

**AGREEMENT BY AND BETWEEN
THE CITY OF MOUNTAIN VIEW AND CITY OF SUNNYVALE
FOR COST SHARING OF BERNARDO UNDERCROSSING PRELIMINARY
DESIGN AND ENVIRONMENTAL REVIEW PROJECT**

This AGREEMENT is made and entered into this ____ day of _____ 2018, by and between the CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation of the State of California, whose address is 500 Castro Street, P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter "MOUNTAIN VIEW"), and the CITY OF SUNNYVALE, a municipal corporation, whose address is 456 West Olive Avenue, Sunnyvale, California, 94086 (hereinafter "SUNNYVALE"), collectively referred to as "the Parties".

RECITALS

WHEREAS, Bernardo Avenue is bisected by the Caltrain railroad tracks and Central Expressway, creating a barrier for bicycles and pedestrians to use Bernardo Avenue for north-south travel; and

WHEREAS, Bernardo Avenue is roughly the boundary between MOUNTAIN VIEW and SUNNYVALE on the south side of the Caltrain tracks and Bernardo Avenue north of the expressway is in MOUNTAIN VIEW; and

WHEREAS, MOUNTAIN VIEW listed Bernardo Avenue as a spot improvement location in the 2015 Bicycle Transportation Plan and has identified the need for a bicycle/pedestrian undercrossing at Bernardo Avenue to support connectivity between high-density housing south of the tracks and the large employment area to the north; and

WHEREAS, SUNNYVALE has retained WMH Corporation ("CONSULTANT") to undertake preliminary design and environmental review for the construction of a bicycle/pedestrian undercrossing of the Caltrain tracks at Bernardo Avenue, hereinafter referred to as "PROJECT"; and

WHEREAS, MOUNTAIN VIEW and SUNNYVALE agree that continuing the Bernardo Avenue bicycle/pedestrian crossing under Central Expressway will improve the benefit and safety for bicycles and pedestrians using the Bernardo Avenue corridor for north-south travel; and

WHEREAS, MOUNTAIN VIEW and SUNNYVALE desire to expand the PROJECT scope to include extending the bicycle/pedestrian undercrossing under Central Expressway; and

WHEREAS, on December 12, 2017, the MOUNTAIN VIEW City Council approved funding for the PROJECT as a midyear capital improvement project and authorized the City Manager to execute a cost-sharing agreement with SUNNYVALE.

NOW, THEREFORE, subject to the terms, conditions, and provisions hereinafter set forth, the parties hereto agree as follows:

AGREEMENT

1 SCOPE OF WORK

1.1 The PROJECT consists of preliminary design and environmental clearance for constructing a bicycle/pedestrian crossing beneath the Caltrain railroad tracks and the adjacent Central Expressway along Bernardo Avenue as defined in the attached CONSULTANT Scope of Work – Amendment 1, attached hereto and incorporated herein as Exhibit A.

1.2 SUNNYVALE will perform the following:

1.2.1 Provide project management, including managing all aspects of CONSULTANT's work and administering CONSULTANT contract.

1.2.2 Provide MOUNTAIN VIEW with administrative drafts of all CONSULTANT deliverables for review and comment allowing a minimum of three (3) weeks for review of reports and design plans.

1.2.3 Involve MOUNTAIN VIEW in technical review meetings with CONSULTANT, stakeholder meetings, and community outreach processes.

1.3 MOUNTAIN VIEW will perform the following:

1.3.1 Assist with data collection and community outreach for the PROJECT.

1.3.2 Participate in PROJECT coordination, technical review, and stakeholder meetings.

1.3.3 Review and comment on draft deliverables in a timely manner.

1.3.4 Assist with organizing a joint SUNNYVALE and MOUNTAIN VIEW Bicycle/Pedestrian Advisory Committee meeting for PROJECT input.

1.3.5 Provide CONSULTANT with any MOUNTAIN VIEW excavation or encroachment permits required to perform PROJECT work at no cost.

1.3.6 Coordinate consideration of approval of the final document by MOUNTAIN VIEW City Council.

1.4 The designated Project Manager for SUNNYVALE for the duration of the PROJECT is Ria Hutabarat Lo or other designated SUNNYVALE employees. SUNNYVALE's Project Manager shall have all the necessary authority to direct technical and professional work within the scope of this Agreement and shall serve as the principal point of contact for SUNNYVALE.

1.5 The designated Project Manager for MOUNTAIN VIEW for the duration of the PROJECT is Dawn Cameron or other designated MOUNTAIN VIEW employee. MOUNTAIN VIEW's Project Manager will act as the principal point of contact with SUNNYVALE.

