

COOPERATIVE AGREEMENT  
FOR THE  
CHANNEL STREET CORRIDOR IMPROVEMENTS PROJECT

This Cooperative Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF STOCKTON, a Municipal Corporation to the State of California, (“CITY”), and the San Joaquin Regional Rail Commission a California joint powers agency (“SJRRRC”),

W I T N E S S E T H

WHEREAS, SJRRRC plans to undertake the Channel Street Corridor Improvements Project (herein referred to as “PROJECT”) to improve the streetscape and pedestrian paths of Channel Street from Aurora Street to Stanislaus Street, Stanislaus Street from Miner Avenue to Weber Avenue, Grant Street from Miner Avenue to Weber Avenue, and Aurora Street from Miner Avenue to Weber Avenue (see Exhibit A attached hereto and made a part hereof); and

WHEREAS, SJRRRC has secured Regional State and local funding comprised of Active Transportation Program and Measure K funds for PROJECT within City limits; and

WHEREAS, CITY has secured Affordable Housing and Sustainable Communities (AHSC) Program funding for PROJECT within City limits; and

WHEREAS, SJRRRC is taking the lead in completing permitting, environmental approvals, and design phase work for the PROJECT; and

WHEREAS, CITY will be jurisdictional lead agency on behalf of SJRRRC for the construction phase of the project commencing with advertisement of the PROJECT.

NOW, THEREFORE, it is mutually agreed by and between CITY and SJRRRC as follows:

1. CITY shall act as jurisdictional lead for the construction phase consisting of: advertising for bids, awarding a construction contract, and overseeing construction, and construction management for the PROJECT.
2. SJRRRC, as overall PROJECT lead, is responsible for overall funding coordination, disbursements, and approvals including actual costs associated with construction of the PROJECT. Construction costs include construction, construction management, inspection, administration, and contingencies. CITY and SJRRRC shall confer on all anticipated costs prior to advertising the PROJECT. CITY and SJRRRC agree that Exhibit B, attached hereto and made a part hereof, represents the best estimate possible at the time of this Agreement.
3. SJRRRC shall reimburse CITY 100% of the actual cost of construction, construction management, and administrative expenses for the PROJECT within the available PROJECT budget. CITY may retain contract support for construction management or other services.

4. SJRRC will be responsible for reporting and other administrative requirements for the PROJECT funding. CITY will provide requested information to SJRRC as requested to comply with reporting requirements and deadlines. Reporting requirements include quarterly progress reports, completion report, final delivery report, and before and after photos.
5. Unless SJRRC and CITY otherwise agree in writing the amount actually paid or reimbursed to CITY will not exceed \$8,397,980. The City will pay the contractor directly in amount not to exceed \$202,020 from their AHSC funding source. The estimated breakdown of the estimated project costs at that time of this Agreement is as follows:
 

a. Material Testing	\$ 100,000
b. Construction Management	\$1,000,000
c. Construction	\$6,284,667
d. Contingency (19%)	<u>\$1,215,333</u>
Total:	<u>\$8,600,000</u>
6. Unless otherwise agreed to in writing the amount actually paid or reimbursed to CITY will not exceed \$5,100,000 for fiscal years (July 1 – June 30) 2024–2025 and 2025-2026 and \$3,500,000 for fiscal year 2025-2026.
7. CITY will access the AHSC funding source directly by invoicing Visionary Home Builders of California in an amount not to exceed \$202,020.
8. On a monthly basis, the CITY shall submit to SJRRC a detailed invoice reflecting all costs incurred by the City for the PROJECT. Invoices shall clearly identify the portion SJRRC is responsible for reimbursing. Invoices shall be submitted via email to [AccountsPayable@sjrrc.com](mailto:AccountsPayable@sjrrc.com).
9. CITY will require any and all contractors, subcontractors, and entities providing goods or services in connection with the PROJECT to agree to comply with all applicable laws, statutes, and regulations.
10. SJRRC will reimburse CITY for all allowable costs, as described in Section 10 of this Agreement, associated with construction phase of the PROJECT which will include construction, construction management, inspection, administration. SJRRC will make its best efforts to pay all invoices within sixty (60) days of approved invoice. SJRRC shall notify CITY, in writing, of any disputed amounts included in an invoice.
11. All costs charged to this Agreement by CITY shall be supported by time records, invoices, and vouchers, evidencing in proper detail the nature and propriety of the charges. CITY shall also comply with Title 2, Code of Federal Regulations, Part 200 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) in the procurement of services, supplies, or equipment. Any direct costs charged for travel shall be in accordance with Cal HR guidelines.

