

**COST REIMBURSEMENT AGREEMENT BETWEEN GOOGLE, LLC AND  
THE SANTA CLARA VALLEY WATER DISTRICT  
FOR CONSTRUCTION OF BAY TRAIL IMPROVEMENTS AS PART OF THE SUNNYVALE  
EAST CHANNEL AND WEST CHANNELS FLOOD PROTECTION PROJECT**

This agreement (AGREEMENT) is made and entered into as of the date it is fully executed, by and between GOOGLE, LLC, a Delaware limited liability company. (GOOGLE), and the SANTA CLARA VALLEY WATER DISTRICT (DISTRICT), a special district of the State of California. GOOGLE and DISTRICT may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

WHEREAS, on September 9, 2014, DISTRICT's Board of Directors certified a Final Environmental Impact Report (Final EIR) and approved its Sunnyvale East Channel and Sunnyvale West Channel Flood Protection Project (PROJECT) as lead agency pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.); and

WHEREAS, DISTRICT is currently proceeding with the permitting phase of its PROJECT in its right-of-way. After permits are issued, DISTRICT will subsequently advertise for bids and award a contract for construction of the PROJECT; and

WHEREAS, GOOGLE desires that the existing San Francisco Bay Trail at trail segments A, B, and C as shown on Exhibit A be resurfaced in accordance with GOOGLE's design (TRAIL IMPROVEMENTS) at no expense to the public and desires DISTRICT to incorporate such TRAIL IMPROVEMENTS into its PROJECT; and

WHEREAS, it is in the public's best interests to achieve the economic benefits and efficiencies resulting from combining the design and construction of the Parties' public improvement projects; and

WHEREAS, DISTRICT is willing to include the TRAIL IMPROVEMENTS in its PROJECT at GOOGLE'S expense and in accordance with the terms and conditions set forth in this AGREEMENT; and

WHEREAS, the TRAIL IMPROVEMENTS are consistent with the DISTRICT'S joint use agreement (A3979X) with the City of Sunnyvale for the existing Bay Trail and subject to approval by the City of Sunnyvale;

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the Parties hereto agree as follows:

**AGREEMENT**

**1. DESCRIPTION OF PROJECT SITE**

Along the existing Bay Trail, from Sunnyvale West Channel, generally along the DISTRICT'S southerly maintenance road extending from approximately Carl Road, along the southern perimeter of Pond A4, to the south maintenance road of Sunnyvale East Channel extending to its confluence with Guadalupe Slough (Exhibit A).

## **2. SCOPE OF WORK**

- 2.1 DISTRICT shall perform the following:
  - 2.1.1 Include the TRAIL IMPROVEMENTS in its administration, design, review, and contracting for the construction of its PROJECT, incorporating GOOGLE's trail resurfacing design plans as supplemental bid items. Coordinate with appropriate local, state, federal, and regulatory agencies regarding any permits or approvals required for construction of the TRAIL IMPROVEMENTS.
  - 2.1.2 Proceed with construction of TRAIL IMPROVEMENTS, if authorized by appropriate regulatory agencies, pursuant to the determination by the DISTRICT that it concurs with the Lead Agency, Association of Bay Area Governments, determination that the TRAIL IMPROVEMENTS are categorically exempt from CEQA per Section 15301.
  - 2.1.3 In the event the regulatory agency permits are not obtained for the PROJECT or the TRAIL IMPROVEMENTS, DISTRICT is not required to construct the TRAIL IMPROVEMENTS.
- 2.2 GOOGLE shall perform the following:
  - 2.2.1 If the TRAIL IMPROVEMENTS are not covered by permits obtained by the DISTRICT as described in Section 2.1.1 above, use best efforts to obtain all appropriate regulatory approvals and/or permits required for construction of the TRAIL IMPROVEMENTS by the DISTRICT.
  - 2.2.2 Provide DISTRICT with all documentation and information regarding its TRAIL IMPROVEMENTS so that DISTRICT'S staff preparing the PROJECT design can incorporate the design of these TRAIL IMPROVEMENTS in its PROJECT, per GOOGLE'S design and specifications.
  - 2.2.3 Promptly review DISTRICT'S design documents prepared for public bidding and award and provide input to DISTRICT, and confirm acceptance of the design documents prior to DISTRICT proceeding with advertisement and bidding.
- 2.3 The designated project manager for DISTRICT for the duration of the PROJECT is Mr. Stephen M. Ferranti, P.E. DISTRICT's project manager shall have all the necessary authority to direct technical and professional work within the scope of the AGREEMENT and shall serve as the principal point of contact with GOOGLE. The designated project manager for GOOGLE for the duration of the

