

**FIRST AMENDMENT
TO THE AGREEMENT BETWEEN GOOGLE AND THE CITY OF
SUNNYVALE TO REIMBURSE CITY FOR PLANNING, DEVELOPMENT AND
ENGINEERING SERVICES RELATED TO GOOGLE AND CITY TRANSPORTATION
PROJECTS**

This FIRST AMENDMENT to the Agreement between Google and City of Sunnyvale to Reimburse City For Planning, Development and Engineering Services Related to Google and City Transportation Projects (the "Agreement") is made this ____ day of _____, 2019, by and between the City of Sunnyvale (hereinafter referred to as "City") and Google LLC (hereinafter referred to as "Applicant").

RECITALS

WHEREAS, City and Applicant entered into the Agreement executed on April 6, 2016;

WHEREAS, the Traffic Engineer and Transportation Manager positions funded by Google pursuant to the Agreement have been vacant for approximately one year as of the date of this First Amendment;

WHEREAS, the City would like the flexibility to hire one (1) full-time Traffic Engineer and at CITY's option either of the following: (i) one (1) full-time Traffic and Transportation Manager, or (ii) one (1) full-time Principal Transportation Engineer; and

WHEREAS, City and Applicant have faithfully performed their respective obligations in accordance with the Agreement; and

WHEREAS, City and Applicant now wish to amend the Agreement to modify Applicant's obligation for funding and to extend the term of the Agreement as set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreement of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Google agree as follows:

1. The following recital is hereby deleted in its entirety:

"WHEREAS, APPLICANT will also have non-transportation projects that will require development and civil engineering services; and"
2. Article I, entitled "Reimbursement for Expenditures", subsection A is hereby deleted in its entirety and replaced with the following language:

"A. In order to reimburse CITY for the cost of providing such services, APPLICANT shall deposit with the City funds to pay the projected equivalent cost of one (1) full-time Traffic Engineer and at CITY's option either of the following: (i) one (1) full-time Traffic

and Transportation Manager, or (ii) one (1) full-time Principal Transportation Engineer, for civil and transportation engineering costs incurred including, but not limited to, personnel, outside contractors and administrative overhead charge and any other reimbursable expenditures including such costs related to the implementation of CITY Transportation priorities and to copying and noticing associated with APPLICANT's present and future transportation projects necessary to process APPLICANT's Applications for all transportation permits ("Applications"). CITY shall perform such engineering services to evaluate CITY transportation priorities and the Applications proposed by APPLICANT, including but not limited to, analysis of engineering issues, preparation of documents and attendance at meetings, in addition to any other inquiries regarding engineering services."

3. Article II, entitled, "Applicant's Obligations For Funding", Subsections A, C and D are hereby deleted in their entirety and replaced with the following language:

"A. By May 1st of each year, CITY shall provide APPLICANT with an estimate for the projected equivalent cost of the services for one (1) full-time Traffic Engineer and at CITY's option either of the following: (i) one (1) full-time Traffic and Transportation Manager, or (ii) one (1) full-time Principal Transportation Engineer, including administrative overhead charge and any other reimbursable expenditures including such costs related to copying and noticing associated with APPLICANT's present and future projects, ("Estimated Reimbursement Deposit") for the upcoming fiscal year. Should the APPLICANT have any questions or concerns regarding the Estimated Reimbursement Deposit, the APPLICANT and CITY shall meet to discuss the APPLICANT's questions or concerns before the acceptance deadline."

"C. In consideration of the fact that the Traffic Engineer and Transportation Manager positions funded by Google pursuant to the Agreement have been vacant for a year, and notwithstanding any provision of this Agreement to the contrary, APPLICANT shall not be responsible to pay the Estimated Reimbursement Deposit to CITY for fiscal year 2019-2020. APPLICANT's nonpayment of the Estimated Reimbursement Deposit for fiscal year 2019-2020 shall not be considered a breach of this Agreement."

"D. By June 1, 2020, APPLICANT shall pay the Estimated Reimbursement Deposit to CITY for fiscal year 2020-2021. By June 1, 2021, APPLICANT shall pay the Estimated Reimbursement Deposit to CITY for fiscal year 2021-2022. By June 1, 2022, APPLICANT shall pay the Estimated Reimbursement Deposit to CITY for fiscal year 2022-2023."

4. Article III, entitled, "City's Responsibilities", Subsection A is hereby deleted in its entirety and replaced with the following language:

"A. By May 1st of each year, CITY shall provide APPLICANT with an estimate for the projected equivalent cost of the services for one (1) full-time Traffic Engineer and at CITY's option either of the following: (i) one (1) full-time Traffic and Transportation Manager, or (ii) one (1) full-time Principal Transportation Engineer, including administrative overhead charge and any other reimbursable expenditures including such

costs related to copying and noticing associated with APPLICANT's present and future projects ("Estimate Reimbursement Deposit") for the upcoming fiscal year."

5. Article IV, entitled, "Term and Termination", Subsection A is hereby deleted in its entirety and replaced with the following language:

"A. The term of this Agreement shall be from April 6, 2016 through June 30, 2023, unless terminated earlier."

6. In the event of inconsistencies between the Agreement and this First Amendment, the terms and conditions of this First Amendment shall be controlling. Unless specifically modified or changed by the terms of this First Amendment, all terms and conditions of the Agreement shall remain in effect and shall apply fully as described and set forth therein, respectively.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment by causing their duly authorized representatives to sign below as of the day and year first above written.

APPROVED AS TO CONTENT:

CITY:

City of Sunnyvale
a California Charter City and municipal
corporation

By: _____
Name:
Title: City Manager

APPLICANT:

Google LLC,
a Delaware limited liability company

By: _____
Name: David Radcliffe
Title: VP Real Estate

APPROVED AS TO CONTENT:

Name:
Title: Public Works Director

FINANCIAL APPROVAL:

Name:
Title: Finance Director

APPROVED AS TO FORM

Name:
Title: City Attorney