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SANTA CLARA COUNTY OPEN SPACE AUTHORITY
20% FUNDING PROGRAM AGREEMENT
CITY OF MILPITAS
Alviso Adobe Renovation Project

DRAFT

This Agreement is made and entered into between the SANTA CLARA COUNTY OPEN SPACE AUTHORITY, a Special District (hereinafter referred to as the "Authority"), and the CITY OF MILPITAS, a municipal corporation (hereinafter referred to as "Applicant").

WHEREAS, the Authority was created by the California State legislature in response to efforts by citizens and local governments of Santa Clara County; and

WHEREAS, the Authority's jurisdiction is comprised of the cities of Campbell, Milpitas, Morgan Hill, Santa Clara and San Jose, as well as unincorporated areas of Santa Clara County (herein collectively referred to as "Participating Jurisdictions"); and

WHEREAS, the mission of the Authority is to preserve, protect and manage, for the use and enjoyment of all people, a well-balanced system of urban and non-urban areas of outstanding scenic, recreational and agricultural importance; and

WHEREAS, approximately twenty percent (20%) of the principal amount of the Authority's assessment revenues, after deducting Authority's operation costs (hereinafter referred to as "20% Program Funds"), is reserved for use by Participating Jurisdictions to supplement their open space efforts which are consistent with the Authority's dedication of open space, agricultural criteria and general acquisition policies; and

WHEREAS, the specific amount allocated to each Participating Jurisdiction is based on its percentage of the total number of parcels within the assessment district; and

WHEREAS, Applicant is requesting funds for the Alviso Adobe Renovation Project ("the Project") located in the City of Milpitas, County of Santa Clara, State of California; and

WHEREAS, Authority's staff has recommended that the Authority approve the expenditure of 20% Program Funds in the amount of $356,837.00 to assist the Applicant in its Project; and

WHEREAS, Authority desires to contribute 20% Program Funds to assist in the development of the Project in order to further Authority goals of providing and/or enhancing open space; and

WHEREAS, Applicant will first need to stabilize the Alviso Adobe and conduct Adobe Building Renovations prior to implementing and enhancing the orchard, garden, and outdoor activity area; and

WHEREAS, in order for Applicant to proceed with the renovations, it is seeking commitment and release of 20% Program Funds during the restoration stabilization and restoration phase of the Project to ensure that the restoration and stabilization is completed; and

WHEREAS, the Authority Board of Directors, with recommendation from its Citizen Advisory Committee, has approved funding of the agrarian and open space components of the Project; and

WHEREAS, the Authority Board of Directors agrees to release the 20% Program Funds during the stabilization and restoration phase of the Project contingent on agreement by the City to guarantee that the associated site improvements (orchard, garden, outdoor activity area) are completed after the stabilization of the Alviso Adobe project.

WHEREAS, Authority's expenditure of 20% Program Funds for the Project is conditioned upon Applicant's satisfaction of the terms and conditions of this Agreement, as set forth in detail below:

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein, the Authority and Applicant agree as follows:

SECTION I. FINDING OF CONSISTENCY WITH 20% FUNDING PROGRAM POLICY

Authority's Board of Directors has evaluated Applicant's application and finds that the Project is consistent with Applicant's General Plan open space goals and policies and with Authority's 20% Funding Program Policy, and that the Project will provide a special benefit to Applicant's citizens as well as a general benefit to citizens of the Participating Jurisdictions.

SECTION II. PROJECT FUNDING

1. **Responsibility of Applicant.**

Applicant shall promptly and without delay:

a). Provide Authority's General manager with copies of all invoices, receipts or other evidence of expenses incurred for the Project prior to receiving disbursement of 20% funds.

b) Secure all government agency approvals required for the satisfactory completion of the Adobe Building Renovations.

c) As a condition of the release of 20% Funding for this project, Applicant commits to the completion of the associated site improvements (orchard,

garden, outdoor activity area) and said improvement shall be completed no later than December 31, 2008. Applicant may request an extension of time for completion of said improvements, which may be granted by the Authority's Board of Directors in its sole discretion. If the associated site improvements are not completed within the time provided, or as may be extended, Applicant will immediately return to the Authority all funds allocated and released to the Applicant pursuant to this Agreement.

d) If the Project is constructed, select a location for a "Sign" to be provided by the Authority acknowledging the Authority's funding assistance, unless the Applicant incorporates this acknowledgement into other signage in a manner approved by the Authority's General Manager. The Authority shall provide specification for the Authority sign and logo.

