

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN GOOGLE LLC
AND THE SANTA CLARA VALLEY WATER DISTRICT TO NEGOTIATE A
COST-SHARING AGREEMENT
FOR A PORTION
OF THE DISTRICT'S SUNNYVALE EAST AND WEST CHANNELS
FLOOD PROTECTION PROJECT**

This MEMORANDUM OF UNDERSTANDING (MOU) is effective upon full execution by and between the SANTA CLARA VALLEY WATER DISTRICT (District), a special district of the State of California, and GOOGLE LLC, a Delaware limited liability company (Google). District and Google may be referred to individually as a "Party" or collectively as the "Parties."

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 (District 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 Sunnyvale East Channel and Sunnyvale West Channel Flood Protection Project (District Project), in its right-of-way. After permits are issued, District will subsequently advertise for bids and award a contract for construction of the District Project; and

WHEREAS, the District Project was designed to protect certain areas within the City of Sunnyvale and City of Cupertino against 100-year riverine flood protection by constructing improvements in its approximately three mile long right-of-way from the San Francisco Bay to Inverness Way in Sunnyvale, California, along the Sunnyvale East Channel and Sunnyvale West Channel (West Channel), as depicted in Exhibit A, Proposed West Channel Enhancement Project Area Map, attached hereto and incorporated herein; and

WHEREAS, on May 11, 2016, District and the City of Sunnyvale executed a cost sharing agreement for District to include construction of recreational trails as part of the District Project, and executed Amendment No. 1 to said agreement on October 10, 2017; and

WHEREAS, District's Board of Directors approved a Joint Use Trails Agreement on June 14, 2016 with the City of Sunnyvale for terms and conditions of public use within District right-of-way after the construction of the District Project is completed; and

WHEREAS, Google currently owns property on both sides of a portion of the West Channel between Caribbean Drive and Caspian Court and desires to construct new office/research and development facilities (Google Project), which may include certain flood control enhancements to that segment of the West Channel (West Channel Enhancement); and

WHEREAS, public agency consideration of approving construction of the Google Project and proposed West Channel Enhancement would necessitate prior environmental review under the California Environmental Quality Act (CEQA) and would also require review and approval by various government agencies, including the District, the City of Sunnyvale, the United States Army Corps of Engineers, the California San Francisco Regional Water Quality Control Board, and the California Department of Fish and Wildlife; and

WHEREAS, the Parties understand that the City of Sunnyvale will be the CEQA lead agency for an environmental review document to be prepared for the Google Project (Google Project CEQA document), including the associated proposed West Channel Enhancement, and that the District will be a CEQA responsible agency for its approvals of the proposed West Channel Enhancement; and

WHEREAS, the Parties anticipate that the Google Project CEQA document would provide project-level CEQA review of the impacts of the proposed West Channel Enhancement, discuss any changes to the previously-approved District Project (as described in the District Project EIR) needed to incorporate the proposed West Channel Enhancement, and evaluate the impacts of those changes; and

WHEREAS, if following compliance with CEQA, all required permits and approvals are received for the Google Project, which includes the proposed West Channel Enhancement, Google intends to construct the West Channel Enhancement, at District's partial expense consistent with the framework of terms and conditions set forth in this MOU; and

WHEREAS, following construction of the West Channel Enhancement, the District intends to assume those operation and maintenance responsibilities of the constructed West Channel Enhancement, only for purposes of flood protection and/or storm water drainage, provided the District receives any access easements that may be necessary to carry out these operation and maintenance activities.

NOW THEREFORE, Google and the District hereby agree as follows.

1. Purpose and Limitations. This MOU memorializes the prospective terms, as negotiated and preliminarily agreed upon by Google and the District; to outline the responsibilities of the Parties for the good-faith negotiation by the Parties of a binding definitive agreement for cost-sharing of construction of the West Channel Enhancement and the future operation and maintenance of the West Channel Enhancement (hereafter, "Binding Cost-Share Agreement").

