

**FUNDING AGREEMENT BETWEEN GOOGLE
AND THE CITY OF SUNNYVALE
FOR THE EAST CHANNEL TRAIL STUDY**

This Funding Agreement (“Agreement”) is dated for execution purposes on _____, 2022 (the “Effective Date”), by and between the CITY OF SUNNYVALE, a California Charter City and municipal corporation, whose address is 456 W. Olive Avenue, Sunnyvale, CA 94086 (hereinafter “CITY”), and GOOGLE LLC, whose address is 1600 Amphitheatre Parkway, Mountain View, California 94043 (hereinafter “GOOGLE”), individually referred to as “Party” and collectively referred to as “the Parties”, with respect to the following facts:

RECITALS

WHEREAS, on October 5, 2017, the Santa Clara Valley Transportation Authority (“VTA”) Board of Directors established the 2016 Measure B Program (“PROGRAM”) and adopted the 2016 Measure B Program Category Guidelines; and

WHEREAS, on June 3, 2021, the VTA Board of Directors approved the fiscal year 2020/21 recommended project list for the BIKE/PED PLANNING PROGRAM; and

WHEREAS, CITY’S East Channel Trail Study (“PROJECT”) is an eligible project on the VTA Board of Directors’ approved list for the BIKE/PED PLANNING PROGRAM; and

WHEREAS, VTA shall allocate Eight Hundred Thirty Thousand Dollars (\$830,000) of Measure B funds for the CITY’S PROJECT; and

WHEREAS, CITY is required to fund the remainder of the PROJECT costs and GOOGLE has volunteered to contribute approximately fifty percent (50%) of CITY’S costs for the PROJECT.

NOW, THEREFORE, in consideration of the Recitals and mutual promises contained herein, CITY and GOOGLE agree as follows:

AGREEMENT

1. PROJECT DESCRIPTION

The PROJECT is a planning study for a 5.78-mile bicycle/pedestrian facility between Bay Trail and Homestead Road, all located within Sunnyvale, California. Between Bay Trail

and Inverness Way, the PROJECT will study and design a Class I trail along the East Channel. Between Inverness Way and Homestead Road, the PROJECT will study and design a combination of Class IIIB bicycle boulevard and Class I shared use path.

2. SCOPE OF WORK

The scope of work for the PROJECT consists of existing conditions analysis, public outreach, community engagement and technical analysis of trail alignment, alternatives, types of crossings, and right-of-way impacts. The final deliverables are a study report and 25% design plans for the 5.78-mile bicycle/pedestrian facility between Bay Trail and Homestead Road (“PROJECT completion”).

3. TERM OF AGREEMENT

A. Term. The term of this Agreement shall be from the Effective Date through PROJECT completion, unless terminated earlier.

B. Early Termination. This Agreement may be terminated either by CITY or GOOGLE upon two (2) months’ (60 days) written notice to the other Party unless a shorter termination period is mutually agreed upon by both Parties. Upon receipt of a notice of termination, CITY shall terminate any contracts between CITY and consultants to perform or complete the PROJECT, and CITY shall reimburse GOOGLE for GOOGLE’s Contribution as provided in Section 5.E of this Agreement.

4. COST OF PROJECT

“Total Project Cost” means the total cumulative dollar amount actually incurred and expended toward the PROJECT by CITY, GOOGLE, and the VTA, as measured at the completion or termination of the PROJECT. The Total Project Cost is estimated not to exceed Two Million Eight Hundred Thirty Thousand Dollars (\$2,830,000) (“Estimated Total Project Cost”).

5. FINANCIAL CONTRIBUTIONS TO COST OF PROJECT

A. VTA’s Financial Contribution for PROJECT. The Parties understand that the VTA will contribute an amount not to exceed Eight Hundred Thirty Thousand Dollars (\$830,000) to be used by CITY for completion of the PROJECT.

B. CITY’s Financial Contribution for PROJECT. CITY is responsible for funding the remaining Two Million Dollars (\$2,000,000) of the Estimated Total Project Cost (“Estimated Remaining Project Cost”).

C. GOOGLE'S Contribution. GOOGLE will voluntarily contribute up to One Million Dollars (\$1,000,000) to CITY to partially fund the Estimated Remaining Project Cost ("GOOGLE's Contribution"). GOOGLE's Contribution is intended to fund approximately fifty percent (50%) of the Estimated Remaining Project Cost. GOOGLE shall provide CITY with GOOGLE's Contribution within sixty (60) days of the Effective Date of this Agreement. No interest shall accrue on the amount contributed.

