

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Updated RA Term Sheet
Date: Tuesday, May 18, 2021 12:20:30 PM
Attachments: [CLEAN Reimbursement Agreement Term Sheet \(5-6-2021\).docx](#)
[REDLINE Reimbursement Agreement Term Sheet \(5-6-2021\).docx](#)

From: MWChan@perkinscoie.com <MWChan@perkinscoie.com>
Sent: Thursday, May 6, 2021 9:32 PM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Cc: Gray, Matthew S. (Perkins Coie) <MGray@perkinscoie.com>
Subject: Updated RA Term Sheet

[External Email]

Johnny,

Please find attached updated clean and redline versions of the RA Term Sheet. The redline tracks changes against the version that I circulated yesterday and addresses items discussed today. 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.
<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 Subsequent Approvals required to implement the Project, including but not limited to any further environmental review, Conformance Review Applications, City

	<p>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 permits. Unless otherwise agreed to by the parties, processing of building permits shall not be considered “Reimbursable Work” under this Agreement and Project Sponsor shall pay any fees and charges incurred for building permits according to the City’s standard process and rates, with the ability to elect an expedited review process.</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, public outreach/community engagement, and any other fees and costs mutually agreed upon between the parties will be covered in this same or a separate reimbursement agreement(s).
<u>Section 3.</u> Consultants	<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 (set forth in Section 7 below), Consultants will supplement certain Dedicated Staff and other City staff as needed to address intensification in development activity and/or provide technical or 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.</u> City Costs	<p>“City Costs” shall have the meaning set forth in Section 1.18 of the Development Agreement and include the following:</p>

	<ol style="list-style-type: none">1. City's "Fully Loaded Costs" shall mean the standard rate in effect at the time services are provided, as established by City for the full cost to employ such Dedicated Staff and which 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.)2. Actual costs of Consultants, if retained.3. Actual costs of City staff time, based on standard fully loaded hourly rate in effect at the time services are provided, 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 may incorporate costs associated with Director and management -level staff time and coordination. There shall be no separate overhead cost charged to the Project Sponsor. The fully loaded hourly rate published for City staff time in City departments that are non-ratepayer funded incorporates costs associated with Director-level staff time and coordination; therefore, there shall be no separate costs associated with Director-level staff time charged to the Project Sponsor for non-ratepayer funded City departments. Project Sponsor understands and agrees that actual costs for any Director-level staff time incurred by ratepayer-funded City departments must be charged as a separate cost. The City shall identify Director-level staff time from ratepayer-funded City departments to be separately charged in each Budget. 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.4. The Parties will periodically review and adjust (e.g.
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	<p>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.</p> <p>5. 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; provided, however, that fees for building permits shall be charged according to the City's standard rates and process and are not Reimbursable Work unless otherwise agreed to between the parties. The parties may further coordinate with City departments, including the City's Building Division and the Fire Department, and agree to incorporate the expedited processing of permits that are not currently within the scope of Reimbursable Work as a component of Reimbursable Work under this Agreement.</p> <p>City Costs shall not include any costs that are not identified on an Approved Budget (as defined in Section 8).</p>
<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.
<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; (iv) anticipated coordination meetings required of City staff and consultants; and (v) anticipated other efforts to be addressed over the course of the year, including but not limited to anticipated public outreach and community engagement to be conducted by or in coordination with the City in relation to the Reimbursable Work.

	<ul style="list-style-type: none"> 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.
Section 8. Annual Budget and Budgeted City Costs	<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 half of the Budget Period. At least fifteen (15) 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. Each Approved Budget shall be subject to the budget and appropriation process in Chapter 12 of the City Charter. Notwithstanding anything to the contrary herein, Project Sponsor shall have no obligation to deliver a Deposit to City for a particular Budget Period until the City Council has appropriated the monies

	relevant to and consistent with the applicable Approved Budget.
Section 9. Commencement Date and Initial Budget	<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.
Section 10. 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 twenty (20) 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

	<p>amount within thirty (30) calendar days after approving such increase.</p> <ul style="list-style-type: none"> ● <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 percent (50%)] of the Initial Budget (“Initial Deposit”). The remaining fifty percent (50%) shall be deposited no later than January 15, 2023. ● <u>Subsequent Bi-Annual 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 half of that Budget Period (“Deposit”). The Project Sponsor shall make an additional deposit no more than five (5) calendar days after January 1 of a Budget Period in the approved amount for that half of the Budget Period.
<u>Section 12</u> . Cooperation	<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 Manager</u>. The City agrees that it shall engage, at Google’s sole cost and expense, a Dedicated Staff person who will act as a consistent liaison to the Project (“Project Manager”) to assist in coordinating the review and approval of Subsequent Approvals and implementation of the Project. The Project Manager shall host every-other-week meetings among the City, Project Sponsor, and all Dedicated Staff to ensure that

	<p>the applications are being timely processed and approved and Reimbursable Work is being performed efficiently and expeditiously. The Project Manager shall also be responsible for serving as a liaison between the Project Sponsor and City departments when reasonably requested by the Project Sponsor. As necessary, the Project Manager will engage Director-level support, whose time may not be charged as a separate City Cost under this Agreement, for the purpose of: (1) resolving disputes between the Project Sponsor and City departments; (2) facilitating Meet and Confer meetings as defined below; and (3) facilitating the referral of significant issues to the Director/Head of applicable City departments, and if necessary the City Manager.</p> <ul style="list-style-type: none"> ● <u>Director-Level Engagement.</u> The City agrees that the Project Manager shall regularly engage a senior-level liaison (Director-level) to generally keep them apprised of the status of the Project, and to coordinate with other Director/Head of City departments as needed to resolve issues between the Project Sponsor and City departments. This will include regular Director-level attendance at Project meetings among the City, Project Sponsor, and Dedicated Staff. ● <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 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><u>Section 13.</u> Dispute Resolution</p>	<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>