1.1 This MOU does not bind the District or commit the District to any definite course of action regarding the proposed West Channel Enhancement, or make any approval as defined by CEQA Guidelines section 15352 related to the proposed West Channel Enhancement, without first complying with the requirements of CEQA.

1.2 This MOU does not restrict the District from considering any alternatives, including a "no-action" alternative, or requiring any feasible mitigation measures, when considering whether to approve the proposed West Channel Enhancement. Nothing in this MOU precludes the District from not issuing approvals for the proposed West Channel Enhancement, or from weighing the economic, legal, social, technological, or other benefits of the West Channel Enhancement when determining whether to issue such approvals. The District's approval of this MOU does not constitute issuing an approval for the proposed West Channel Enhancement.

1.3 Actions taken by either the District or Google, including but not limited to, expenditure of funds, incurring or canceling other commitments, or acts taken to implement any of the proposed terms set forth in this MOU, shall not be construed as part performance of the proposed terms and conditions contained herein, nor shall the Party taking such action be regarded as having changed its position in reasonable reliance on the terms and conditions contained herein, so as to give rise to a claim of promissory estoppel or other equitable claims.

2. Description of the Proposed West Channel Enhancement Project Area. The District's Sunnyvale West Channel extends from San Francisco Bay to Inverness Way, approximately 3.0 miles in length. The proposed West Channel Enhancement would be located between Caribbean Drive and Caspian Court, approximately eleven hundred linear feet in length, as shown on the Proposed West Channel Enhancement Project Area Map, **Exhibit A** hereto.

3. Responsibilities of the Parties.

3.1 Google's Responsibilities.

(a) Design and Engineering. Google intends to retain qualified, licensed professional consultants to design the proposed West Channel Enhancement, including Engineer-of-Record services. All costs for design and associated documents shall be borne by Google.

(b) Proposed West Channel Enhancement. Google is proposing a project that would construct or cause to be constructed the West Channel Enhancement in conformance with the final design for the proposed West Channel Enhancement if said design is agreed to by Google, and following CEQA compliance, the District and all other permitting agencies. The West Channel Enhancement design will be consistent with District's existing cost sharing agreement with the City of Sunnyvale to include recreational trails as part of the District Project.

(c) Applications. Google intends to be the applicant for any and all permits and other entitlements required by federal, state, or local governmental agencies for the construction of the proposed West Channel Enhancement.

(d) Easements. Google intends to act promptly to cause to be executed any necessary property title or easement transfers to the District, following District CEQA compliance, required in connection with the final design, should the proposed West Channel Enhancement ultimately be approved by the District.

(e) Access. Google intends to cooperate with the District in ensuring that the final design of the proposed West Channel Enhancement includes all necessary provisions for access by the District to the improved West Channel for purposes of channel maintenance and operation.

(f) Document Review. Google, upon reasonable notice, intends to make available to District all records, books, and other documents relating to construction of the proposed West Channel Enhancement that are in possession or control of Google for a period of three (3) years following the receipt of payment to Google by District in accordance with the cost-sharing provisions described below.

(g) Design Documents. Google intends to provide the District with the design documents and other related information in advance and in a timely manner to allow the District

to provide input on Google's proposed West Channel Enhancement design such that it would be properly incorporated into the District's previously-approved District Project.

3.2 District's Responsibilities. The following listed District responsibilities are subject to approval by District's Board of Directors.

(a) Design Documents. The District intends to provide Google the design documents and information for the previously-approved District Project, in order for Google's proposed West Channel Enhancement design to be properly incorporated into the larger previously approved District Project.

(b) CEQA Compliance. The District shall complete actions required to comply with CEQA prior to issuing any approvals, including any permits or other entitlements, or undertaking ongoing operation and maintenance responsibilities, for Google's proposed West Channel Enhancement.

(c) Easements and Permits. If the proposed West Channel Enhancement is approved, the District intends to execute the necessary permanent and temporary right of way deeds and/or encroachment or construction permits required by Google to construct the proposed West Channel Enhancement.