D. Actual Project Costs. If the Total Project Cost is less than the Estimated Total Project Cost, the CITY's financial contribution to the PROJECT and GOOGLE's Contribution shall be reduced accordingly. In such event, CITY shall reimburse GOOGLE for GOOGLE's Contribution in an amount equivalent to fifty percent (50%) of the difference between the Total Project Cost and the Estimated Total Project Cost. If the Total Project Cost exceeds the Estimated Total Project Cost, then the Parties may meet and confer regarding a potential written amendment to this Agreement to increase GOOGLE's Contribution.

E. Reimbursement in the Event of Early Termination. In the event this Agreement is terminated pursuant to Section 3.B above, CITY shall reimburse GOOGLE for the amount of GOOGLE's Contribution that has not yet been spent on the PROJECT at the time of CITY's termination of any contracts between CITY and consultants to perform or complete the PROJECT.

6. CITY'S RESPONSIBILITIES

A. Accounting. One month after the Effective Date, and on a monthly basis thereafter, CITY shall provide an accounting report to GOOGLE showing the PROJECT funds expended by CITY. The accounting report shall indicate PROJECT costs on a month to date and a year to date basis.

B. Discretionary Authority. CITY makes no promise, representation or warranty, express or implied, as to the timing or outcome of the PROJECT and any associated environmental review. Nothing in this Agreement is intended to diminish or otherwise affect CITY's discretionary authority and powers with respect to the PROJECT.

7. CITY ACCEPTANCE OF GOOGLE'S CONTRIBUTION

CITY can accept, and GOOGLE can provide, the funding provided pursuant to this Agreement under applicable laws. The funding provided pursuant to this Agreement is not a gift to any specific individual. CITY is aware and acknowledges that GOOGLE may be a vendor and/or lobbyist employer, and GOOGLE employees may be registered lobbyists.

This Agreement shall not prevent GOOGLE from supplying products or services to the City.

8. GENERAL PROVISIONS

A. Successors and Assigns. This Agreement is binding on GOOGLE and its respective agents, successors and assigns and legal representatives. GOOGLE shall not assign or transfer its interest in this Agreement without the prior written consent of CITY, which shall not unreasonably be withheld, and any attempt to do so shall be voidable by CITY.

B. Applicable Laws, Venue and Attorneys' Fees. This Agreement shall be construed and enforced pursuant to the laws of the State of California and venue shall be in the superior courts of Santa Clara County, California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, each party shall bear their own legal costs and attorneys' fees.

C. Amendment. This Agreement may be amended in writing and signed by both Parties.

D. Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, external agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

E. Public Records. The Parties recognize and acknowledge that CITY is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.

F. Notices. Any notice required to be given to GOOGLE shall be deemed to be duly and properly given if mailed to GOOGLE, postage prepaid, addressed to:

Google LLC
Attention: Director, Real Estate
District Development 1600
Amphitheatre Parkway
Mountain View, CA 94043

With a copy of notice to:

Google LLC
Attention: Legal Department/RE Matters
1600 Amphitheatre Parkway
Mountain View, CA 94043

or personally delivered to GOOGLE at such address or at such other addresses as GOOGLE may designate in writing to CITY.

Any notice required to be given CITY shall be deemed to be duly and properly given if mailed to CITY, postage prepaid, addressed to:

Director of Public Works
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086

With a copy of notice to:

Office of City Attorney
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086

or personally delivered to CITY at such address or at such other addresses as CITY may designate in writing to GOOGLE.

G. Execution in Counterparts / Electronic Signature. This Agreement may be executed electronically and in any number of counterparts by each Party, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

H. Authority to Execute Agreement. Each Party to this Agreement represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

[signatures on following page]

IN WITNESS WHEREOF, this Agreement between the City of Sunnyvale and Google LLC for a voluntary financial contribution to the PROJECT, is executed by CITY and GOOGLE.

CITY:

CITY OF SUNNYVALE,
a California Charter City and municipal
corporation

By: _____
Name: Kent Steffens
Title: City Manager

GOOGLE:

GOOGLE LLC,
a Delaware limited liability company

By: _____
Name: Jeff Holzman
Title: Director, Real Estate District
Development

APPROVED AS TO CONTENT:

By: _____
Name: Chip Taylor
Title: Public Works Director

FINANCIAL APPROVAL:

By: _____
Name: Tim Kirby
Title: Finance Director

APPROVED AS TO FORM:

By: _____
Name: John A. Nagel
Title: City Attorney