

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: RA Term Sheet
Date: Tuesday, May 18, 2021 12:19:34 PM
Attachments: [REDLINE Reimbursement Agreement Term Sheet \(4-30-21\).docx](#)
[CLEAN Reimbursement Agreement Term Sheet \(4-30-21\).docx](#)

From: MWChan@perkinscoie.com <MWChan@perkinscoie.com>
Sent: Friday, April 30, 2021 6:15 PM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Cc: Gray, Matthew S. (Perkins Coie) <MGray@perkinscoie.com>
Subject: RA Term Sheet

[External Email]

Johnny,

Please find attached revised clean and redline versions of the draft RA term sheet. Let us know if you have any questions. Thanks,

Michelle

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**TERM SHEET FOR
REIMBURSEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE AND GOOGLE LLC**

This TERM SHEET memorializes the proposed terms for a REIMBURSEMENT AGREEMENT (“Agreement”) by and between GOOGLE LLC, a Delaware limited liability company authorized to do business in the State of California ("Google" or “Project Sponsor”), and the CITY OF SAN JOSE, a municipal corporation ("City"). City and Google are sometimes referred to individually herein as a “Party” and collectively as the “Parties.” The Agreement will provide for Google’s reimbursement of the City for “City Costs” in connection with the City’s performance of Reimbursable Work (as defined below) for the Downtown West Mixed-Use Project (“Project” or “Downtown West”). This Term Sheet is intended to establish the framework and identify key terms for an Agreement. Nothing in this Term Sheet shall be construed as a binding obligation.

Key Terms	Summary of Term
<u>Section 1.</u> Purpose and Intent Agreement	<ul style="list-style-type: none">• The Agreement is intended to memorialize the Parties long-term understanding of Google’s reimbursement of the City for “City Costs” in connection with the City’s processing of Downtown West.• The Parties share the objectives of ensuring (i) full cost recovery for the City in connection with the City’s processing of Downtown West; and (ii) timely processing of Subsequent Approvals in connection with the Project in order to advance the Parties shared vision of transforming Downtown San Jose and the Diridon Station Area Plan into a vibrant, transit-oriented neighborhood with a diverse and complementary mix of land uses that will provide substantial public benefits to the City, including expansion of economic opportunity within the City and significant improvements and investments in the public realm through the Parties’ shared goal of timely implementation of the Project; and (iii) establishing a framework, process(es), and personnel to facilitate the expedited processing of building permits and site permits.
<u>Section 2.</u> Reimbursement Obligation	<ul style="list-style-type: none">• Google agrees to reimburse the City for City Costs associated with the City’s performance of “Reimbursable Work”.• “Reimbursable Work” consists of the processing of

	<p>Subsequent Approvals required to implement the Project, including but not limited to any further environmental review, Conformance Review Applications, City Dedicated Open Space designs, permits for Interim Uses and Special Events and Limited Term Uses during the term of the Agreement, phased final subdivision maps, improvement plans, and grading and building permits.</p> <ul style="list-style-type: none">● Google’s reimbursement obligations in this Agreement, which exceed City standard review and processing fees, are intended by the Parties to compensate the City for its expedited review of Conformance Review Applications as established in the Implementation Guide and other Project approvals and documents. Unless stated otherwise in the Project approvals and documents, City review of Subsequent Approvals following the Conformance Review process shall adhere to standard requirements of the Municipal Code and the Permit Streamlining Act.● Reimbursement related to litigation/challenges of the Project, legal costs for agreements associated with District Systems, and any other fees and costs mutually agreed upon between the parties will be covered in a separate reimbursement agreement(s).
<u>Section 3. Consultants</u>	<ul style="list-style-type: none">● The City may select and retain Consultants to perform Reimbursable Work.● As determined by the City through the Work Plan process, Consultants will supplement certain Dedicated Staff and other City staff as needed to address intensification in development activity and/or provide subject matter expertise. The City may allocate/reallocate, in its reasonable discretion, the specific tasks and services between Consultants and City staff and shall reasonably confer with Project Sponsor to ensure that Consultants are used in an efficient manner.
<u>Section 4. City Costs</u>	<p>“City Costs” shall have the meaning set forth in Section 1.18 of the Development Agreement and include the following:</p> <ul style="list-style-type: none">● City’s “Fully Loaded Costs” shall mean the standard rate established by City for the full cost to employ such Dedicated Staff and generally includes the salary,

