

**FUNDING AGREEMENT
BETWEEN
CITY OF SAN JOSE
AND
CITY OF CUPERTINO
FOR
STEVENS CREEK BOULEVARD VISION STUDY FUNDING**

This Funding Agreement (“Agreement”) is entered into by and between the City of San José, a municipal corporation and chartered city of the State of California (“CSJ”) and the City of Cupertino (“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 2018, the cities of San José, Santa Clara, and Cupertino, County of Santa Clara, and the Valley Transportation Authority formed a multi-jurisdictional group to generally discuss key regional issues with a focus on transportation and circulation, including complete streets and high-capacity transit concepts along the Stevens Creek Boulevard Corridor (SCBC); and
- B. **WHEREAS**, in 2019, the cities of San Jose, Santa Clara, Cupertino, and Santa Clara adopted resolutions in support of a joint study of the SCBC, formalizing interest in creating a common vision for complete street and high-capacity transit concepts that will improve mobility and its interrelationship with walking, biking, placemaking, and enhancing the quality of life for all community members; and
- C. **WHEREAS**, in 2020, , a “Steering Committee” of elected representatives between the cities of San José, Santa Clara, Cupertino and , County of Cupertino, and the Valley Transportation Authority was established to focus work on the SCBC vision; and
- D. **WHEREAS**, in 2020, the Steering Committee jointly submitted a grade separated high-capacity transit concept along the SCBC to the Plan Bay Area 2050 process; and
- E. **WHEREAS**, on July 20, 2020, consensus was reached among the Steering Committee to proceed with developing a funding strategy for a study (“Vision Study” or “Project”) to provide illustrative designs to support community engagement and discussion of complete streets and high-capacity transit concepts along the SCBC; and
- F. **WHEREAS**, the City of San Jose (“CSJ”) is in the process of establishing a Multimodal Transportation Improvement Plan (MTIP) for CSJ that identifies, prioritizes, and recommends transportation projects and programs for West San José, which includes the portion of the

SCBC (within CSJ jurisdiction) between Stern Avenue and Diridon Station; and

- G. **WHEREAS**, staff from the cities of San José, Santa Clara, and Cupertino, County of Santa Clara, and the Valley Transportation Authority agree on CSJ leading the SCBC Vision Study in coordination with the cities of Cupertino, and Santa Clara, County of Santa Clara, and the Valley Transportation Authority; and
- H. **WHEREAS**, the CSJ West San José MTIP presents an opportunity to advance and streamline the Vision Study between participating jurisdictions for the Stevens Creek Boulevard corridor while maintaining its purpose and expected outcomes; and
- I. **WHEREAS**, consistent with the goals of the West San José MTIP, CSJ will develop the Vision Study for the Stevens Creek Boulevard corridor between Foothill Boulevard and Diridon Station in coordination with the cities of Cupertino, and Santa Clara, County of Santa Clara, and the Valley Transportation Authority; and
- J. **WHEREAS**, in order to develop the Vision Study for the SCBC between Foothill Boulevard and Diridon Station, CSJ will enter into one or more agreements with contractors, subject to certain funding conditions set forth in this Agreement;

NOW THEREFORE, for good and valuable consideration, the CSJ and Cupertino (“Parties”) agree as follows:

II. AGREEMENT

1. SCOPE OF WORK

The scope of work (Attachment A) consists of developing a Vision Statement and Vision Implementation for SCBC. The scope is based on a 19-month duration project with two months allocated to Project Initiation, eight months allocated to the development of a Vision Statement, and nine months allocated to the Vision Implementation development.

The study deliverables include a draft and final SCBC Vision Plan that summarizes relevant information from previous deliverables: existing conditions report, public outreach results, vision statement, alternative improvement concepts considered and evaluated, final vision concept, and implementation and a funding strategy.

CSJ will hire one contractor in coordination with the cities of Cupertino (“CC”), Santa Clara, County of Santa Clara, and the Valley Transportation Authority, to develop the Vision Study and carry out Project development.