12. CITY shall assume maintenance of project assets within CITY right of way, before, during and after the construction phase of the PROJECT. As this is the CITY's Right of Way and the CITY is directly managing and supervising the construction and operation of the affected streets, CITY assumes all responsibilities for PROJECT maintenance and irrigation.
13. CITY shall cooperate with SJRRRC efforts to deliver the PROJECT so as to comply with the schedule prescribed by the funding source. With the exception cited below in paragraph 18, CITY will administer and approve changes required during PROJECT construction through change orders to the construction contract. CITY shall meet regularly, no less than monthly, with SJRRRC to review construction progress, issues, and review change order logs for current and anticipated changes needed. SJRRRC and City shall endeavor to avoid delays to the PROJECT.
14. SJRRRC and CITY shall be jointly responsible (50% each) for all costs associated with remediation of any hazardous materials found during construction of the PROJECT. SJRRRC share of these costs shall not exceed \$300,000 which is already included in the amount listed in Section 6 of this Agreement.
15. CITY hereby represents and warrants that the letting of PROJECT contracts and construction will be done pursuant to the laws of the State of California.
16. CITY will confer with SJRRRC after bids are received to verify alternate bid items, if applicable, to be awarded. SJRRRC will provide additional funding as needed, if available, to award the agreed upon alternate bid items should the bid amounts exceed the estimates shown in Exhibit B.
17. SJRRRC will be responsible for meeting the terms and conditions of all funding sources for the PROJECT. All communication with San Joaquin Council of Governments, Caltrans, and the California Transportation Commission will be through SJRRRC.
18. Prior to final payment by SJRRRC to CITY, CITY shall provide SJRRRC copies of the final documentation including, but not limited to, record drawings, and a final detailed statement of all project construction costs and all engineering costs borne by CITY in support of the construction phase of the PROJECT.
19. Neither SJRRRC nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this Agreement. It is understood and agreed that CITY and/or its agents will fully defend, indemnify, and save harmless SJRRRC and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under this Agreement.
20. Neither CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by SJRRRC and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon

SJRRRC under this Agreement. It is understood and agreed that SJRRRC and/or its agents will fully defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions for liability occurring by reason of anything done or omitted to be done by SJRRRC and/or its agents under this Agreement.

21. Insurance

- a. SJRRRC shall have and maintain in full force and effect during the term of this Agreement railroad liability insurance, or equivalent, in an amount not less than \$2,000,000 per occurrence. SJRRRC shall ensure that CITY, and its officers, officials, employees, and volunteers are named as additional insureds on the railroad liability insurance policy, or the equivalent, for the purpose of any claims arising at any time during or after the term of this Agreement with respect to the performance of this Agreement, or any act or omission thereunder. That policy shall also provide for notice to CITY in the event of any lapse of coverage, except for nonpayment of premium. Evidence of self-insurance on the part of SJRRRC will be acceptable to satisfy the insurance requirements of this section.
- b. CITY shall have and maintain in full force and effect during the term of this Agreement the following minimum coverages:

Commercial General Liability Insurance on an occurrence basis including Bodily Injury & Property Damage Coverage, Premises Coverage, Products & Completed Operations Coverage, Contractual Liability Coverage, and Independent Contractors Liability Coverage with limits not less than the following:

\$10,000,000	General Aggregate
\$10,000,000	Products & Completed Operations Aggregate
\$10,000,000	Each Occurrence
\$1,000,000	Personal & Advertising Injury
\$100,000	Damage to Premises Rented to You

Such policy shall be endorsed to provide:

- Waiver of Subrogation in favor of SJRRRC and their directors, officers, representatives, agents, and employees (CG 24 04 or equivalent).
- SJRRRC shall be included as Additional Insured to include on-going and completed operations (CG 20 10 & CG 20 37 or equivalent).
- Additional Insured coverage must be on Primary and Non-Contributory basis.
- Include Contractual Liability – SJRRRC Endorsement (CG 24 17 or equivalent), if applicable.
- Coverage must not exclude Punitive Damages, unless prohibited by law.
- An Umbrella policy may be utilized to satisfy the required limits of liability.
- Thirty (30) days prior notice of cancellation.

CITY shall maintain Statutory Workers' Compensation and Employers' Liability Insurance for its employees (if any) with minimum limits of not less than:

\$1,000,000	Bodily Injury by Accident, Each Accident
\$1,000,000	Bodily Injury by Disease, Policy Limit
\$1,000,000	Bodily Injury by Disease, Each Employee

Such policy shall be endorsed to provide:

- Waiver of Subrogation in favor of SJRRRC and their directors, officers, representatives, agents, and employees (WC 04 13 or equivalent)
- Alternate Employer Endorsement, if applicable (WC 00 03 or equivalent)
- Thirty (30) days prior notice of cancellation.

CITY shall maintain Business Auto Insurance for all vehicles owned, leased, borrowed, or rented by CITY with a minimum liability limit of not less than \$1,000,000 per occurrence (combined single limit).

Such policy shall be endorsed to provide:

- Waiver of Subrogation in favor of SJRRRC and their directors, officers, representatives, agents, and employees (CA 04 44 or equivalent)
- SJRRRC shall be included as Additional Insured on a Primary & Non-Contributory basis.
- Coverage for Certain Operations in Connection with SJRRRC Endorsement, if applicable (CA 20 70 or equivalent)
- Broadened Pollution coverage, if applicable (CA 99 48 or equivalent)
- Thirty (30) days prior notice of cancellation.

CITY shall maintain Umbrella/Excess Liability insurance on an occurrence basis in excess of the underlying insurance described above which is at least as broad as each and every one of the underlying policies. Umbrella limits may be used to satisfy limit requirements as long as the total amount of insurance is not less than the limits specified in this Agreement.

\$5,000,000	Each Occurrence
\$5,000,000	General Aggregate
\$5,000,000	Products & Completed Operations Aggregate

Such policy shall be endorsed to provide:

- Waiver of Subrogation in favor of SJRRRC and their directors, officers, representatives, agents, and employees on a follow form basis of the underlying coverages.

- SJRRRC shall be included as an Additional Insured on a Primary and Non-Contributory basis.
- Coverage must not exclude Punitive Damages, unless prohibited by law.
- Thirty (30) days prior notice of cancellation.

If applicable, the CITY shall maintain Professional Liability Insurance with minimum limits of \$5,000,000 per occurrence coverage all operations of the CITY.

Such policy shall be endorsed to provide:

- Insured's interest in joint ventures, if applicable.
- Coverage must not exclude Punitive Damages, unless prohibited by law.
- Retroactive Date must be prior to the commencement of work.
- Extended Reporting Period of no less than 36 months.