	<p>benefits, and other related costs for the “Dedicated Staff.” Dedicated Staff shall include a certain number of new full-time equivalent staffing corresponding to City staff positions that represent the Parties’ good faith estimate of the staffing levels required to perform the Reimbursable Work. (For the avoidance of doubt, it is intended that this funding for full-time equivalent staff would enable the City to hire additional personnel and thereby increase staffing capacity beyond existing levels for the purpose of expediting the review and approval of Conformance Review/Subsequent Approval applications and implementation of the Project.)</p> <ul style="list-style-type: none">● Actual costs of Consultants, if retained.● Actual costs of City staff time, based on standard fully loaded hourly rate, incurred in connection with the Reimbursable Work that cannot reasonably be performed by Dedicated Staff. The fully loaded hourly rates published for City staff time includes the City’s standard overhead fee and incorporates costs associated with Director-level staff time and coordination. There shall be no separate overhead cost or costs associated with Director-level staff time charged to the Project Sponsor. The Project Sponsor’s reimbursement of actual costs of City staff time shall be in addition to the City’s “Fully Loaded Costs” for Dedicated Staff.● The Parties will periodically review and adjust (e.g. during Meet and Confer meetings as described below) Dedicated Staff and City staffing levels to ensure that appropriate levels of City resources are available to perform the Reimbursable Work.● If Processing Fees are charged in connection with any Reimbursable Work, such Processing Fee shall be credited against Google’s liability for reimbursement of City Costs. <p>City Costs shall not include (i) any City standard expedited processing costs in connection with the Reimbursable Work; and (ii) any costs that are not identified on an Approved Budget (as defined in Section 8).</p>
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<u>Section 5.</u> Term	The term of this Agreement shall be continuous with the term of the Development Agreement unless terminated earlier.
<u>Section 6.</u> Budget Period	Except for the Initial Budget Period (as defined below), each budget period “Budget Period” shall be from July 1 to June 30 consistent with the City’s fiscal year. As long as Google continues to commit funds for Reimbursable Work, the funds shall be used for City staff and timely processing of Subsequent Approvals pursuant to the terms of this Agreement.
<u>Section 7.</u> Project Sponsor’s Schedule and Work Plan	<ul style="list-style-type: none">● To assist the City in preparing an annual budget for the upcoming Budget Period (“Annual Budget”), Google shall submit to the City by December 1st of each year, a proposed schedule and work plan (“Work Plan”) that identifies Google’s: (i) anticipated schedule for the submission of Conformance Review/Subsequent Approval applications, (ii) anticipated number of Conformance Review/Subsequent Approval applications, (iii) anticipated type of Conformance Review/Subsequent Approval applications; and (iv) anticipated coordination meetings required of City staff and consultants; and (v) anticipated other efforts to be addressed over the course of the year.● Google shall notify the City as promptly as possible if it determines that the Work Plan will significantly change including anticipated schedule for the submission of Conformance Review/Subsequent Approval applications or the number of Conformance Review/Subsequent Approval applications will substantially deviate from the Work Plan previously submitted to the City.

<u>Section 8. Annual Budget and Budgeted City Costs</u>	<ul style="list-style-type: none">● Within forty-five (45) calendar days following Google’s submittal of a Work Plan for an upcoming Budget Period, the City and Project Sponsor shall meet and confer in good faith to collectively prepare a proposed budget (“Budget”) of estimated City Costs (“Budgeted City Costs”) in-line with comparable projects for the upcoming Budget Period. The Parties shall prepare a mutually agreed upon Budget for the upcoming Budget Period by February 1st.● Each Budget shall include detailed information of the proposed Budgeted City Costs for the applicable Budget Period, including but not limited to: (i) identifying all City departments and Consultants anticipated to be required to review Reimbursable Work for the upcoming Budget Period; (ii) a description of the anticipated proposed scope of work to be carried out by each City department and/or Consultant; (iii) identifying proposed City staff in each City department anticipated to be required to perform the Reimbursable Work; (iv) the standard hourly rate for the proposed City staff; and (v) an estimated not-to-exceed amount for each City department and/or Consultant for each quarter of the Budget Period.● At least [twenty (20) calendar days] prior to March 1st of each year, the City shall provide an Annual Budget that is the agreed upon Budget established through the collective process to the Project Sponsor for review and approval (“Approved Budget”), which the Project Sponsor shall reasonably approve if substantially consistent with the proposed Budget that the parties collectively prepared.
<u>Section 9. Commencement Date and Initial Budget</u>	<ul style="list-style-type: none">● Commencement Date. The commencement date of this Agreement shall be the later of (i) July 1, 2022; or (ii) termination of the [13-month Reimbursement Agreement] (“Commencement Date”).● Initial Budget. The initial budget period (“Initial Budget Period”) shall commence on the Commencement Date and shall end on the next June 30th that occurs following the Commencement Date. Google shall submit to the City a Work Plan for the Initial Budget Period by December 1, 2021 and the parties shall coordinate and collectively develop a Budget for the Initial Budget