2. TERM OF AGREEMENT

This Agreement shall become effective upon the Effective Date and will remain in effect through either: (i) CSJ's full expenditure of CC's Maximum Contribution Amount (as defined in **Section 4**); or (ii) December 31, 2024; or (iii) CSJ's completion of the Vision Study, or whichever occurs first ("Expiration Date"), unless and until terminated by either Party at any time by giving fourteen (14) calendar 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. **CC's Financial Contribution.** CC will provide an amount not to exceed \$154,079.00 ("Maximum Contribution Amount") for Eligible Costs (as defined below in **Section 5**) toward the advancement and development of the Vision Study on a cost reimbursement basis.
- b. **CSJ's Financial Contribution.** CSJ is solely responsible for all funds expended on the Project outside of this Agreement.
- c. **Additional Funds.** If additional funds are secured through joint grant applications or joint efforts by CC and the CSJ, the applicable joint funds will be utilized to fund additional, eligible scope beyond the individual Party shares. Joint funds cannot be used to supplement a Party's pro-rata share. To the extent possible and allowable, joint funds will be utilized before individual Party contributions. Additional funds will require an amendment to the scope of work and this funding agreement.

4. ELIGIBLE COSTS

- a. The only eligible costs that may be reimbursed under this Agreement are contractor costs related to the development of the Vision Study ("Eligible Costs"). Any and all costs (direct, indirect, or staff time) incurred by a Party, with the exception of the contractor costs, are the responsibility of each respective Party.

5. CSJ's OBLIGATIONS

CSJ may retain contractor in the development and delivery of the Vision Study. CSJ may issue task orders to the contractor for the contractor to proceed with services. However, CSJ may, in its sole discretion, wait for sufficient funding before issuing a task order to ensure that there will be sufficient funds to reimburse CSJ for cost of the contractor services rendered under the task order.

6. CSJ INVOICING

- a. CSJ shall submit invoices to CC on a quarterly, if not more frequent, basis for reimbursement of the contractor costs paid by CSJ to develop and deliver the Vision Study. CSJ shall include auditable back-up documentation with each invoice.

- b. Upon the Expiration Date, or date of sooner termination, CSJ will invoice CC and CC will pay its pro-rata share of all of CSJ's remaining unpaid contractor costs, up to CC's Maximum Contribution Amount, for contractor services rendered between the date of CC's previous payment to the Expiration Date or date of sooner termination.

7. CC's OBLIGATIONS

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

8. INDEMNIFICATION

Neither CC nor any officer or employee thereof shall be responsible for any damage or liability arising out of or relating to CSJ's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction associated with the Vision Study. CSJ will fully indemnify and hold CC harmless from any liability imposed for injury (as defined by Government Code §810.8) arising out of or relating to CSJ's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction delegated to CSJ under this Agreement.

9. INSURANCE

CSJ is a self-insured public agency for third party claims arising out of its general operations (by way of example, commercial general liability, professional liability or automobile liability insurance). Further, CSJ is also self-insured covering workers' compensation claims and has received the necessary consent of the State Department of Industrial Relations to do so. Each fiscal year, as a part of its budgetary process, CSJ appropriates funds specifically for the purposes of satisfying valid third-party claims and workers' compensation claims which may potentially be brought against CSJ. Information concerning these appropriations is a matter of public record and can be obtained from visiting the following website: <http://www.sanjoseca.gov/budget/>.

10. PUBLIC WORKS

If CSJ 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, CSJ 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, CSJ must also comply, and must require, such third party to also comply with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148).

11. COMPLIANCE WITH APPLICABLE LAW

In the execution of the Vision Study and performance responsibilities set forth herein, CC and the CSJ must comply with all applicable requirements of local, state, and federal laws.

12. TERMINATION

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.

13. 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.

14. AGENCIES REPRESENTATIVES

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

15. 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 CC: City of Cupertino
 Attention: David Stillman, Transportation Manager
 10300 Torre Ave
 Cupertino, CA 95014

To CSJ: City of San José
 Attention: Director of Transportation
 200 East Cupertino Street, 8th Floor

San José, CA 95113

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

16. 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 CC and CSJ 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, CC and CSJ shall negotiate an equitable adjustment in the provisions of 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 CSJ and CC, 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. CSJ 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 (over 40), 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 employee's 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, CC policy, or CSJ 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.

"CC"

City of Cupertino

"CSJ"

City of San José, a municipal
corporation and chartered city
in the State of California

By: _____

Name: Jim Throop

City Manager

City of Cupertino

By: _____

Name: Sarah Zarate

Title: City Manager's Office, Director

APPROVED AS TO FORM:

"CC"

"CSJ"

Name: Chris Jensen

City Attorney

City of Cupertino

Aaron Yu

Deputy City Attorney