mariani Ave/Infinite Loop: Convert transverse crosswalk to yellow high-vis crosswalk.
- 3) Vista Dr/Forest Ave: Install shared-use path beside Lawson track from Forest Ave to bike cage.