	Period pursuant to the timeframes and process in Section 8.
<u>Section 10.</u> Budget Reporting, Modifications and Augmentations	<ul style="list-style-type: none">• <u>Budget Modifications and/or Augmentation.</u> Google understands the City must be fully cost recovery in providing services under this Agreement. The agreed upon annual Work Plan and Approved Budget for any Budget Period are a good faith estimate based on the information provided by Google. The City and applicable City departments will use its reasonable efforts to work within the agreed upon annual Work Plan and Approved Budget for any Budget Period. However, Google understands additional and unanticipated coordination, meetings, reviews, and other issues may arise as part of processing the Conformance Review applications requiring modification to the annual Work Plan and Approved Budget for any Budget Period. The Budgeted City Costs in an Approved Budget for any Budget Period may be modified or increased from time to time by the City with the written consent of Google, which shall not be unreasonably withheld, conditioned, or delayed, provided the City has conferred with Google and furnished reasonable written justification for the modification or increase. Google shall approve or disapprove a request for modification or increase of the Budgeted City Costs in an Approved Budget within [thirty (30) calendar days] of receiving the City's written request and supporting information. In the event Google provides written consent for an increase in the Budgeted City Costs during a Budget Period, Google shall increase the Deposit in the approved amount within [fourteen (14) calendar days] after approving such increase.• <u>Reporting.</u> The City shall deliver quarterly cost variance reports ("Quarterly Report") to Google that details City Costs incurred by the City in relation to the approved Budgeted City Costs, the percentage of work that has been completed by each City department, and how much remains available for billing for each City department under the then-approved Annual Budget.
<u>Section 11.</u> Deposit and Payment	<ul style="list-style-type: none">• <u>Initial Deposit.</u> Within thirty (30) calendar days after the Commencement Date and prior to City commencing any Reimbursable Work, Google shall deliver to the City a deposit in the amount of [fifty

	<p>percent (50%)] of the Initial Budget (“Initial Deposit”).</p> <ul style="list-style-type: none">• <u>Subsequent Quarterly Deposits</u>. No less than five (5) calendar days prior to commencement of a Budget Period, the Project Sponsor shall deposit the approved amount for the first quarter of that Budget Period (“Deposit”). The Project Sponsor shall make an additional deposit no less than five (5) calendar days prior to each quarter of a Budget Period in the approved amount for that quarter of the Budget Period.
<u>Section 12. Cooperation</u>	<ul style="list-style-type: none">• <u>Expeditious Processing</u>. Provided Google has (i) provided all required notice, and (ii) fully made the payments to City as agreed upon, City agrees to make best efforts to expeditiously implement the Project and review and process Conformance Review Applications and other Subsequent Approvals in accordance with the Implementation Guide and other Project Approvals and Documents in an efficient manner to ensure timely delivery of the economic and community benefits associated with Project implementation.• <u>Project Liaison</u>. The City agrees that it shall engage, at the City’s sole cost and expense, a consistent senior-level liaison to the Project (“Project Liaison”) to assist in the review and approval of Subsequent Approvals and implementation of the Project. The Project Liaison shall host every-other-week meetings among the City, Project Sponsor, and all Dedicated Staff to ensure that the applications are being timely processed and approved and Reimbursable Work is being performed efficiently and expeditiously. The Project Liaison shall also be responsible for (1) serving as a liaison between the Project Sponsor and City departments when reasonably requested by the Project Sponsor; (2) resolving disputes between the Project Sponsor and City departments; (3) facilitating Meet and Confer meetings as defined below; and (4) facilitating the referral of significant issues to the Director/Head of applicable City departments, and if necessary the City Manager.• <u>Meet and Confer</u>. The City and the Project Sponsor agree to meet and confer (“Meet and Confer”) a minimum of every six (6) months to discuss matters related to the successful implementation of the Parties’ rights and obligations under this Agreement and the parties’ goal of timely implementing the Project. During a Meet and