- c. CITY shall cause any consultant or contractor it retains for the performance of any aspect of this Agreement to provide railroad liability or general liability insurance, as applicable, and workers compensation, automobile, and commercial general liability, umbrella/excess, and professional liability insurance coverage that meets all of the requirements of this Agreement. SJRRRC, its directors, officers, representatives, agents, and employees shall be included as Additional Insured, on a Primary and Non-Contributory basis with Waiver of Subrogation on all insurance policies required for the performance of all work under this Agreement.
22. The indemnification obligations under Sections 19 and 20 will not be limited by the existence of any insurance policy procured or maintained by CITY, or by or for any or all CITY-Related Parties, or by SJRRRC, or by or for any or all SJRRRC-Related Persons, or by any limitation on the amount or type of damages, compensation or benefits payable by or for CITY or by or for any or all CITY-Related Parties, or by SJRRRC or by or for any or all SJRRRC-Related Persons, and will survive the termination of this Agreement.
23. This Agreement shall be effective upon execution date and shall continue until PROJECT completion, including other conditions as agreed, unless terminated earlier as provided herein or unless otherwise extended in writing. Either Party may terminate this Agreement for convenience by providing the other not less than thirty (30) business days written notice. In the event SJRRRC terminates for convenience, SJRRRC will reimburse CITY for any documented expenses incurred as of the date the notice is received by CITY, but not to exceed the total amount of SJRRRC's contribution hereunder.
24. This Agreement, including any attachments or exhibits hereto, constitutes the entire agreement between the Parties concerning the subject matter herein. No promise or representation not expressly set forth herein shall be binding or have any force or effect.
25. Force Majeure. The failure of either Party to perform, in whole or in part, any of the obligations of that Party under this Agreement, by reason of the occurrence of acts of terrorism, riots, insurrection or war, strikes or lockouts by third parties providing labor, material or services under contract to a party, delays caused by another party to this

Agreement, third-party litigation or court order, derailments, wrecks or freight embargoes, inability to procure critical materials, unforeseen delays in obtaining any required permits or approvals, unforeseen physical conditions, environmental conditions including cultural, archaeological, paleontological, or other protected resources or catastrophic emergencies anywhere within the rail system utilized by that Party, and earthquake, fire, flood, explosion, disaster, tornado, epidemic, pandemic, or other phenomena of nature beyond the power of a party reasonably able to foresee or to make preparation in defense against, or any other cause beyond the reasonable control of that Party (hereinafter referred to as ("Force Majeure Occurrence")) shall be excused for all purposes, including time performance; provided, that the Party affected shall promptly begin work when the Force Majeure Occurrence abates and complete the work. However, if the Force Majeure Occurrence has delayed work or increased costs so that PROJECT scope of work cannot be completed as specified in this Agreement, for the cost or in the time or manner specified in the exhibits, that Party need not proceed with completion of work until the Parties have mutually agreed to amend the PROJECT or this Agreement in ways necessary to complete the work hereunder in order to enable the PROJECT scope of work to be completed in the revised manner, for the revised amount and/or in compliance with the revised schedule. In the event of a claimed Force Majeure Occurrence, the affected Party shall promptly notify and consult with the other Party as to how to proceed pursuant to the provisions of this Agreement under the circumstances presented by the Force Majeure Occurrence.

26. Neither Party shall assign this Agreement without prior written consent of the other, which consent may be withheld by the other Party in its sole discretion.
27. Neither CITY, nor any or all of its respective directors, officers, representatives, agents, and employees, shall be considered agents of SJRRRC.
28. Neither SJRRRC, nor any or all of its respective directors, officers, representatives, agents, and employees, shall be considered agents of CITY.
29. Amendment to this Agreement shall be mutually agreed to between the CITY and SJRRRC. The City Manager or his designee for CITY and SJRRRC shall have the authority to amend this Agreement by written concurrence.
30. Default
  - a. Failure of either Party to perform its obligations under this Agreement shall constitute a default. The Party, who is not in default, may notify the defaulting Party and demand a cure to the default, which must be cured within thirty (30) days, unless the Parties mutually agree in writing otherwise. Failure of the defaulting Party to cure or commence a cure to the default within this period or any agreed extended period shall be a breach of this Agreement and shall constitute cause to allow the non-defaulting Party to terminate this Agreement.
  - b. Material failure of CITY to properly perform its obligations under this Agreement, in compliance with City, State and Federal laws and regulations and applicable directives, shall constitute a default and SJRRRC may elect to terminate this Agreement if CITY fails to cure any such default as provided in subsection 30.a, above.

