

**FUNDING AGREEMENT  
BETWEEN  
CITY OF CUPERTINO  
AND  
CITY OF SANTA CLARA  
FOR  
CUPERTINO-SANTA CLARA JOINT ON-DEMAND SHUTTLE SERVICE PROJECT**

This Funding Agreement ("Agreement") is entered into by and between the City of Cupertino ("CC"), a municipal corporation and general law city of the State of California and the City of Santa Clara, a municipal corporation and chartered city of the State of California ("CSC"), individually a "Party", and collectively the "Parties", as of the latest execution date of any of the Parties ("Effective Date").

**I. RECITALS**

- A. **WHEREAS**, in October 2019, CC initiated a pilot program for an on-demand shuttle operated by Nomad Transit, LLC, dba Via (Via) providing on-demand shared rides to residents, visitors and employees within Cupertino, connecting the community to Sunnyvale Caltrain, Rancho San Antonio and Kaiser Santa Clara; and
- B. **WHEREAS, in March 2022**, CC filed an application to the Transit & Intercity Rail Capital Program (TIRCP), a grant program of the California State Transportation Agency (CalSTA), on behalf of CC and CSC to expand Via services into CSC in two phases. In addition to expansion into CSC, the existing fleet of internal combustion engine (ICE) vehicles will be converted to electric vehicles (EV) and El Camino Hospital and Mountain View Transit Center will be added to the service area; and
- C. **WHEREAS, in July 2022**, a TIRCP grant of \$8,465,000 was awarded to CC to provide Via on-demand service for a period of four years, beginning in May 2023, with an estimated greenhouse gas emission reduction of 76,000 MTCO<sub>2</sub>e; and
- D. **WHEREAS, on September 20, 2022**, the Cupertino City Council took action to formalize the pilot program, receive the TIRCP grant, and approved a sole-source procurement with Nomad Transit, LLC to operate the service; and
- E. **WHEREAS**, service will begin in CSC only when this agreement is executed by both parties, when the CSC City Council allocates funding to the project, and when CSC provides a written notice to proceed to CC and Via; and
- F. **WHEREAS**, TIRCP grant funding was awarded to the project based on scoring for the full geographic zone, including both phases of expansion in CSC due to the prevalence of several regional rail stations and a designated SB 535 zone; and
- G. **WHEREAS**, while the CC is the City in contract with Via for the four-year project, and grant funds have been awarded to the CC, a funding agreement between the CSC and CC is necessary to outline the terms and conditions, payment schedule, and other financial details of the four-year joint micro transit project.

- H. **WHEREAS**, on May 23, 2023, the City Council of CSC will consider authorizing the CSC City Manager to Negotiate, Execute, and Administer an Agreement with CC for the Cupertino-Santa Clara Joint On-Demand Shuttle Service Project.

**NOW THEREFORE**, for good and valuable consideration, the parties agree as follows:

## II. AGREEMENT

### 1. **SCOPE OF WORK**

The scope of work as detailed in “Exhibit A” attached and incorporated herein consists of pre-launch planning, coordination on community outreach, interdepartmental coordination, and ongoing operations. The launch in CC is anticipated to begin in May 2023 while the launch in CSC is anticipated to begin in June 2023, with a fleet of 16 EV’s that will be deployed over a period of four years.

CC and CSC, will define, in writing, a decision-making framework for conducting the project as well as roles and responsibilities for each agency regarding specific task requirements.

### 2. **TERM OF AGREEMENT**

This Agreement shall become effective upon the Effective Date and will remain in effect through either: (i) CC’s full expenditure of CSC Maximum Contribution Amount (as defined in **Section 3** below); or (ii) August 30, 2027, whichever is earlier, unless terminated by either Party at any time by giving 90 days written notice from either Party, or unless sooner terminated in accordance with the terms of this Agreement.

### 3. **FINANCIAL CONTRIBUTION TO THE COST OF THE PROJECT**

- a. **CSC’s Financial Contribution.** CSC will provide an amount not to exceed \$4,004,230 (“CSC Maximum Contribution Amount”) toward the operation of the program on a cost reimbursement basis over the life of the four-year project. CSC’s ability to provide funding is subject to budget availability and City Council appropriation of funds.

The CSC Maximum Contribution Amount shall be provided pursuant to the schedule as follows:

- |             |             |
|-------------|-------------|
| a. FY23-24: | \$689,547   |
| b. FY24-25: | \$808,855   |
| c. FY25-26  | \$864,936   |
| d. FY26-27: | \$1,643,892 |

The amounts above are not to exceed amounts, and actual billing may be less, contingent on ridership demand in Santa Clara. CSC is responsible for all funds expended on the Project outside of this Agreement, including but not limited to, staff time dedicated to the project, electricity costs for vehicle charging (if applicable), and any other unforeseen costs not covered by the grant or Via.