	<p>Confer, the City and the Project Sponsor may discuss the City's planned or anticipated allocation of Dedicated Staff, any anticipated slowdown or intensification of development activity relative to the then-current Work Plan, and any other matters of concern under this Agreement pertaining to timely and effective review and consideration of Conformance Review/Subsequent Approval applications. Either Party may request a Meet and Confer with the other Party and the Parties shall reasonably seek to Meet and Confer within seven (7) calendar days of such request.</p> <ul style="list-style-type: none">● <u>Building Permits</u>. In order to provide efficient and expeditious processing of building permits, the City and Project Sponsor shall cooperate to establish a framework and process to retain key personnel (e.g. Dedicated Staff) in the City's Building Division. The parties recognize that the retention of key personnel will be mutually beneficial in achieving the parties' shared objective of processing permits in an expeditious manner to timely implement the Project.
<u>Section 13</u> . Dispute Resolution	<p>Any dispute between the Parties shall be subject to the [meet and confer process set forth in Section 9.2 of the Development Agreement before a Party sends a notice of default].</p>
<u>Section 14</u> . Default	<ul style="list-style-type: none">● Google shall be in default under this Agreement if it: (i) fails to timely fund or replenish the Deposit and does not cure such failure within sixty (60) calendar days after service of written notice from City; (ii) fails to timely submit a Work Plan or timely approve or disapprove a City request for Budget modification or increase; or (iii) otherwise fails to perform any other obligation under this Agreement and does not cure such failure within sixty (60) calendar days after service of written notice from the City.● The City shall be in default under this Agreement if it: (i) fails to timely provide Quarterly Reports; (ii) fails to timely process Subsequent Approvals pursuant to the timelines set forth in the Project approvals and documents provided that Google is not in default of this Agreement; and (iii) otherwise fails to perform any obligation under this Agreement and does not cure such failure within sixty (60) calendar days after service of written notice from Google.

<u>Section 15. Termination</u>	<p>This Agreement may only be terminated as follows:</p> <ul style="list-style-type: none">● <u>Automatic Termination.</u> This Agreement shall automatically terminate upon the termination of the Development Agreement.● <u>Termination by City.</u> If Google is in default under this Agreement and fails to cure such default following written notice and expiration of the cure periods identified above, the City may terminate this Agreement by written notice to Google specifying the date of termination which shall not be less than ten (10) calendar days following the date of such notice.● <u>Termination by Google.</u> If the City is in default under this Agreement and fails to cure such default following written notice and expiration of the cure periods identified above, Google may terminate this Agreement by written notice to City specifying the effective date of termination which shall not be less than ten (10) calendar days following the date of such notice.● In the event of termination of the Agreement by Google or the City, the City's review of the Conformance Review/Subsequent Approval applications would be subject to the standard requirements of the Municipal Code and the Permit Streamlining Act which the City shall continue to review in a manner commensurate with the Project's status as a priority project and consistent with the Conformance Review framework set forth in the Implementation Guide.
<u>Section 16. Recordkeeping and Audits</u>	<ul style="list-style-type: none">● City shall maintain records with respect to services performed by City and its Consultants under this Agreement (the "Records") in accordance with the City's current procedures. No less than seven (7) calendar days after notice by Project Sponsor, City shall make available to Project Sponsor all Records for examination.● Nothing in this Agreement shall be construed to require the City to provide documents that are privileged, attorney work product, or attorney-client privileged.
<u>Section 17. Assignment</u>	<ul style="list-style-type: none">● <u>Assignment to Lendlease and Lendlease Affiliate.</u> If Google assigns, or partially assigns, its rights, duties, obligations or interests to Lendlease or any Lendlease Affiliate with respect to residential, hotel, limited-

	<p>term corporate accommodations, or retail development pursuant to the terms of the Development Agreement, Google may assign or partially assign its obligations under this Agreement to Lendlease or any Lendlease Affiliate. Within [thirty (30) calendar days] of providing the City with an Assignment and Assumption Agreement as set forth under Section 12 of the Development Agreement, Lendlease or any Lendlease Affiliate shall prepare and submit to the City an anticipated Work Plan that identifies its (i) anticipated schedule for the submission of Conformance Review Applications and other Subsequent Approval applications, (ii) anticipated number of Conformance Review Applications and other Subsequent Approval applications, (iii) anticipated type of Conformance Review Applications and Subsequent Approval applications to be submitted, and (iv) other relevant information that may assist the City in preparing an Annual Budget and appropriate levels of City resources and staffing required to perform the Reimbursable Work for the upcoming Budget Period as it relates to its implementation of the Project. Within [fourteen (14) calendar days] of providing the City with its Work Plan, the City and Lendlease or Lendlease Affiliate shall meet and confer to establish a proposed budget pursuant to Sections 7 and 8 above as it relates to Reimbursable Work for Lendlease or any Lendlease Affiliate.</p> <ul style="list-style-type: none">● <u>Other Transfers/Assignments.</u> If Google assigns, or partially assigns its rights, duties, obligations to a third-party (“Assignee”) other than Lendlease or any Lendlease Affiliate pursuant to the terms of the Development Agreement, Google may request, and the City will reasonably consider, that this Agreement be assigned or partially assigned to the Assignee. Alternatively, the Assignee may negotiate a separate reimbursement agreement with the City to address the Assignee’s reimbursement of the City for “City Costs” in connection with the City’s processing of the Assignee’s Reimbursable Work to advance the objective of timely implementation of the Downtown West project.
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TERM SHEET FOR
REIMBURSEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE AND GOOGLE LLC

This TERM SHEET memorializes the proposed terms for a REIMBURSEMENT AGREEMENT ("Agreement") by and between GOOGLE LLC, a Delaware limited liability company authorized to do business in the State of California ("Google" or "Project Sponsor"), and the CITY OF SAN JOSE, a municipal corporation ("City"). City and Google are sometimes referred to individually herein as a "Party" and collectively as the "Parties." The Agreement will provide for Google's reimbursement of the City for "City Costs" in connection with the City's performance of Reimbursable Work (as defined below) for the Downtown West Mixed-Use Project ("Project" or "Downtown West"). This Term Sheet is intended to establish the framework and identify key terms for an Agreement. Nothing in this Term Sheet shall be construed as a binding obligation.

