

**AGREEMENT BETWEEN THE CITY OF CUPERTINO AND  
THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT  
FOR THE CRISTO REY DRIVE BIKE LANES PROJECT**

THIS AGREEMENT is entered into by and between the CITY OF CUPERTINO, a municipal corporation ("CITY") and the MIDPENINSULA REGIONAL OPEN SPACE DISTRICT ("DISTRICT"), and is effective on the last date signed below ("Effective Date").

RECITALS

WHEREAS, DISTRICT's mission is to acquire, restore, preserve and protect, in perpetuity, open space land as part of the regional greenbelt, and to provide opportunities for ecologically sensitive public enjoyment and education; and

WHEREAS, DISTRICT conducted the *Rancho San Antonio Multimodal Access Study 2021* to explore and evaluate non-motorized mobility, transit options and parking alternatives for Rancho San Antonio Preserve to encourage visitors to opt for greener forms of transportation and reduce parking demand and traffic, while maintaining equitable access for both local and regional visitors; and

WHEREAS, DISTRICT's Study recommendations were scored and weighted on a series of factors to develop three sets of strategies for implementation; and

WHEREAS, DISTRICT's Board of Directors authorized the implementation of the first priority set in April 2021 containing six strategies for improvement; and

WHEREAS, DISTRICT identified strategy *New and Improved Bike Access* which includes collaboration between DISTRICT and CITY to implement bike access improvements along Cristo Rey Drive, a CITY street; and

WHEREAS, CITY's *2016 Bicycle Transportation Plan* identifies a prioritized list of projects that support and promote bicycling in Cupertino; and

WHEREAS, CITY's 2016 Bicycle Transportation Plan identified implementation of Class II bike lanes on Cristo Rey Drive as a Tier III improvement; and

WHEREAS, On January 18, 2023, CITY's Bicycle and Pedestrian Commission approved the implementation of Class II bike lanes on Cristo Rey Drive through a cost sharing agreement with DISTRICT; and

WHEREAS, CITY and DISTRICT find it is in the public interest to share the PROJECT costs due to the mutual benefit the Project will confer; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations contained herein, CITY and DISTRICT agree:

**1. PROJECT DESCRIPTION:**

For purposes of this Agreement, the “PROJECT” shall consist of installing approximately 7,000 linear feet of Class II bike lanes through removal and replacement of traffic markings, markers, and legends on Cristo Rey Drive, exclusively in the CITY’s jurisdiction, 150 feet east of Cristo Rey Place to Canyon Oak Way.

**2. PROJECT EXECUTION:**

CITY agrees as follows:

- A. To administer the construction of the PROJECT. Administration shall include preparation of specifications, contract documents and cost estimate; notification of local business; coordination with various agencies; preparation of all necessary environmental documents; obtaining permits; obtaining bids; awarding the construction agreement; administering the construction agreement; providing materials control and inspection services; and making progress payments to the contractor.
- B. Promptly provide DISTRICT with awarded final specifications and contract documents for the PROJECT.
- C. To pay CITY’s 50% share of the PROJECT COST. For purposes of this Agreement, the “PROJECT COST” is defined as the actual amount paid to the contractor for construction of the PROJECT.
- D. To keep and maintain a complete copy of all records regarding costs and expenditures relating to the PROJECT, together with a complete copy of all plans, specifications, reports, contracts and other documents relating to the PROJECT.

DISTRICT agrees as follows:

- A. To pay DISTRICT’s 50% share of the PROJECT COST to CITY, including contingencies / change orders, subject to a total not-to-exceed amount of \$15,000.
- B. To pay its share of the PROJECT COST within forty-five (45) business days of receiving and approving the detailed invoice from CITY, provided that both of the following conditions are met:
  - 1. The PROJECT has been completed and DISTRICT has verified in writing that the CITY has accepted the PROJECT in accordance with the contract documents; and
  - 2. The detailed invoice sets the cost of construction of all PROJECT work based on the actual contract unit prices paid and negotiated change order(s), if any.

**3. TERM OF AGREEMENT:**

- A. Unless otherwise modified by a written amendment to this Agreement, the term of this Agreement shall be one (1) year from the Effective Date or until the PROJECT acceptance by both parties and final payments of all outstanding balances, whichever is later.
- B. CITY shall cause the contractor to provide a warranty period of at least one (1) year from the acceptance date.