- b. **CC’s Financial Contribution.** CC will provide an amount not to exceed \$4,457,761 (“CC Maximum Contribution Amount”) toward the operation of the program on a cost reimbursement basis over the life of the four-year project. The CC Maximum Contribution Amount shall be provided pursuant to the schedule as follows:

- a. FY23-24: \$932,916
- b. FY24-25: \$1,094,328
- c. FY25-26: \$1,170,204
- d. FY26-27: \$1,260,312

The amounts above are not to exceed amounts, and actual billing may be less, contingent on ridership demand in Cupertino. CC is responsible for all funds expended on the Project outside of this Agreement, including but not limited to, staff time dedicated to the project, electricity costs for vehicle charging (if applicable), and any other unforeseen costs not covered by the grant or Via.

#### **4. CC's OBLIGATIONS**

CC staff will serve as the primary contact for TIRCP grant administration, communication with Caltrans and Via management, etc. Meetings between CC and CSC staff will be established on a bi-weekly basis to ensure CSC specific issues are resolved to the satisfaction of CSC. CSC will be invited to participate in weekly meetings with Via and CC leading up to the launch, and after the launch of the program will continue bi-weekly to discuss program operations, ridership, and any other relevant topics to the grant. CSC staff will be given access to an online portal where routine complaints can be filed, in addition to contact information for Via staff if an urgent matter arises that needs immediate attention.

#### **5. CC INVOICING**

- a. CC shall submit invoices to CSC on the 10<sup>th</sup> of every month for reimbursement of the monthly invoice paid by CC for Via services. CC shall include auditable back-up documentation with each invoice, including fare-box discounts, and any applicable fees or taxes.
- b. Upon the Expiration Date, or date of sooner termination, CC will invoice CSC and CSC will pay its pro-rata share of all remaining unpaid contractor costs for the period where Via service was provided between the date of CSC's previous payment to date of termination.

#### **6. CSC's OBLIGATIONS**

CSC will remit the amount due to CC under this Agreement within thirty (30) calendar days of CSC's receipt of a complete and proper, fully documented invoice complying with the requirements set forth herein. CSC shall reimburse CC in arrears for Eligible Costs up to CSC's Maximum Contribution Amount.

#### **7. INDEMNIFICATION**

Neither CSC nor CC, nor any officer or employee thereof shall be responsible for any damage or liability arising out of or relating to each others' negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction associated with the Cupertino-Santa Clara Joint On-Demand Shuttle Service Project. CC and CSC will fully indemnify and hold each other harmless from any liability imposed for injury (as defined by Government Code §810.8) arising out of or relating to each Parties negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction under this Agreement.

Additionally, CC will ensure that CC's contract with Via includes CSC approved indemnification and hold harmless language for the benefit of CSC.

**8. INSURANCE**

Via maintains insurance coverage for its services while in operation on public roadways and while serving the public. The insurance requirements imposed by the CC will apply to the larger service zone upon expansion. The policy provides coverage for Commercial General Liability, and Automobile Liability. Each occurrence is covered up to \$1,000,000, with \$100,000 towards damage to rented premises, \$5,000 medical expenses to any one individual, \$1,000,000 personal & advanced injury, and \$10,000,000 General Aggregate. Automobile Liability includes coverage for up to \$1,000,000, combined single limit. CC will cause Via to name CSC as an additional insured for the applicable policies stated above in compliance with the CSC's insurance requirements for this project as shown in "Exhibit B" attached and incorporated herein.

**9. PUBLIC WORKS**

If CC awards a contract to a third party for the performance of a public work (as defined in California Labor Code Section 1720 through 1720.6) (a "Public Works Contract") in connection with this Agreement, CC must comply, and must require such third party to comply, with the requirements of California Labor Code Section 1720 et seq. If the Public Works Contract is funded in whole or in part with federal funds, CC must also comply, and must require such third party to also comply, where applicable, with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148).

**10. COMPLIANCE WITH APPLICABLE LAW**

In the execution of the Cupertino-Santa Clara Joint On-Demand Shuttle Service Project and performance responsibilities set forth herein, CSC and the CC must comply with all applicable requirements of local, state, and federal laws.

**11. TERMINATION**

Parties shall have the right to terminate this Agreement without cause. Upon termination, the termination notice must identify the effective date of such termination and must be provided in accordance with the terms and conditions of this Agreement. In the event of termination by either Party prior to August 30, 2027, the Parties agree to be jointly liable for reasonable costs arising from such termination, including but not limited to any costs arising from the TIRCP grant or under the Via contract between CC and Via. As used herein, termination includes the failure of either party to provide the funding set forth in Section 3.