Key Terms	Summary of Term
<u>Section 1.</u> Purpose and Intent Agreement	<ul style="list-style-type: none">The Agreement is intended to memorialize the Parties long-term understanding of Google's reimbursement of the City for "City Costs" in connection with the City's processing of Downtown West.The Parties share the objective objectives objectives of ensuring expeditious (i) <u>the City is fully</u> full cost recovery for the City in connection with the City's processing of Downtown West; and (ii) timely processing of Subsequent Approvals in connection with the Project in order to advance the Parties shared vision of transforming Downtown San Jose and the Diridon Station Area Plan into a vibrant, transit-oriented neighborhood with a diverse and complementary mix of land uses that will provide substantial public benefits to the City, including expansion of economic opportunity within the City and significant improvements and investments in the public realm through the Parties' shared goal of timely implementation of the Project; <u>and (iii) establishing a framework, process(es), and personnel to facilitate the expedited processing of building permits and site permits.</u>
<u>Section 2.</u> Reimbursement Obligation	<ul style="list-style-type: none">Google agrees to reimburse the City for City Costs associated with the City's performance of "Reimbursable Work".

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	<ul style="list-style-type: none">• “Reimbursable Work” consists of the processing of Subsequent Approvals required to implement the Project, required to implement the Project, including but not limited to any further environmental review, Conformance Review Applications, City Dedicated Open Space designs, permits for Interim Uses and Special Events and Limited Term Uses during the term of the Agreement, phased final subdivision maps, improvement plans, and grading and building permits.• Google’s reimbursement obligations in this Agreement, which exceed City standard review and processing fees, are intended by the Parties to compensate the City for its expedited review of Conformance Review Applications as established in the Implementation Guide and other Project approvals and documents. Unless stated otherwise in the Project approvals and documents, City review of Subsequent Approvals following the Conformance Review process shall adhere to standard requirements of the Municipal Code and the Permit Streamlining Act.• Reimbursement related to litigation/challenges of the Project, legal costs for agreements associated with District Systems, and <u>any other fees and costs mutually agreed upon between the parties</u> will be covered in a separate reimbursement agreement(s).
<u>Section 3. Consultants</u>	<ul style="list-style-type: none">• The City may select and retain Consultants to perform Reimbursable Work.• As determined by <u>the City through the work plan Work Plan process</u>, Consultants will supplement certain Dedicated Staff and other City staff as needed to address intensification in development activity and/or provide subject matter expertise. The City may allocate/reallocate, in its reasonable discretion, the specific tasks and services between Consultants and City staff and shall reasonably confer with Project Sponsor to ensure that Consultants are used in an efficient manner.
<u>Section 4. City Costs</u>	“City Costs” shall have the meaning set forth in Section 1.18 of the Development Agreement and include the following:

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- City's "Fully Loaded Costs" shall mean the standard rate established by City for the full cost to employ such Dedicated Staff and generally includes the salary, benefits, and other related costs for the "Dedicated Staff." Dedicated Staff shall include a certain number of new full-time equivalent staffing corresponding to City staff positions that represent the Parties' good faith estimate of the staffing levels required to perform the Reimbursable Work. (For the avoidance of doubt, it is intended that this funding for full-time equivalent staff would enable the City to hire additional personnel and thereby increase staffing capacity beyond existing levels for the purpose of expediting the review and approval of Conformance Review/Subsequent Approval applications and implementation of the Project.)
- Actual costs of Consultants, if retained.
- Actual costs of City staff time, based on standard fully loaded hourly rate, incurred in connection with the Reimbursable Work that cannot reasonably be performed by Dedicated Staff. The fully loaded hourly rates published for City staff time includes the City's standard overhead fee and incorporates costs associated with Director-level staff time and coordination. There shall be no separate overhead cost or costs associated with Director-level staff time charged to the Project Sponsor. The Project Sponsor's reimbursement of actual costs of City staff time shall be in addition to the City's "Fully Loaded Costs" for Dedicated Staff.
- The Parties will periodically review and adjust (e.g. during Meet and Confer meetings as described below) Dedicated Staff and City staffing levels to ensure that appropriate levels of City resources are available to perform the Reimbursable Work.
- If Processing Fees are charged in connection with any Reimbursable Work, such Processing Fee shall be credited against Google's liability for reimbursement of City Costs.