**4. OWNERSHIP AND MAINTENANCE:**

- A. During the course, and upon completion, of the PROJECT, ownership and title to all materials, equipment and appurtenances installed as a part of the PROJECT will be vested in CITY and no further agreement will be necessary to transfer ownership.
- B. As owner of the PROJECT, CITY shall be solely responsible for its ongoing maintenance, operation and repair.

**5. CONTRACTOR SHALL BE AN INDEPENDENT CONTRACTOR:**

Any contractor(s) hired by any Party to perform the work included in the PROJECT shall not be an agent or employee of any Party and will perform such work as independent contractor. All persons employed by or contracted with such contractor(s) to furnish labor and/or materials in connection with the work in the PROJECT shall not be employees of any Party in any respect.

**6. TERMINATION:**

Once CITY has awarded the construction contract for the PROJECT, the Agreement can be terminated only upon the mutual written consent and terms acceptable to all Parties.

**7. NO PLEDGING OF EITHER JURISDICTION'S CREDIT:**

Under no circumstances shall either CITY or DISTRICT have authority or power to pledge the credit of the other public entity or incur obligation in the name of the other public entity.

**8. NO THIRD PARTY BENEFICIARY:**

This Agreement shall not be construed or deemed to be 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.

**9. AMENDMENTS:**

No alternation or violation of the terms of this Agreement shall be valid unless made in writing.

**10. NOTICES:**

Communications relating to this Agreement shall be in writing and shall be delivered personally, sent by United States mail, first class postage prepaid, or by private messenger or courier service:

To CITY: David Stillman,  
Transportation Manager  
City of Cupertino  
10300 Torre Ave.  
Cupertino, CA 95014

To DISTRICT: Susanna Chan  
Assistant General Manager  
Midpeninsula Regional Open Space  
District  
5050 El Camino Real  
Los Altos, CA 94022

**11. SEVERABILITY CLAUSE:**

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

**12. HOLD HARMLESS/INDEMNIFICATION:**

Neither of the respective Parties, their respective City Council, Board of Directors, employees, officers, agents and assigns shall be responsible to the other Party 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 further understood and agreed that pursuant to California Government Code Section 895.4, that each Party shall fully indemnify and hold the other Party 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 the indemnifying Party 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, errors or omissions of the indemnifying Party and/or that Party's officers, employees, agents, or any person or entity acting or omitting to act for or on behalf of said Party or such person or entities as are specifically authorized and empowered by that Party to act for it.

**13. CAPTIONS:**

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.

**14. INSURANCE REQUIREMENTS:**

CITY shall require any contractor awarded a contract for any portion of the work to be done on the PROJECT to secure and maintain in full force and effect at all times during construction and performance of the PROJECT, and until said PROJECT is accepted by all Parties, bodily injury insurance, and property damage insurance, at no additional cost to either DISTRICT, with coverage amounts, required endorsements, certificates of insurance, and coverage verifications satisfactory and acceptable to all Parties.

It is mutually understood that during the term of the construction activities on the PROJECT,

CITY will require the successful contractor to carry commercial general liability in amounts of not less than Two Million Dollars (\$2,000,000) per occurrence; automobile liability in an amount not less than Two Million Dollars (\$2,000,000) per accident; and a Workers' Compensation Insurance policy as required by the State of California, with Statutory and Employer's Liability Insurance limits of not less than One Million Dollars (\$1,000,000).

**15. STATUTES AND LAW GOVERNING CONTRACT:**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. CITY shall require that any contractor awarded a contract for any portion of the work to be done on the PROJECT comply with the requirements for prevailing wage under Labor Code Section 1770, et seq.

**16. WAIVER:**

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.

**17. ENTIRE AGREEMENT:**

This Agreement contains the entire Agreement between CITY and DISTRICT relating to the PROJECT. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

**18. OTHER AGREEMENTS:**

This Agreement shall not prevent either Party from entering into similar agreements with others. The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the effective date.

IN WITNESS WHEREOF, CITY and DISTRICT execute this Agreement.

For the CITY OF CUPERTINO

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

City Manager

Attest: \_\_\_\_\_ Approved as to form for CITY: \_\_\_\_\_

City Clerk

City Attorney

For the MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

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

General Manager

Attest: \_\_\_\_\_

District Clerk

Approved as to form for DISTRICT: \_\_\_\_\_

General Counsel