2. COST SHARING

2.1 MOUNTAIN VIEW agrees to reimburse SUNNYVALE for CONSULTANT costs to deliver the expanded scope of work as shown for Amendment No. 1 in the cost proposal, attached hereto and incorporated herein as Exhibit B. MOUNTAIN VIEW will pay for the actual costs incurred, which may differ from the Amendment No. 1 task costs shown on Exhibit B but are not to exceed a total of Four Hundred Sixty-Five Thousand One Hundred Forty-Four Dollars (\$465,144).

2.2 MOUNTAIN VIEW agrees to reimburse SUNNYVALE for fifty percent (50%) of third-party review costs charged by Caltrain, for a not-to-exceed amount of Ten Thousand One Hundred Twenty-Five Dollars (\$10,125).

2.3 MOUNTAIN VIEW agrees to provide a PROJECT contingency budget of \$46,514. SUNNYVALE's Project Manager shall receive written approval from MOUNTAIN VIEW'S Project Manager prior to use of contingency budget funds.

2.4 SUNNYVALE will invoice MOUNTAIN VIEW for MOUNTAIN VIEW's share of PROJECT costs on a periodic basis to be determined by SUNNYVALE. The invoices will include supporting documentation of the costs to be reimbursed. MOUNTAIN VIEW will pay the invoice from SUNNYVALE within 30 days of receipt of invoice from SUNNYVALE.

2.5 If unanticipated costs that exceed the contingency budget arise during the PROJECT, the parties will convene to determine a mutually agreed course of action.

3. INSURANCE AND INDEMNIFICATION

3.1 SUNNYVALE will require CONSULTANT to add MOUNTAIN VIEW, its officers, officials, employees, and volunteers as additional insured from and against all damages and claims, loss, liability, cost, or expense arising out of or in any way connected with the PROJECT to the insurance coverages required in SUNNYVALE's contract with CONSULTANT.

3.2 SUNNYVALE will require CONSULTANT, to the fullest extent permitted by law, to indemnify, defend with competent counsel reasonably acceptable to the MOUNTAIN VIEW City Attorney, and hold harmless MOUNTAIN VIEW and its directors, officers, employees, and volunteers from and against all liabilities (including, without limitation, all claims, lawsuits, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including, but not limited to, reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) regardless of nature or type that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, or the acts or omissions of an employee, agent, or subcontractor of CONSULTANT. The provisions of this paragraph survive completion of the services or the termination of this Agreement.

3.3 In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but, instead, MOUNTAIN VIEW and SUNNYVALE agree that, pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage, or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such other party under this Agreement. The obligations set forth in this paragraph will survive termination and expiration of this Agreement.

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4. OWNERSHIP OF MATERIALS

4.1 All reports, documents, or other materials developed as part of the PROJECT will be the mutual property of both parties without restriction or limitation upon their use.

5. TERMINATION

5.1 This Agreement terminates upon PROJECT work acceptance and final payments by MOUNTAIN VIEW to SUNNYVALE, and no later than December 31, 2020, unless it is mutually agreed by both MOUNTAIN VIEW and SUNNYVALE to extend the agreement.

5.2 This Agreement can be terminated prior to the term in Section 5.1 only upon the mutual written consent and terms acceptable to both parties.

5.3 MOUNTAIN VIEW'S obligation to reimburse SUNNYVALE pursuant to Section 2 (if unpaid at such time) as well as the Parties' applicable indemnification obligations pursuant to Section 3 shall survive the termination of this Agreement.

6. NOTICES

6.1 Notices required under this Agreement may be delivered by first class mail addressed to the appropriate party at the following addresses:

To MOUNTAIN VIEW: City of Mountain View
Public Works Department
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540
Attn: Director of Public Works

To SUNNYVALE: City of Sunnyvale
Public Works Department
456 West Olive Avenue
Sunnyvale, CA 94086
Attn: Director of Public Works

7. ADDITIONAL PROVISIONS

7.1 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.

7.2 This Agreement contains the entire Agreement between MOUNTAIN VIEW and SUNNYVALE relating to the cost sharing for the Project. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

7.3 If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on MOUNTAIN VIEW and SUNNYVALE.

7.4 This Agreement shall be governed and construed in accordance with the laws of the State of California.

7.5 This Agreement may be executed in counterparts and will be binding as executed.

7.6 This Agreement may only be modified by a written amendment duly executed by both parties to this Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO CONTENT:

Public Works Director

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

APPROVED AS TO FORM:

City Attorney

CITY OF SUNNYVALE, a municipal corporation

By: _____
City Manager

APPROVED AS TO FORM:

City Attorney