City Costs shall not include (i) any City standard expedited processing costs in connection with the Reimbursable Work;

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	and (ii) any costs that are not identified on an Approved Budget (as defined in Section 8).
Section 5. Term	The term of this Agreement shall be eotermious continuouscontinuous with the term of the Development Agreement unless terminated earlier.
Section 6. Budget Period	Except for the Initial Budget Period (as defined below), each budget period "Budget Period" shall be from July 1 to June 30 consistent with the City's fiscal year. All agreed upon Annual Budgets are subject to appropriation of the City Council. As long as Google continues to commit funds for Reimbursable Work, the funds shall be used for City staff and timely processing of Subsequent Approvals pursuant to the terms of this Agreement.
Section 7. Project Sponsor's Schedule and Work Plan	<ul style="list-style-type: none">• To assist the City in preparing an annual budget for the upcoming Budget Period ("Annual Budget"), Google shall submit to the City by December 1st of each year, a proposed schedule and work plan ("Work Plan") that identifies Google's: (i) anticipated schedule for the submission of Conformance Review/Subsequent Approval applications, (ii) anticipated number of Conformance Review/Subsequent Approval applications, and (iii) anticipated type of Conformance Review/Subsequent Approval applications; and (iv) anticipated coordination, review, and meetings required of City staff and consultants; and (v) anticipated other issuesefforts to be addressed over the course of the year.• The Project SponsorGoogleGoogle shall endeavor to notify the City as promptly as possible if it determines that the Work Plan will significantly change including anticipated schedule for the submission of Conformance Review/Subsequent Approval applications or the number of Conformance Review/Subsequent Approval applications will substantially deviate from the Work Plan previously submitted to the City.

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Section 8. Annual Budget and Budgeted City Costs	<ul style="list-style-type: none">[Twenty Within Sixty (2060) Within forty-five (45) calendar days] following the Project Sponsor Google's Google's submittal of a Work Plan for an upcoming Budget Period, the City and Project Sponsor shall meet and confer in good faith to collectively prepare a proposed budget ("Budget") of estimated City Costs ("Budgeted City Costs") in-line with comparable projects for the upcoming Budget Period. The Parties shall prepare a mutually agreed upon Budget for the upcoming Budget Period by February 1st subject to review and approval of the City Council as part of the City budget or separate appropriation processes.Each Budget shall include detailed information of the proposed Budgeted City Costs for the applicable Budget Period, including but not limited to: (i) identifying all City departments and Consultants anticipated to be required to review Reimbursable Work for the upcoming Budget Period; (ii) a description of the anticipated proposed scope of work to be carried out by each City department and/or Consultant; (iii) identifying proposed City staff in each City department anticipated to be required to perform the Reimbursable Work; (iv) the standard hourly rate for the proposed City staff; and (iv) an anticipated <u>an estimated</u> not-to-exceed amount for each City department and/or Consultant for each quarter of the Budget Period.At least [twenty (20) calendar days] prior to March 1st of each year, the City shall provide an Annual Budget that is the agreed upon Budget established through the collective process to the Project Sponsor for review and approval ("Approved Budget"), which the Project Sponsor shall reasonably approve if substantially consistent with the proposed Budget that the parties collectively prepared.
Section 9. Commencement Date and Initial Budget	<ul style="list-style-type: none"><u>Commencement Date. The commencement date of this Agreement shall be the later of (i) July 1, 2022; or (ii) termination of the [13-month Reimbursement Agreement] ("Commencement Date").</u><u>Initial Budget. The initial budget period ("Initial Budget Period") shall commence on the Commencement Date and shall end on the next June 30th that occurs following the Commencement Date. Google shall submit to the City a Work Plan for the Initial Budget Period by</u>