**12. AUDIT AND RECORDS**

- a. All Parties must maintain, and shall require their contractors to maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data pertaining to services performed under this Agreement, including the costs of contract administration. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges and must be sufficient to allow a proper audit of services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.
- b. For the duration of the Agreement, and for a period of five (5) years after final payment, the Parties and their representatives shall have access during normal business hours to the other Party's books, accounts, records, data, and other relevant documents that are pertinent to this

Agreement for audits, examinations, excerpts, and transactions and copies thereof must be furnished upon request.

**13. AGENCIES REPRESENTATIVES**

The City Manager or designee for CSC is hereby made the representative of CSC for all purposes under this Agreement. The City Manager or designee for CC is hereby made the representative of CC for all purposes under this Agreement.

**14. NOTICES**

Any notice required to be given by either Party, or which either Party may wish to give, must be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To CSC:           City of Santa Clara  
                      Attention: Michael Liw, Assistant Public Works Director  
                      1500 Warburton Avenue  
                      Santa Clara, CA 95050

To CC:             City of Cupertino  
                      Attention: David Stillman, Transportation Manager  
                      10300 Torre Avenue  
                      Cupertino, CA 95014

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

**15. GENERAL TERMS AND CONDITIONS**

- a. **Headings.** The subject headings of the articles and paragraphs in this Agreement are included for convenience only and will not affect the construction or interpretation of any of its provisions.
- b. **Construction and Interpretation of Agreement.** This Agreement, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the Parties. Accordingly, each Party expressly acknowledges and agrees that: (i) this Agreement will not be deemed to have been authored, prepared, or drafted by any particular Party and (ii) the rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or in the resolution of disputes.
- c. **Amendment.** No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by both of the Parties hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the Parties hereto.
- d. **Entire Agreement.** This Agreement contains the entire understanding between CSC and CC relating to the subject matter hereof. This Agreement supersedes any and all other agreements which may have existed between the Parties, whether oral or written, relating to the subject matter hereof. This Agreement is binding upon each Party, their legal representatives, and successors for the duration of the Agreement.

- e. **Representation of Authority.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a party to this Agreement.
- f. **No Waiver.** The failure of either Party to insist upon the strict performance of any of the terms, covenants and conditions of this Agreement will not be deemed a waiver of any right or remedy that either Party may have, and will not be deemed a waiver of either Party's right to require strict performance of all of the terms, covenants, and conditions hereunder.
- g. **Dispute Resolution.** If a question or allegation arises regarding (i) interpretation of this Agreement or its performance, or (ii) the alleged failure of a Party to perform, the Party raising the question or making the allegation shall give written notice thereof to the other Party. The Parties shall promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the Parties to the greatest extent possible to avoid litigation as a method of dispute resolution. In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of California in the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, San José, California.
- h. **Severability.** If any of the provisions of this Agreement (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, CSC and CC shall negotiate an equitable adjustment in the provisions this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- i. **Governing Law.** The laws of the State of California will govern this Agreement, as well as any claim that might arise between CC and CSC, without regard to conflict of law provisions.
- j. **Venue.** Any lawsuit or legal action arising from this Agreement must be commenced and prosecuted in the courts of Santa Clara County, California. CC agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
- k. **Non-discrimination.** The Parties and any contractors performing services on behalf of the Parties ("Contractors") will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age, sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the Parties and Contractors shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. The Parties and Contractors must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.
- l. **Relationship of the Parties.** It is understood that this is an Agreement by and between independent parties and does not create the relationship of agent, servant, employee,

partnership, joint venture or association, or any other relationship other than that of independent contractor.

- m. Execution in Counterparts / Electronic Signature.** This Agreement may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. Unless otherwise prohibited by law, CSC policy, or CC policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by each of the Parties.

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**WITNESS THE EXECUTION HEREOF** the day and year first hereinabove set forth.

**"CSC"**

City of Santa Clara

**"CC"**

City of Cupertino

By: \_\_\_\_\_

Name:

Office of the City Manager

City of Santa Clara

1500 Warburton Avenue

Santa Clara, CA 95050

Telephone: (408) 615-2210

Fax: (408) 241-6771

By: \_\_\_\_\_

Name: Pamela Wu

Title: City Manager

City of Cupertino

10300 Torre Avenue

Cupertino, CA 95014

Telephone: (408) 777-3200

Fax: (408) 777-3366

APPROVED AS TO FORM:

**"CSC"**

**"CC"**

\_\_\_\_\_  
Name: Glen R. Googins

Title: City Attorney

City of Santa Clara

1500 Warburton Avenue

Santa Clara, CA 95050

Telephone: (408) 615-2210

Fax: (408) 241-6771

\_\_\_\_\_  
Name: Chris Jensen

Title: City Attorney

City of Cupertino

10300 Torre Avenue

Cupertino, CA 95014

Telephone: (408) 777-3200

Fax: (408) 777-3366