

AGREEMENT BETWEEN TOWN OF LOS GATOS AND CITY OF CUPERTINO FOR THE Cal OES PASS THROUGH GRANT SUBAWARD

THIS AGREEMENT is made and entered into on _____ (DATE) by and between the Town of Los Gatos, a California municipal corporation, ("Los Gatos") and the City of Cupertino, a California municipal corporation (herein called "Cupertino"). This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Los Gatos, in conjunction with Cupertino, submitted an Assembly Budget Request to the Assembly Budget Committee for the Resilient Emergency Operations Center and Business Continuity Resilience Program.
- 1.2 Los Gatos was awarded a \$7,000,000 grant from the California Governor's Office of Emergency Services ("Cal OES") to be allocated between various entities as set forth in Exhibit A to this Agreement, and over which Los Gatos was appointed to be the administrator of this grant.
- 1.3 Cupertino was awarded a \$1,000,000 ("Cupertino Funds") from the \$7,000,000 grant from Cal OES to help initiate the Business Continuity Resilience Program which will provide resiliency improvements and technical assistance to businesses in emergency planning. This funding will also help Cupertino to enhance their Emergency Operations Center to support city and regional response.

II. AGREEMENTS

- 2.1 Scope of Services. Los Gatos will be responsible for administering the allocation to Cupertino in a manner consistent with any standards required as a condition of providing these funds, which are hereby incorporated by reference and attached as Exhibit A. Cupertino will be responsible for using the funds consistent with the grant application and approval and the standards set forth in Exhibit A. Los Gatos shall disburse the entire amount of the Cupertino Funds to Cupertino by June 30, 2022.
- 2.2 Term and Time of Performance. Program performance may retroactively begin on July 1, 2021, for purposes of determining eligible expenses unless otherwise noted in Exhibit A. Accordingly, services of Cupertino shall start on the 1st day of July 2021 and end on the 30th day of June 2024 but may be extended and remain in effect during any period that Cupertino has control over the funds, if any. The term of this Agreement and the provisions herein may be extended by mutual agreement in writing to cover any additional time period consistent with grant requirements. Such extension may be based upon remaining initial funding under this Agreement or funding of which Los Gatos remains in control of from Cal OES funds or other assets.

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- 2.3 Budget. Cupertino will incorporate this grant funding in accordance with applicable Governmental Accounting and Auditing Standards and procedures as provided by Cupertino's financial policies and procedures.
- 2.4 Payment. It is expressly agreed and understood that the total amount to be paid by Los Gatos under this Agreement shall not exceed the amount shown in Exhibit A.
- 2.5 Notices. Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, personal delivery, facsimile, or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery. Notices sent by mail are presumed delivered after (5) days. All written communications under this Agreement shall be addressed to the individuals in the capacities listed below, unless otherwise modified by subsequent written notice.

Communications and details concerning this Agreement shall be directed to the following representatives:

Los Gatos

Town of Los Gatos
Attn: Laurel Prevetti
Title: Town Manager
110 E. Main St
Los Gatos, CA 95030
lprevetti@losgatosca.gov

Cupertino

City of Cupertino
Attn: Kristina Alfaro
Title: Administrative Services Director
10300 Torre Ave
Cupertino, CA 95014
kristinaa@cupertino.org

- 2.6 Conditions.
- A. "Independent Contractor"
- Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Cupertino shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement.
- B. Hold Harmless
- Each party shall hold harmless, defend and indemnify the other party from any and all claims, actions, suits, charges and judgments whatsoever that arise out of its performance or nonperformance of the obligations set forth in this Agreement.
- C. Indemnification
- Each party shall indemnify, defend, and hold harmless the other party from any claim, liability, loss, injury or damage arising out of, or in connection with, its performance of this Agreement or the performance of its agents, employees or sub-contractors.

2.7 Administrative Requirements.

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A. Financial Management

1. Accounting Standards & Cost Principles

Los Gatos agrees to comply with Governmental Accounting Standards Board (GASB) accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Documentation and Record Keeping

1. Records to be Maintained

Cupertino shall maintain all records required by Los Gatos and the State of California.

2. Close-outs

Cupertino's obligation to Los Gatos shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to Subrecipient), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Cupertino has control over the funds, including program income.

C. Reporting

Cupertino shall report on an annual basis for the Fiscal Year (FY) ending June 30th. All program expenses related to the funds received under this Agreement are due by September 30th of each FY during the term of this Agreement.

D. Procurement

1. Compliance with Regulations

Cupertino shall procure all materials, property, or services in accordance with its Purchasing Policies and Procedures.

- 2.8 Assignability. Cupertino shall not assign or transfer any interest in this Agreement without the prior written consent of Los Gatos: provided, however, that claims for money due or to become due to Cupertino from Los Gatos under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to Los Gatos.

III. GENERAL TERMS

- 3.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

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- 3.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 3.3 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the parties.
- 3.4 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Los Gatos and Cupertino. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party. Unless otherwise prohibited by law or Cupertino's 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 transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by Cupertino.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Town of Los Gatos by:

Cupertino, by:

Laurel Prevetti, Town Manager

Recommended by:

Department Head

Printed Name and Title

[add approved as to form sig block for Cupertino too]

Approved as to Form:

[attestation not necessary if agreement will not be recorded]

Gabrielle Whelan, Town Attorney

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