(d) Operations and Maintenance. Subject to agreement with the terms and conditions of any final permit approvals, the District intends to undertake all ongoing operation and maintenance responsibilities for the proposed West Channel Enhancement associated with flood protection and/or storm water drainage purposes.

4. Cost-Sharing of West Channel Enhancement.

4.1 At this time, the Parties are considering negotiating the Binding Cost-Share Agreement, which would be a binding, definitive cost-sharing agreement in the future for that portion of the previously-approved District Project within the proposed West Channel Enhancement Project Area.

4.2 Preliminarily, the District's cost-share portion would be all costs (including mitigation costs) required to complete the previously-approved District Project in the portion that is the West Channel Enhancement Project Area according to the design that was described in the Final EIR for the District Project (**District's Cost-Share Portion**).

4.3 Google's cost-share portion would be any additional costs resulting from planning (including any additional CEQA review costs), designing, and implementing the proposed West Channel Enhancement in lieu of the previously-approved District Project for this portion of the West Channel (**Google's Cost-Share Portion**).

4.4 Following all required CEQA review, and concurrently with or after issuance of all permits or other entitlements that may be issued for the proposed West Channel Enhancement, but prior to commencement of construction of same, the Parties intend to document the cost of the West Channel Enhancement in the contemplated Binding Cost-Share Agreement, which will state the final amount of the District's Cost-Share Portion. Preliminarily, the estimated amount of the District's Cost-Share Portion is at least \$2,600,000, although the Parties agree to confer to review and if necessary refine the cost estimates including mitigation cost prior to finalizing the

Binding Cost-Share Agreement. In no event would the District's Cost-Share Portion be more than the actual cost of the design and construction of the proposed West Channel Enhancement.

5. Indemnity Provisions.

5.1 Google Indemnity. It is intended that a provision of the contemplated Binding Cost-Share Agreement shall require Google to defend, indemnify, protect, and hold harmless the District and its officers, directors, employees, contractors, attorneys, agents, representatives, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, demands, directives, orders, forfeitures, losses, costs, or expenses (including reasonable attorney's, consultant's, and expert fees) arising from, related to, or in connection with the death or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by Google's negligence or intentional act, in connection with the construction of the West Channel Enhancement by Google. Any such provision will include a Google's defense and indemnity obligation to the District for any CEQA challenge of the District's CEQA compliance with respect to its forthcoming consideration of the West Channel Enhancement, including any related CEQA challenges to the District Project. It is intended that Google's obligations as stated in this section 5.1 shall survive completion, suspension, termination, and expiration of the Binding Cost-Share Agreement.

5.2 Google MOU Indemnity. Google shall defend, indemnify, protect, and hold harmless the District and its officers, directors, employees, contractors, attorneys, agents, representatives, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, demands, directives, orders, forfeitures, losses, costs, or expenses (including reasonable attorney's, consultant's, and expert fees) arising from, related to, or in connection with any CEQA challenge of the District's approval of this MOU. Google's obligations as stated in this section 5.2 shall survive completion, suspension, termination, and expiration of this MOU.

5.3 District Indemnity. It is intended that a provision of the contemplated Binding Cost-Share Agreement shall require District to defend, indemnify, protect, and hold harmless Google and its officers, directors, employees, contractors, attorneys, agents, representatives, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, demands, directives, orders, forfeitures, losses, costs, or expenses (including reasonable attorney's, consultant's, and expert fees) arising from, related to, or in connection with the death or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by District's negligence or intentional act, only in connection with the District's operation and maintenance for flood protection and/or storm water drainage purposes, of Google's completed West Channel Enhancement. It is intended that District's obligations as stated in this section 5.3 shall survive completion, suspension, termination, and expiration of the Binding Cost-Share Agreement.

6. Miscellaneous 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 MOU contains the entire agreement between District and Google relating to the District Project and Google's proposed West Channel Enhancement. Any prior agreements,

promises, negotiations, or representations not expressly set forth in this MOU are of no force or effect.

6.3 If any term, condition or covenant of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this MOU shall be valid and binding on District and Google.

