

**FUNDING AND REIMBURSEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE AND
SAN JOSE LIGHT TOWER CORPORATION
RELATED TO THE URBAN CONFLUENCE SILICON VALLEY PROJECT**

THIS AGREEMENT ("Agreement") is made and entered into this 13th day of October 2021, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and San Jose Light Tower Corporation, a California 501c3 organization authorized in the state of California.

RECITALS

Whereas, the City and SJLTC intend to collaborate on the design, construction and future operating plans for an iconic landmark (the "Project") and ancillary improvements (that may be necessary to support the Project and approved by the City and SJLTC pursuant to future agreement) to the Arena Green area of Guadalupe River Park; and

Whereas, the City and SJLTC aspire to, with the creation of the Project and ancillary improvements (as described above), improve the conditions within Arena Green and Guadalupe River Park specifically related to public safety, improved economic opportunity, the creation of opportunities for local artists and musicians, and enhancing the natural and built environment; and

Whereas, the City and SJLTC intend to continue developing and implementing a comprehensive approach for ongoing community outreach to inform future design and activation decisions; and

Whereas, the City and SJLTC desire to enter into this Agreement to provide for reimbursement from SJLTC to the City to directly engage certain consultants and staff needed to perform work related to the Project; and

Whereas, this Agreement does not commit the City to a definite course of action with regard to any project, including approval of any project that may be proposed, the execution and approval of this Agreement is not a "project" under the California Environmental Quality Act ("CEQA");

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

1. Deposit and Payment of Funds.

- 1.1 Payment of City's Costs.** SJLTC shall provide funds, as outlined below, in four (4) installments to enable work as outlined on Exhibit B ("WORK") to be performed by City's consultants and staff. In no event shall WORK necessitating

SJLTC's provision of funds include any ancillary improvements unless such improvements are agreed upon by SJLTC pursuant to a future agreement.

1.2 Deposits.

1.2.1 Deposits. SJLTC shall make four equal payments of \$46,071 each to the City, which equates to twenty five percent (25%) of the budget estimate associated with City staff costs for fiscal year 2021/2022 outlined in Exhibit A attached hereto to pay for City's costs related to the WORK depicted in Exhibit B. The total amount of the four equal payments shall not exceed \$184,284. The initial deposit shall be made within two weeks following execution of this Agreement by City and SJLTC and shall include an additional \$90,000 (for a total first payment of \$136,071) to allow for City to execute a consultant agreement for project management services to support the project. City shall not be obligated to commence or perform any WORK until such time as SJLTC makes the initial deposit. Subsequent deposits shall be made on the following schedule:

- Deposit 2 on or before January 15, 2022
- Deposit 3 on or before March 15, 2022
- Deposit 4 on or before June 15, 2022

These deposits are intended to cover work performed by the City and its consultants as defined in Exhibit B for Fiscal Year 2021/2022. Work for future years will be funded through subsequent addendums to this agreement.

1.2.2 Additional Deposits. SJLTC shall make additional deposits as necessary pursuant to this Agreement within thirty (30) calendar days after receipt of a written request for additional funds from the Director of Parks Recreation and Neighborhood Services or the Director's authorized designee (the "Director") and mutual agreement for the proposed scope of services. SJLTC is not obligated to make any additional deposits, but if the deposit is wholly expended and is not timely replenished by an additional deposit, City will not be obligated to do further work until SJLTC deposits with City additional funds to cover estimated remaining City expenses, as provided herein.

1.2.3 Once paid, any deposit shall be non-refundable, except as provided in Section 1.4 below.

1.2.4 Maximum Compensation. Maximum compensation for this agreement shall not exceed \$790,956. Any revisions or increase in funding will be formalized through an amendment.

1.3 Accounting.

- 1.3.1 In accordance with normal accounting practices, City will track all actual costs related to the services identified in Exhibit A within its financial management system. Actual costs include contractual services, supplies, salaries, benefits, overhead and any other direct or indirect costs related to the administration of this Agreement. Costs of any consultants hired by City in connection with the scope identified in Exhibit A shall be billed at the rate actually incurred by City, without any markups. City will record all funds advanced by SJLTC pursuant to this Agreement within its financial management system.
- 1.3.2 City shall have flexibility to reallocate funds between the line items listed in Exhibit A.
- 1.3.3 If requested by SJLTC in writing, City will provide SJLTC with up to two financial reports listing all costs incurred by City and all funds advanced by SJLTC pursuant to this Agreement within thirty (30) calendar days following such written request. Within sixty (60) calendar days following the expiration date, as defined in Section 3.1 below, or earlier termination of this Agreement, City will submit to SJLTC a final written accounting of the Account.