2. Use of 20% Program Funds.

a). 20% Program Funds shall not be used for:

1) Escrow fees and closing costs;
2) Any property inspection or evaluation, including without limitation, the performance of any Phase I or Phase II environmental evaluations;
3) Applicant salaries, administration and/or overhead related to the Project;
4) Computer hardware or software;
5) Applicant purchased, leased or rented equipment of any kind, including vehicles;
6) Office space;
7) Insurance premiums;
8) Legal fees and costs expended by Applicant, for purchase of Property or implementation of the Project, as well as any dispute with any third party relating to the same; and

c). To the extent necessary, Applicant shall be solely responsible for obtaining any and all funds in excess of the 20% Program Funds needed for the satisfactory completion of the Project.

3. Open Space Purposes

Applicant agrees that the Project will be used for open space and recreation, be open to the public on an equal basis, benefit all citizens of Milpitas, and serve City park and/or open space purposes.

SECTION III. OPERATION AND MAINTENANCE

Applicant is requesting that 20% Program Funds be contributed to the development of the Project. Applicant understands and agrees that the Project will be operated and maintained, in perpetuity, by the Applicant for the benefit of the public.

SECTION IV. COMPENSATION

1. Funding.

Authority shall provide 20% Program Funding in the maximum amount of *Three hundred and fifty six thousand, eight hundred and thirty seven dollars ($356,837.00)*. Applicant's total allocation of 20% Program Funds granted for the Project pursuant to this Agreement must be expended no later than December 31, 2008.

2. Records

a) Applicant shall retain all records pertaining to the Project for audit purposes for a period of three (3) years after completion of the Project or until all Project related claims have been fully and finally settled, whichever occurs last. Applicant shall make all Project records and data available to the Authority within five (5) business days of Authority's written request.

b) Subject to Section IV.2. (a) above, and prior to Applicant's disposal of any or all Project records, Applicant shall notify Authority and Authority shall have the opportunity to place the Project records in storage unless a written release is provided to Applicant by Authority's General Manager.

c) Audits may be conducted at the Authority's discretion. The audits may take two forms: (1) an informal review of the Project records by Authority staff, and/or (2) a formal financial audit conducted by either Authority staff or a consultant. Applicant shall be prepared for either or both types of audits.

d) In the event audit or inspection of the Project records results in the disclosure of any unauthorized expenditures or activities, Applicant shall, within forty five (45) days of the date of Authority's written demand, repay Authority for all funds received for such unauthorized costs or activities. Applicant shall also pay Authority's investments, and all costs of the audit(s) or inspection(s).

SECTION V. INDEMNIFICATION AND INSURANCE

1. Indemnification.

Applicant shall defend, indemnify and hold harmless Authority, its directors, officers, employees and agents from and against any and all claims, losses, demands, damages, costs, expenses, injuries, judgments, penalties, obligations and liabilities whatsoever for or in connection with or in any way related to this Agreement and/or the use of 20% Program

Funds. In the event any such claim is made naming Authority, its directors, officers, employees or agents, Applicant shall immediately notify Authority, whereupon Authority shall have the right to elect either to be defended by Applicant or to retain its own counsel at Applicant's expense.

SECTION VI. TERM OF THE AGREEMENT

1. Effective Date of Agreement

This Agreement shall become operative upon its execution by the parties.

2. Time for Expenditure of Funds

Applicant's total allocation of 20% Program Funds must be expended no later than December 31, 2008. Applicant may request an extension of time for expenditures to complete the Project, which may be granted by the Authority's Board of Directors in its sole discretion. If the 20% Program funds are not expended within the time provided, or as may be extended, those funds allocated for the Project will revert to the Authority for reprogramming to other Participating Jurisdictions. For purposes of this Agreement, "expended" means the transfer of Applicant's 20% Funds.

3. Continuing Obligations

Applicant shall provide assurances that all real property improved or acquired pursuant to the Project shall be for open space or parkland consistent with the Authority's mission, goals, and acquisition criteria, in perpetuity.