6.4 This MOU shall be governed and construed in accordance with the laws of the State of California without giving effect to any conflict of law provisions thereof. The federal and state courts within the County of Santa Clara, California shall be exclusive jurisdiction to adjudicate any dispute arising out of or related to this MOU. Each Party expressly consents to the personal jurisdiction of and venue in such courts.

6.5 This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.6 The term of this MOU shall commence upon execution of this MOU by both Parties and terminate upon the effective date of the contemplated Binding Cost-Share Agreement.

6.7 All changes or extensions to this MOU must be in writing in the form of an amendment approved by both Parties.

6.8 This MOU is entered into only for the benefit of the Parties executing this MOU and not for the benefit of any other individual, entity, or person.

6.9 This Agreement shall be binding on and enforceable by and against the Parties to it and their respective heirs, legal representatives, successors, and assigns, except that neither this MOU nor the duties or obligations as stated in this MOU may be assigned by a Party without the prior written consent of the other Party.

6.10 Equal Opportunity.

(a) The Santa Clara Valley Water District is an equal opportunity employer and requires the parties it contracts with to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of this MOU, Google will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment, in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

(b) Compliance With Applicable Equal Opportunity Laws. Google's policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations," Title VII of the Civil Rights Act of 1964 as amended; the American's with Disabilities Act of 1990; the Rehabilitation Act of 1973 (Sections 503 and 504); the Age Discrimination Act of 1975 (42 U.S.C. sec. 6101 et seq.); the California Fair Employment and Housing Act (Government Code Section 12900 et. seq.); and California Labor Code Sections 1101 and 1102.

(c) Investigation of Claims. Google has in place nondiscrimination and anti-harassment policies and procedures for investigation of complaints of discrimination and harassment consistent with applicable law. Google's nondiscrimination policy complies with applicable law, and its anti-harassment policy applies to anyone at Google, as well as Google partners and vendors. In instances where investigation of complaints of discrimination or harassment results in a finding of misconduct, Google takes appropriate remedial measures consistent with its policy and the law.

7. TERMINATION

7.1 Either Party may terminate this MOU upon the finding by such Party of a material deviation from the terms hereof, which deviation would, in such Party's reasonable discretion, result in the imposition of a substantial additional burden or the deprivation of a substantial benefit with regard to such Party's performance hereunder.

7.2 Either Party may terminate this MOU if good faith negotiations fail to produce a binding definitive agreement.

7.3 Either District or Google may, upon thirty (30) days' written notice, terminate this MOU at any time prior to Google's commencement of construction of the proposed West Channel Enhancement.

7.4 Once the District Project construction work commences, this MOU may be terminated by the mutual written consent and terms acceptable to both Parties.

8. NOTICES

8.1 All correspondence relating to the District Project or the proposed West Channel Enhancement, including all notices required by the terms of this MOU, may be delivered by first class mail addressed to the appropriate Party at the following addresses:

DISTRICT:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attn: Stephen M. Ferranti, Engineering Unit Manager

Phone: (408) 630-2677
E-mail: sferranti@valleywater.org

GOOGLE, LLC:

Parham Khoshkbari
Project Executive
Google
1212 Bordeaux Drive
Sunnyvale, CA 94089

Phone: (650) 889-6256
E-mail: parhamk@google.com

9. EXHIBITS

The following listed Attachments referred to herein are incorporated in this AGREEMENT as though set forth in full:

Exhibit A – Proposed West Channel Enhancement Project Area Map

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THE AGREEMENT THE DAY AND YEAR SET FORTH BELOW.

"GOOGLE, LLC"

Google, LLC, a Delaware limited
Liability company

"DISTRICT"

a Special District of the State of California

By: _____
Janette D'Elia
Chief Operating Officer

By: _____
Richard P. Santos
Chair/Board of Directors

Date: _____

Date: _____

Firm Address:

ATTEST:

Michele L. King, CMC
Clerk/Board of Directors

EXHIBIT A

PROPOSED WEST CHANNEL ENHANCEMENT PROJECT AREA

Exhibit A



Proposed Project Extent: Caribbean to Caspian Drive