1.4 Refunds.

- 1.4.1 If this Agreement expires or is terminated as provided herein, either by SJLTC or City, the balance of any remaining deposits made by SJLTC that are not required to pay for costs already incurred by City in accordance with this Agreement prior to the expiration date or the date of the termination notice, shall be refunded to SJLTC within thirty (30) calendar days of the final accounting pursuant to Section 1.3.3 of this Agreement. City shall not refund any funds expended from the deposits prior to the expiration date or the date of the termination notice, nor be responsible for any reimbursement of such expended funds to SJLTC. SJLTC shall reimburse City for any additional costs incurred by City in accordance with this Agreement prior to the expiration date or the date of the termination notice that exceed the amounts deposited by SJLTC within thirty (30) calendar days after the date of expiration or termination to the extent SJLTC agreed to make any additional deposits pursuant to Section 1.2.2 above.

1.5 Interest.

- 1.5.1 Interest shall not accrue on any deposit and shall not be paid by City in refunding a deposit or any portion thereof.

1.6 Relationship to Other Fees and Charges.

1.6.1 The funds deposited with City pursuant to Section 1.2 above are intended to cover City staff and consultant costs associated with certain activities related to planning, design and construction of the SJLTC project.

1.7 No Commitment by CITY to Approve.

1.7.1 SJLTC acknowledges and understands that this Agreement is only for the purpose of providing a funding mechanism to allow City staff and City consultants to perform necessary tasks identified in Exhibit B. SJLTC agrees and acknowledges that this Agreement in no way commits City to approve any improvements to or modifications of Arena Green at Guadalupe River Park proposed by SJLTC.

1.7.2 All expenditures listed in Exhibit A are subject to appropriation by the City Council.

1.8 Staff Commitment by City

1.8.1 Provided SJLTC submits the deposits set forth herein, City commits to provide the necessary staffing to complete the WORK as detailed in Exhibit B. City shall have the absolute right and discretion to utilize City staff and/or City consultants to complete the WORK under this Agreement. Further, City shall have absolute right and authority to contract or engage any specific consultant and/or City staff the City deem is appropriate to complete the WORK set forth in Exhibit B.

2. Procurement of Consultants and City Staffing Plan.

2.1 Using its standard procurement procedures, City may select and retain the services of a qualified consultant or consultants ("Selected Consultant") to conduct the WORK. The Selected Consultant may engage subconsultants as approved and deemed appropriate by City. City shall direct and control the Selected Consultant's services and determine the scope of the WORK to be performed by City staff and the Selected Consultant. City shall provide reasonable notice to SJLTC before retaining any Selected Consultant advising of the cost of such portion of the WORK to be performed by such consultant and shall take reasonable steps to incorporate in any agreement between City and a Selected Consultant the termination provisions set forth in this Agreement.

3. Termination and Expiration.

3.1 Either SJLTC or City may terminate this Agreement by delivering to the other party twenty (20) calendar days' advance written notice of election to terminate. If not subject to earlier termination, as provided herein, this Agreement shall expire upon the last to occur of: (1) written notification by SJLTC that they no

longer intend to pursue the project; or (2) a final determination and action by City Council regarding acceptance of the project. SJLTC's obligations to reimburse City for any outstanding amounts due, however, shall survive, and remain enforceable after, the termination or expiration of this Agreement. City's obligation to provide refunds to SJLTC shall be in accordance with Section 1.4 herein.

4. Miscellaneous Provisions

4.1 Notices. All notices to be given hereunder shall be in writing and shall be served, either personally or by mail, postage prepaid, to the addresses set forth below, or to any other address provided by one party to the other in writing.

To CITY: City of San José
Department of Parks Recreation
and Neighborhood Services
200 E. Santa Clara Street, 9th Floor
San José, CA 95113
Attn: Jon Cicirelli, Director

To DEVELOPER: San José Light Tower Corporation
671 Washington Street
San José, CA 95112

With a copy to: Daniel Nevis
Miller Morton Caillat & Nevis, LLP
2001 Gateway Place, Suite 220W
San José, CA 95110

The effective date of such written notice shall be the date of personal delivery or the date of receipt by certified mail or three (3) calendar days after mailing in the United States Mail.

4.2 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. This Agreement supersedes any and all prior representations, agreements, arrangements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement. This Agreement may not be amended except pursuant to a written instrument signed by all parties.

4.3 Assignment. SJLTC shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or notation), without the prior written approval of City.

4.4 Waiver. The parties agree that waiver by either party of any breach of one or more of the terms, covenants or conditions under this Agreement or any default

in the performance of any obligations under this Agreement shall not be construed as waiver by that party of any other term, covenant, condition, or obligation; nor shall a waiver of any incident of breach or default constitute a continuing waiver of same.

4.5 Applicable Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. In the event that suit shall be brought by either party to enforce or interpret the terms of this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

4.6 No Third-Party Beneficiaries. This Agreement shall not be construed as, or deemed to be an Agreement for the benefit of, any third party or parties; and no third party or parties shall have any right or action hereunder for any cause whatsoever.

4.7 No Joint Venture. Neither this Agreement, nor the reimbursements made hereunder, shall constitute or create any form of association, joint venture, partnership, or cooperative activity of any nature whatsoever for any purpose between City and SJLTC.