- c. In the event that CITY defaults as provided above, and SJRRRC elects to terminate this Agreement, CITY shall promptly remit to SJRRRC the full amount of SJRRRC funds received.
  
- 31. Pursuant to California Government Code Section 8546.7, the Parties shall be subject to the examination and audit of the State Auditor, at the request of CITY or as part of any audit of CITY by the State Auditor, for a period of three (3) years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the cost of administering the Agreement.
  
- 32. CITY will ensure that a description of the foregoing audit rights is included in each subcontract for work under this Agreement, or in an addendum or amendment to each subcontract. The term "subcontract" as used in this paragraph excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the public.
  
- 33. Notices  
 Any written notice required or permitted to be given herein shall be made by registered or certified U.S. Mail, Electronic Mail (e-mail), or by personal delivery to the receiving Party at the following addresses, or to such other addresses as either Party may from time-to-time designate in writing, during normal business hours:

<p>SJRRRC            Stacey Mortensen            Executive Director            949 East Channel Street            Stockton, CA 95202            Phone: (209) 944-6220            Email: <a href="mailto:SMortensen@sjrrc.com">SMortensen@sjrrc.com</a></p> <p>With copies to: <a href="mailto:Contracts@sjrrc.com">Contracts@sjrrc.com</a></p>	<p>CITY            Chad Reed            Director of Public Works            22 E. Weber Avenue, Room 301            Stockton, CA 95202            Phone: (209) 937-8411            Email: <a href="mailto:Chad.Reed@stocktonca.gov">Chad.Reed@stocktonca.gov</a></p>
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Notices sent by mail shall be deemed given on the date of the postmark affixed by the United States Post Office. Notices served by personal delivery shall be effective on the date of service.

- 34. This Agreement may be executed in multiple counterparts, each of which, when so executed and delivered, shall be an original but all such counterparts shall together constitute but one and the same instrument. All signatures need not be on the same counterpart. A facsimile, electronic, or scanned .pdf signature, if the genuine act of a Party, shall be sufficient to bind a Party to this Agreement.



IN WITNESS WHEREOF, this agreement has been executed on this \_\_\_\_ day of \_\_\_\_\_, 2024 by the respective parties hereto through their respective authorized officers at Stockton, California, the day, and year first above written.

SAN JOAQUIN REGIONAL RAIL  
COMMISSION

CITY OF STOCKTON

By   
STACEY MORTENSEN,  
Executive Director

\_\_\_\_\_  
HARRY BLACK  
City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Katherine Roland  
Interim City Clerk

\_\_\_\_\_  
JANICE D. MAGDICH,  
General Counsel

APPROVED AS TO FORM:

\_\_\_\_\_  
LORI ASUNCION  
City Attorney

# CHANNEL STREET CORRIDOR IMPROVEMENT PROJECT

CITY OF STOCKTON  
DEPARTMENT OF PUBLIC WORKS



**EXHIBIT B**  
**ESTIMATED CONSTRUCTION PHASE COSTS**  
Channel Street Corridor Improvements Project

<b>SJRRC PROVIDED FUNDING</b>	<b>\$ 8,397,980</b>	<u>NOTES</u>
		MEASURE K, ATP STATE
		PROVIDED THROUGH SEPARATE
		AGREEMENT
<b>AHSC FUNDS</b>	<b>\$ 202,020</b>	
<b>TOTAL FUNDING</b>	<b>\$ 8,600,000</b>	
LOW BID	\$ 6,284,667	AZUL WORKS INC.
CONTINGENCY	\$ 1,215,333	Approximately 19%
CONSTRUCTION MANAGEMENT COST ESTIMATE	\$ 1,000,000	Consultant and City oversight
MATERIAL TESTING	\$ 100,000	Quality assurance testing
<b>TOTAL ESTIMATED COST:</b>	<b>\$ 8,600,000</b>	