SECTION VII. MISC. TERMS & CONDITIONS

1. Notices.

All notices pertaining to this Agreement shall be in writing delivered to the Parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth below. All notices shall be deemed given or delivered; (a) If sent by mail, when received by the party to be notified; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by facsimile, when transmitted. The Parties may, by notice as provided above, designate a different address to which notice shall be given.

SANTA CLARA COUNTY
OPEN SPACE AUTHORITY
General Manager
6830 Via Del Oro
Suite 200
San Jose, CA 95119-1353

CITY OF MILPITAS
Engineering
Division
Attn: Greg Armendariz
455 East Calaveras Boulevard
Milpitas, CA 95035-5479

Phone: (408) 224-7476	Phone: (408) 586-3317
Fax: (408) 224-7548	Fax: (408) 586-3305

2. Remedies Upon Default.

In the event either party defaults in the performance of any of its obligations under this Agreement, the other party shall be entitled to pursue such remedies as are provided in this Agreement or by law or equity.

3. Time is of the Essence; Dates.

Time is of the essence of this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.

4. Binding on Successors.

This Agreement shall be binding not only upon the Parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

5. Additional Documents.

Authority and the Applicant agree to execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

6. Assignments.

Neither of the Parties hereto may assign its interests under this Agreement without the prior written consent of the other Party.

7. Entire Agreement, Modifications, Waiver.

This Agreement constitutes the entire agreement between the Authority and Applicant pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the Parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

8. Severability.

Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

9. Governing Law.

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

10. Delegation of Authority.

a). On behalf of the Authority, the General Manager, is authorized and directed to take all further actions and execute all other documents as necessary and appropriate to carry out the terms of the Agreement, including without limitations, executing the Agreement.

b). On behalf of the Applicant, the City Engineer, is authorized and directed to take all further actions and execute all other documents as necessary and appropriate to carry out the terms of the Agreement, including without limitations, executing the Agreement.

11. Conveyance.

This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same Agreement.

WHEREFORE, the Parties hereto, by their duly authorized representatives, have entered into this Agreement for Alviso Adobe Renovation Project, when this Agreement is fully executed by all parties:

SANTA CLARA COUNTY
OPEN SPACE AUTHORITY
a Special District

PATRICK CONGDON,
General Manager

_____

Date: _____

ATTEST: Lauren Crook, Clerk

_____
Santa Clara County Open Space Authority

CITY OF MILPITAS
a Municipal Corporation

GREG ARMENDARIZ,
City Engineer

_____

Date: _____

APPROVED AS TO FORM:

_____
City Attorney

[Print] _____
Date: _____

APPROVED AS TO FORM

_____
William P. Parkin – Legal Counsel

Date: _____

Budget # _____
Refer # _____

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	321-9515055153575	$356,837	321-951505574800	$356,837

Explain the reason for the budget change:

This project is included in the approved five years Capital Improvement Program and will be implemented in phases based on funding availability. The first phase would be to provide structural stabilization and structural upgrades of the historic Alviso Adobe building, in order to stop further deterioration and prevent complete loss of the building due to an earthquake. This phase is recommended to move forward, independent of the other phases for this reason. The second phase would consist of design and construction of the public access, vehicular parking, and park improvements. The third and final phase would include the historic restoration of the Adobe building, allowing public access on an appointment basis (to the first floor only.)

Staff is currently working on resolving the access and parking issues with the Calvary Church and Alviso Adobe Court residents. Meanwhile staff applied for and has obtained a grant from the Open Space Authority in the amount of $356,837 for site improvements of this project. The Open Space Authority through this grant agreement will allow the City to initially use these funds for the first phase of work involving the building stabilization and structural upgrades.

Approve the grant funding of $356,837 from the SCC Open Space Authority to the Alviso Adobe Renovation Project (5055) for the building stabilization and structural upgrades.

☒ **Check if City Council Approval required.** **Meeting Date:** January 3, 2006

Itemization of funds, if needed:	Amount

Requested by:	Division Head:	Date:
	Department Head:	Date:
Reviewed by:	Finance Director: C. Khul	Date: 12/27/05
Approved by:	City Manager:	Date:

Date approved by City Council, if required: **Confirmed by:**

FI/24786/V

Form 30-222 (Rev. 1/92)