APPROVED AS TO FORM:



AARON YU
Deputy City Attorney

“City”

CITY OF SAN JOSE,
a municipal corporation

By  On behalf of _____
JON CICIRELLI,
Director
Department of Parks, Recreation and
Neighborhood Services

“DEVELOPER”

SAN JOSE LIGHT TOWER CORPORATION


By  _____
Print Name: Steve Borkenhagen
Title: Executive Director

EXHIBIT A

Anticipated Services and Reimbursements

City Staff Costs

Public Works	\$ 113,564
Planning, Building and Code Enforcement	\$ 44,928
Parks Recreation and Neighborhood Services	\$ 25,792
TOTAL CITY STAFF COSTS	\$ 184,284

City Staff Costs - Quarterly Payment Schedule

<u>Deposit</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Description</u>
1	\$136,071	Upon Execution	<u>City Staff Cost - \$46,071</u> <u>Project Management Consultant Cost - \$90,000</u>
2	\$46,071	December 1, 2021	<u>City Staff Cost - \$46,071</u>
3	\$46,071	March 1, 2022	<u>City Staff Cost - \$46,071</u>
4	\$46,071	June 1, 2022	<u>City Staff Cost - \$46,071</u>

Consultant Costs

Civic Engagement Support	\$ 130,000
Consultants to Prepare the Environmental Impact Report ¹	\$250,000 - \$350,000
Project Management Consultant	\$ 90,000

Consultant Costs - Payment Schedule

1. Consultant costs shall be paid within 30 days written notice from PRNS.
2. Project Management Consultant cost shall be paid in the initial deposit.

EXHIBIT B
Schedule of Activities

Planned Work for FY 2021/2022:

- Undertake Civic Engagement related to the proposed Project. The detailed scope will be developed following execution of this Agreement, but is expected to include:
 - Citywide in-person and virtual outreach, including on-line surveys
 - Meetings with specific community and special interest groups
 - Periodic reports to City Council Neighborhood Services and Education (NSE) committee, Parks and Recreation Commission (PRC), and City Council. Reporting to NSE is expected to be quarterly and PRC reporting is expected at project milestones per City Council direction on May 4, 2021.
- Initiate work on:
 - Integrating the proposed iconic structure into the Arena Green Park
 - Evaluating construction means and methods of the Project
 - Preparation of Environmental Impact Reports for the Project which includes but may not be limited to development of the Project Description, coordinating and hosting the Project Scoping meeting, outreach to and consultation with the Native American Tribal Representatives, completion of consultant selection and execution of an agreement with the EIR consultant.
- Prepare, coordinate, review and provide input on conceptual ideas of the above.
- Develop project descriptions and identify City approvals that are required.

Future Work Items (to be the subject of future addenda to this agreement):

- Development and review of Capital and Operating Fundraising Plans
- Review of Design Plans
- Construction inspection and observation services
- Preparation of an Operations and Maintenance Plan for the completed project
- Review and support development of a Business Plan to consider future revenue opportunities associated with the project
- Continue with public outreach and meetings



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Patsy Cortez
 EMAIL: Patsy.Cortez@sanjoseca.gov


SCANNED SIGNATURE AUTHORIZATION

DATE: 10/8/21
 TO: Steve Borkenhagen
 EMAIL: steve@urbanconfluence
 PHONE: (408) 913-5984 siliconvalley.org

TOTAL PAGES: _____
 (INCLUDING THIS PAGE) _____
 TO: _____
 EMAIL: _____
 PHONE: _____

I agree to use electronic signatures

I agree to use electronic signatures

BY: 

BY: _____

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN COLOR**
4. EMAIL THE ENTIRE DOCUMENT TO

To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER
- PERSONALLY KNOWN TO CITY STAFF

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
 City Manager
 City Clerk **OR** Return to
Dept. (circle one)

Insurance Certificates / Waivers Electronically Signed: Yes
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Other

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667197-000

Contractor: San Jose Light Tower Corporation

Address: 671 Washington Street, San Jose, CA

Phone: _____

Email: steve@urbanconfluencesiliconvalley.org

Contract Description: San Jose Light Tower Corporation will provide reimbursement to the City to directly engage certain consultants and staff for the Arena Green area of Guadalupe River Park.

Term Start Date: Upon Execution Term End Date: June 30, 2022 Extension: Select one

Method of Procurement: N/A RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): 6/22/2021

Agenda Item No.: 2.18

Resolution No.: _____

Ordinance No.: NA

Original Contract Amount: NA

Amount of Increase/Decrease: NA

Option #: ___ of ___ Option Amount: _____

NTE/Updated Contract Amount: \$220,956

Fund/Appropriation: _____

Form 700 Required (Selection mandatory for processing): No

Revenue Agreement: No

Tax Certificate No.: _____


Expiration Date: _____

Department: PRNS (64)

Department Contact: Patsy Cortez patsy.cortez@sanjoseca.gov Customer (Finance Only): _____

Notes: DB#646

Project Manager: Nicolle Burnham, nicolle.burnham@sanjoseca.gov

Department Director Signature:  On behalf of Jon Cicirelli 10/13/2021 Date

Office of the City Manager Signature: _____ Date