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	<u>December 1, 2021 and the parties shall coordinate and collectively develop a Budget for the Initial Budget Period pursuant to the timeframes and process in Section 8.</u>
<u>Section 9. Commencement Date and Initial Budget</u> <u>Section 10. Budget Reporting, Modifications and Augmentations</u>	<ul style="list-style-type: none">• 2 Commencement Date. Google shall deliver to the City written notice identifying the commencement date of this Agreement ("Commencement Date"). Google shall provide the City written notice a minimum of 90 calendar days before the stated Commencement Date.• 2 Initial Budget. The initial budget period ("Initial Budget Period") shall commence on the Commencement Date and shall end on the next June 30th that occurs following the Commencement Date. A minimum of [sixty (60) calendar days] before the Commencement Date, the Project Sponsor shall submit a Work Plan to the City and the Parties shall meet and confer in good faith to establish the City's budget of estimated Budgeted City Costs") for the Initial Budget Period pursuant to the process set forth in Sections 7 and 8.• Budget Modifications and/or Augmentation. Google understands the City must be fully cost recovery in providing services under this Agreement. The agreed upon annual Work Plan and Approved Budget for any Budget Period are a good faith estimate based on the information provided by Google. The City and applicable City departments shall not deviate or incur any costs that are not described in an Approved Budget, including deviations from the approved amount allocated to each City department in an will will use its reasonable efforts to work within the agreed upon annual Work Plan and Approved Budget for any Budget Period. However, Google understands additional and unanticipated coordination, meetings, reviews, and other issues may arise as part of processing the Conformance Review applications requiring flexibility and modification to the annual Work Plan and Approved Budget for any Budget Period. The Budgeted City Costs in an Approved Budget for any Budget Period may be modified or increased from time to time by the City with the written consent of Google, which shall not be unreasonably withheld, conditioned, or delayed, provided the City has conferred with Google and furnished reasonable written justification for the modification or increase. Google shall approve or disapprove a request for

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	<p><u>modification or increase of the Budgeted City Costs in an Approved Budget within [thirty (30) calendar days] of receiving the City's written request and supporting information. In the event Google provides written consent for an increase in the Budgeted City Costs during a Budget Period, Google shall increase the Deposit in the approved amount within [fourteen (14) calendar days] after approving such increase.</u></p> <ul style="list-style-type: none"> • <u>Reporting.</u> The City shall deliver <u>quarterly</u> cost variance reports ("Quarterly Report") to Google that details City Costs incurred by the City in relation to the approved Budgeted City Costs, the percentage of work that has been completed by each City department, and how much remains available for billing for each City department under the then-approved Annual Budget.
Section 11. Deposit and Payment	<ul style="list-style-type: none"> • <u>Initial Deposit.</u> Within thirty (30) calendar days after the Commencement Date, and prior to City commencing any Reimbursable Work, Google shall deliver to the City a deposit in the amount of <u>[\$ _____ fifty [fifty] percent (50%) of the Initial Budget</u> ("Initial Deposit"). • <u>Subsequent Quarterly Deposits.</u> No less than five (5) calendar days prior to <u>commencement the mid-year commencement</u> of a Budget Period, the Project Sponsor shall deposit the approved amount for the first quarter of that Budget Period ("Deposit" <u>remaining fifty percent (50%)</u>). The Project Sponsor shall make an additional deposit no less than five (5) calendar days prior to each quarter of a Budget Period in the approved amount for that quarter of the Budget Period.
Section 12. Cooperation	<ul style="list-style-type: none"> • <u>Expeditious Processing.</u> <u>The Provided Provided</u> Google has (i) provided all required notice, <u>and</u> (ii) fully made the payments to City as agreed upon, <u>and (iii) City has adequate staffing.</u> City agrees to <u>make best efforts to</u> expeditiously implement the Project and <u>review and</u> process Conformance Review Applications and other Subsequent Approvals in accordance with the Implementation Guide and other Project Approvals and Documents in an efficient manner to ensure timely delivery of the economic and community benefits associated with Project implementation. • <u>Project Liaison.</u> The City agrees that it shall engage, at

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the City's sole cost and expense, a consistent senior-level liaison to the Project ("Project Liaison") to assist in the review and approval of Subsequent Approvals and implementation of the Project. The Project Liaison shall host every-other-week meetings among the City, Project Sponsor, and all Dedicated Staff to ensure that the applications are being timely processed and approved-and Reimbursable Work is being performed efficiently and expeditiously. The Project Liaison shall also be responsible for (1) serving as a liaison between the Project Sponsor and City departments when reasonably requested by the Project Sponsor; (2) resolving disputes between the Project Sponsor and City departments; (3) facilitating Meet and Confer meetings as defined below; and (4) facilitating the referral of significant issues to the Director/Head of applicable City departments, and if necessary the City Manager.

- **Meet and Confer.** The City and the Project Sponsor agree to meet and confer ("Meet and Confer") a minimum of every six (6) months to discuss matters related to the successful implementation of the Parties' rights and obligations under this Agreement and the parties' goal of timely implementing the Project. During a Meet and Confer, the City and the Project Sponsor may discuss the City's planned or anticipated allocation of Dedicated Staff, any anticipated slowdown or intensification of development activity relative to the then-current Work Plan, and any other matters of concern under this Agreement pertaining to timely and effective review and consideration of Conformance Review/Subsequent Approval applications. Either Party may request a Meet and Confer with the other Party and the Parties shall reasonably seek to Meet and Confer within seven (7) calendar days of such request.