PROJECT is Mr. Parham Khoshkbari. GOOGLE's project manager shall have all the necessary authority to review, approve, and accept technical and professional work within the scope of the AGREEMENT and shall serve as the principal point of contact with DISTRICT.

### **3. REIMBURSEMENT**

- 3.1 DISTRICT will advertise and publicly bid its PROJECT and include GOOGLE'S TRAIL IMPROVEMENTS as "supplemental bid items" in order to ascertain the bidders' proposed price for this work.
- 3.2 DISTRICT will provide to GOOGLE, for its approval, the supplemental bid items' pricing information for the TRAIL IMPROVEMENTS within seven (7) calendar days after DISTRICT'S public bid opening.
- 3.3 GOOGLE shall determine if the costs for the supplemental bid items associated with the TRAIL IMPROVEMENTS are acceptable. If the costs for the TRAIL IMPROVEMENTS are acceptable, GOOGLE will remit payment in full to DISTRICT for the supplemental bid items associated with the TRAIL IMPROVEMENTS within 90 calendar days after DISTRICT's issuance of a Notice to Proceed (NTP) to its PROJECT construction contractor (CONTRACTOR).
- 3.4 If GOOGLE does not approve the supplemental bid item costs associated with the TRAIL IMPROVEMENTS or, absent agreement between the Parties to modify the payment deadline stated in 3.3. above, fails to remit to DISTRICT payment in full within 90 days of DISTRICT's issuance of a NTP, then DISTRICT will delete these supplemental bid items from its contract with its CONTRACTOR and this Agreement will be terminated pursuant to section 7, Termination.
- 3.5 Modifications to DISTRICT'S contract with its CONTRACTOR:
  - 3.5.1 DISTRICT agrees to provide GOOGLE with notice and documentation regarding any modifications, revisions, change orders, and/or extra work required in association with the TRAIL IMPROVEMENTS to GOOGLE within seven (7) calendar days of DISTRICT becoming aware of or initiating such matter, so GOOGLE can provide direction to DISTRICT, if necessary and appropriate.
  - 3.5.2 GOOGLE will respond to DISTRICT regarding such matters within seven (7) calendar days of receipt of such information and provide written direction to DISTRICT, if necessary and appropriate.
  - 3.5.3 If GOOGLE approves any additional expense above the supplemental bid items amounts for which it already remitted payment to DISTRICT, GOOGLE agrees to remit payment in full to DISTRICT within 60 calendar days of receipt of DISTRICT invoice.

### **4. MAINTENANCE**

Neither Party accepts any obligation or responsibility to maintain TRAIL IMPROVEMENTS to any standard or condition upon completion of work regardless of damage or modifications that

may occur for any reason, including DISTRICT's use of its right of way, public use, and damage from natural causes, etc. The DISTRICT represents that responsibility for and any maintenance of the TRAIL IMPROVEMENTS is at the discretion of the City of Sunnyvale in accordance with the Joint Use Agreement between DISTRICT and the City of Sunnyvale, dated May 29, 1998.

