

**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 (VALLEY WATER), a special district of the State of California. GOOGLE and VALLEY WATER 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, VALLEY WATER'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, VALLEY WATER is currently proceeding with the permitting phase of its PROJECT in its right-of-way. After permits are issued, VALLEY WATER 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 VALLEY WATER 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, VALLEY WATER 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 VALLEY WATER'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 VALLEY WATER'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 VALLEY WATER 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 VALLEY WATER 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, VALLEY WATER 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 VALLEY WATER 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 VALLEY WATER.
- 2.2.2 Provide VALLEY WATER with all documentation and information regarding its TRAIL IMPROVEMENTS so that VALLEY WATER'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 VALLEY WATER'S design documents prepared for public bidding and award and provide input to VALLEY WATER and

confirm acceptance of the design documents prior to VALLEY WATER proceeding with advertisement and bidding.

- 2.3 The designated project manager for VALLEY WATER for the duration of the PROJECT is Mr. Stephen M. Ferranti, P.E. VALLEY WATER'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 VALLEY WATER.

3. REIMBURSEMENT

- 3.1 VALLEY WATER 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 VALLEY WATER will provide to GOOGLE, for its approval, the supplemental bid items' pricing information for the TRAIL IMPROVEMENTS within seven (7) calendar days after VALLEY WATER'S award and execution of the public works contract for this PROJECT.
- 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 VALLEY WATER for the supplemental bid items associated with the TRAIL IMPROVEMENTS within 90 calendar days after VALLEY WATER'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 VALLEY WATER payment in full within 90 days of VALLEY WATER's issuance of a NTP, then VALLEY WATER 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 VALLEY WATER'S contract with its CONTRACTOR:
- 3.5.1 VALLEY WATER 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 VALLEY WATER becoming aware of or initiating such matter, so GOOGLE can

provide input and approval to VALLEY WATER, if necessary and appropriate.

- 3.5.2 GOOGLE will respond to VALLEY WATER regarding such matters within seven (7) calendar days of receipt of such information and provide written input and approval to VALLEY WATER, 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 VALLEY WATER, GOOGLE agrees to remit payment in full to VALLEY WATER within 60 calendar days of receipt of VALLEY WATER 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 VALLEY WATER's use of its right of way, public use, and damage from natural causes, etc. VALLEY WATER represents that responsibility for any maintenance of the TRAIL IMPROVEMENTS is the responsibility of the City of Sunnyvale in accordance with the Joint Use Agreement Calabazas Creek between VALLEY WATER and the City of Sunnyvale, dated May 29, 1998.

5. INSURANCE AND INDEMNIFICATION

- 5.1 VALLEY WATER 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 VALLEY WATER, 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 GOOGLE shall indemnify, defend, and hold harmless VALLEY WATER and its officers, directors, employees, contractors, attorneys, agents, representatives, successors, and assigns, from and against any and all claims, expense or cost, injury, damage, and liability arising out of or caused by any negligent acts or omissions or willful misconduct of GOOGLE, its officers, employees, and contractors in connection with the construction of the TRAIL IMPROVEMENTS.
- 5.3 GOOGLE shall defend, indemnify, protect, and hold harmless VALLEY WATER 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 fees, consultant's, and expert fees) arising from, related to, or in connection with any CEQA challenge of VALLEY WATER's approval of this AGREEMENT.
- 5.4 VALLEY WATER 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 VALLEY WATER 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. VALLEY WATER is self-insured and intends to meet this obligation through self-insurance, subject to approval by GOOGLE pursuant to this Section 5.2.

- 5.5 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 VALLEY WATER 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 VALLEY WATER 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 VALLEY WATER and receipt by VALLEY WATER 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 VALLEY WATER or GOOGLE may, upon thirty (30) days' written notice, terminate this AGREEMENT at any time prior to VALLEY WATER's award and execution of the public works contract for this PROJECT.
- 7.2 This AGREEMENT will automatically terminate under the conditions provided for in Section 3.4 above.
- 7.3 After VALLEY WATER awards and executes the public works contract for this PROJECT, this AGREEMENT may only be terminated by the mutual 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 VALLEY WATER:

Santa Clara Valley Water District
Attn: Stephen M. Ferranti, 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

DocuSigned by:
Jeff Holzman
By: 4E17BEEAC8DA4E4
Jeff Holzman, Director - Real Estate District Development

10/31/2019

Date: _____

DocuSigned by:
Joe Van Belleghem
By: 000E0000705C
Joe Van Belleghem, Senior Director of Development

11/2/2019

Date: _____

VALLEY WATER:

SANTA CLARA VALLEY WATER DISTRICT, a special district

By: _____
Norma J. Camacho, Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

By: _____
Joseph Aranda, Assistant Counsel

Date: _____

ATTEST:

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

Date: _____

Exhibit A