- **Building Permits.** In order to provide efficient and expeditious processing of building permits, the City and Project Sponsor shall cooperate to establish a framework and process to retain key personnel (e.g. Dedicated Staff) in the City's Building Division. The parties recognize that the retention of key personnel will be mutually beneficial in achieving the parties' shared objective of processing permits in an expeditious manner to timely implement the Project.

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<u>Section 13. Dispute Resolution</u>	Any dispute between the Parties shall be subject to the [meet and confer process set forth in Section 9.2 of the Development Agreement before a Party sends a notice of default].
<u>Section 14. Default</u>	<ul style="list-style-type: none">Google shall be in default under this Agreement if it: (i) fails to timely fund or replenish the Deposit and does not cure such failure within sixty (60) calendar days after service of written notice from City; or (ii) fails to <u>timely submit a Work Plan or timely approve or disapprove a City request for Budget modification or increase; or (iii) otherwise fails to perform any other</u> obligation under this Agreement and does not cure such failure within sixty (60) calendar days after service of written notice from the City.The City shall be in default under this Agreement if it: <u>(i) fails to timely provide Quarterly Reports; (ii) fails to timely process Subsequent Approvals pursuant to the timelines set forth in the Project approvals and documents provided that Google is not in default of this Agreement; and (iii) otherwise</u> fails to perform any obligation under this Agreement and does not cure such failure within sixty (60) calendar days after service of written notice from Google.
<u>Section 15. Termination</u>	<p>This Agreement may only be terminated as follows:</p> <ul style="list-style-type: none"><u>Automatic Termination.</u> This Agreement shall automatically terminate upon the termination of the Development Agreement.<u>Termination by City.</u> If Google is in default under this Agreement and fails to cure such default following written notice and expiration of the cure periods identified above, the City may terminate this Agreement by written notice to Google specifying the date of termination which shall not be less than ten (10) calendar days following the date of such notice.<u>Termination by Google.</u> If the City is in default under this Agreement and fails to cure such default following written notice and expiration of the cure periods identified above, Google may terminate this Agreement by written notice to City specifying the effective date of termination which shall not be less than ten (10) calendar days following the date of such notice.

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	<ul style="list-style-type: none">• In the event of termination of the Agreement by Google or the City, the City's review of the Conformance Review/Subsequent Approval applications would be subject to the standard requirements of the Municipal Code and the Permit Streamlining Act <u>which the City shall continue to review in a manner commensurate with the Project's status as a priority project and consistent with the Conformance Review framework set forth in the Implementation Guide.</u>
Section 16. Recordkeeping and Audits	<ul style="list-style-type: none">• City shall maintain records with respect to services performed by City and its Consultants under this Agreement (the "Records") in accordance with the City's current procedures. <u>No less than 48 hours</u> seven (7) calendar days after notice by Project Sponsor, City shall make available to Project Sponsor all Records for examination.• Nothing in this Agreement shall be construed to require the City to provide documents that are privileged, attorney work product, or attorney-client privileged.
Section 17. Assignment	<ul style="list-style-type: none">• Assignment to Lendlease and Lendlease Affiliate. If Google assigns, or partially assigns, its rights, duties, obligations or interests to a third party ("Assignee") <u>Lendlease or any Lendlease Affiliate with respect to residential, hotel, limited-term corporate accommodations, or retail development</u> pursuant to the terms of the Development Agreement, Google may assign or partially assign its obligations under this Agreement to an Assignee as it relates to the Assignee's implementation of the Project.• Lendlease or any Lendlease Affiliate. Within [thirty (30) calendar days] of providing the City with an Assignment and Assumption Agreement as set forth under Section 12 of the Development Agreement, the Assignee <u>Lendlease or any Lendlease Affiliate</u> shall prepare and submit to the City an anticipated Work Plan that identifies the Assignee's (i) anticipated schedule for the submission of Conformance Review Applications and other Subsequent Approval applications, (ii) anticipated number of Conformance Review Applications and other Subsequent Approval applications, (iii) anticipated type of Conformance Review Applications and Subsequent Approval applications to be submitted, and (iv) other relevant

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information that may assist the City in preparing an Annual Budget and appropriate levels of City resources and staffing required to perform the Reimbursable Work for the upcoming Budget Period as it relates to its implementation of the Project.

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- Other Transfers/Assignments. If Google assigns, or partially assigns its rights, duties, obligations to a third-party (“Assignee”) other than Lendlease or any Lendlease Affiliate pursuant to the terms of the Development Agreement, Google may request, and the City will reasonably consider, that this Agreement be assigned or partially assigned to the Assignee. Alternatively, the Assignee may negotiate a separate reimbursement agreement with the City to address the Assignee’s reimbursement of the City for “City Costs” in connection with the City’s processing of the Assignee’s Reimbursable Work to advance the objective of timely implementation of the Downtown West project.

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