## **5. INSURANCE AND INDEMNIFICATION**

- 5.1 DISTRICT shall indemnify, defend, and hold harmless GOOGLE from any claim, expense or cost, injury, damage or liability arising out of or caused by any negligent acts or omissions or willful misconduct of the DISTRICT, its officers, employees, and contractors during or after the construction of the TRAIL IMPROVEMENTS, except for the active negligence and willful misconduct of GOOGLE.
- 5.2 DISTRICT and its CONTRACTOR performing the work, will secure and maintain in full force and effect, at all times during TRAIL IMPROVEMENTS construction and until TRAIL IMPROVEMENTS completion, bodily injury insurance, property damage insurance and contractual liability worker compensation and auto coverage in forms and limits of liability acceptable to both DISTRICT and GOOGLE, naming GOOGLE and its respective officers, employees, and agents as additional insured from and against all damages and claims, loss of liability, and cost or expense arising out of or in any way connected with the TRAIL IMPROVEMENTS. DISTRICT is self-insured and intends to meet this obligation through self-insurance, subject to approval by GOOGLE pursuant to this Section 5.2.
- 5.3 The rights, duties, and obligations of the Parties as set forth above in this Section 5 of this AGREEMENT will survive termination, suspension, completion, and expiration of this AGREEMENT.

## **6. ADDITIONAL PROVISIONS**

- 6.1 A Party's waiver of any term, condition, 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.
- 6.2 This AGREEMENT contains the entire AGREEMENT between DISTRICT and GOOGLE relating to the PROJECT. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.
- 6.3 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 DISTRICT and GOOGLE.
- 6.4 This AGREEMENT shall be governed and construed in accordance with the laws of the State of California.
- 6.5 This AGREEMENT may be executed in counterparts and will be binding as executed.

- 6.6 The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both parties and terminate upon PROJECT completion notification by DISTRICT and receipt by DISTRICT of payment in full by GOOGLE, unless sooner terminated pursuant to Section 7 below.
- 6.7 All changes or extensions to this AGREEMENT must be in writing in the form of an amendment approved by both Parties.
- 6.8 This AGREEMENT is entered into only for the benefit of the Parties executing this AGREEMENT and not for the benefit of any other individual, entity, or person.

## 7. TERMINATION

- 7.1 Either DISTRICT or GOOGLE may, upon thirty (30) days' written notice, terminate this AGREEMENT at any time prior to DISTRICT's commencement of the PROJECT.
- 7.2 This AGREEMENT will automatically terminate under the conditions provided for in Section 3.4 above.
- 7.3 Once the PROJECT work commences, this AGREEMENT may be terminated by the mutual written consent and terms acceptable to both Parties.

## 8. NOTICES

- 8.1 All correspondence relating to the PROJECT, including all notices required by the terms of this AGREEMENT may be delivered by first class mail addressed to the appropriate Party at the following addresses:

**To DISTRICT:** Santa Clara Valley Water District  
Attn: Stephen M. Ferranti, Engineering Unit Manager  
5750 Almaden Expressway  
San Jose, CA 95118  
Phone: (408) 630-2677  
Email: sferranti@valleywater.org

**To GOOGLE:** Google, LLC  
Attn: Mr. Parham Khoshkbari, Project Executive  
1212 Bordeaux Drive  
Sunnyvale, CA 94089  
Phone: (650) 889-6256  
Email: parhamk@google.com

With a copy to:  
Google, LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: Google, LLC: Legal Department/RE Matters

**IN WITNESS WHEREOF**, the Parties have executed the AGREEMENT the day and year set forth below, when fully executed.

**GOOGLE:**

GOOGLE, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Parham Khoshkbari, Project Executive

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**DISTRICT:**

SANTA CLARA VALLEY WATER DISTRICT, a special district

By: \_\_\_\_\_  
Norma J. Camacho, Chief Executive Officer

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Joseph Aranda, Assistant District Counsel

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Michele L. King, CMC  
Clerk/Board of Directors

Date: \_\_\_\_\_

# Exhibit A



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