<p><u>Section 14.</u> Default</p>	<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 use best efforts 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.
<p><u>Section 15.</u> Termination</p>	<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 pursuant to the Conformance Review process authorized by the GDP and further set forth in the Implementation Guide (excluding expedited timeframes).
<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-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

	<p>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 in its sole and reasonable discretion may determine whether to approve this Agreement be assigned or partially assigned to the Assignee. Alternatively, the Assignee may negotiate a separate reimbursement agreement with the City, subject to City approval, to address the Assignee’s reimbursement of the City for “City Costs” in connection with the City’s Reimbursable Work for Assignee 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.

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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.
<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 Subsequent Approvals required to implement the Project, including but not limited to any further environmental review, Conformance Review Applications, City

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	<p>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 permits. Unless otherwise agreed to by the parties, processing of building permits shall not be considered “Reimbursable Work” under this Agreement and Project Sponsor shall pay any fees and charges incurred for building permits according to the City’s standard process and rates, with the ability to elect an expedited review process.</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, public outreach/community engagement, and any other fees and costs mutually agreed upon between the parties will be covered in this same or 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, <u>(set forth in Section 7 below)</u>, Consultants will supplement certain Dedicated Staff and other City staff as needed to address intensification in development activity and/or provide technical or 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>

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1. City's "Fully Loaded Costs" shall mean the standard rate in effect at the time services are provided, as established by City for the full cost to employ such Dedicated Staff and which 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.)
2. Actual costs of Consultants, if retained.
3. Actual costs of City staff time, based on standard fully loaded hourly rate in effect at the time services are provided, 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 may incorporate costs associated with Director and management -level staff time and coordination. There shall be no separate overhead cost charged to the Project Sponsor. The fully loaded hourly rate published for City staff time in City departments that are non-ratepayer funded incorporates costs associated with Director-level staff time and coordination; therefore, there shall be no separate costs associated with Director-level staff time charged to the Project Sponsor for non-ratepayer funded City departments. Project Sponsor understands and agrees that actual costs for any Director-level staff time incurred by ratepayer-funded City departments must be charged as a separate cost. The City shall identify Director-level staff time from ratepayer-funded City departments to be separately charged in each Budget. 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.
4. The Parties will periodically review and adjust (e.g.

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	<p>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.</p> <p>5. 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; provided, however, that fees for building permits shall be charged according to the City's standard rates and process and are not Reimbursable Work unless otherwise agreed to between the parties. <u>The parties may further coordinate with City departments, including the City's Building Division and the Fire Department, and agree to incorporate the expedited processing of permits that are not currently within the scope of Reimbursable Work as a component of Reimbursable Work under this Agreement.</u></p> <p>City Costs shall not include any costs that are not identified on an Approved Budget (as defined in Section 8).</p>
<u>Section 5. Term</u>	The term of this Agreement shall be continuous with the term of the Development Agreement unless terminated earlier.
<u>Section 6. Budget Period</u>	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.
<u>Section 7. Project Sponsor's Schedule and Work Plan</u>	<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; (iv) anticipated coordination meetings required of City staff and consultants; and (v) anticipated other efforts to be addressed over the course of the year, including but not limited to anticipated public outreach and community engagement to be conducted by or in coordination with the City in relation to the Reimbursable Work—.

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	<ul style="list-style-type: none">• 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 half of the Budget Period.• At least fifteen (15) 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.• Each Approved Budget shall be subject to the budget and appropriation process in Chapter 12 of the City Charter. Notwithstanding anything to the contrary herein, Project Sponsor shall have no obligation to deliver a Deposit to City for a particular Budget Period until the City Council has appropriated the monies

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	relevant to and consistent with the applicable Approved Budget.
Section 9. Commencement Date and Initial Budget	<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.
Section 10. 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 twenty (20) 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

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	<p>amount within thirty (30) calendar days after approving such increase.</p> <ul style="list-style-type: none">• <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 percent (50%)] of the Initial Budget (“Initial Deposit”). The remaining fifty percent (50%) shall be deposited no later than January 15, 2023.• <u>Subsequent Bi-Annual 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 half of that Budget Period (“Deposit”). The Project Sponsor shall make an additional deposit no lessmore than five (5) calendar days prior toafter January 15 of a Budget Period in the approved amount for that half of the Budget Period.
<u>Section 12</u> . Cooperation	<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 Manager</u>. The City agrees that it shall engage, at Google’s sole cost and expense, a Dedicated Staff person who will act as a consistent liaison to the Project (“Project Manager”) to assist in coordinating the review and approval of Subsequent Approvals and implementation of the Project. The Project Manager shall host every-other-week meetings among the City, Project Sponsor, and all Dedicated Staff to ensure that

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the applications are being timely processed and approved and Reimbursable Work is being performed efficiently and expeditiously. The Project Manager shall also be responsible for serving as a liaison between the Project Sponsor and City departments when reasonably requested by the Project Sponsor. As necessary, the Project Manager will engage Director-level support, whose time may not be charged as a separate City Cost under this Agreement, for the purpose of: (1) resolving disputes between the Project Sponsor and City departments; (2) facilitating Meet and Confer meetings as defined below; and (3) facilitating the referral of significant issues to the Director/Head of applicable City departments, and if necessary the City Manager.

- Director-Level Engagement. The City agrees that the Project Manager shall regularly engage a senior-level liaison (Director-level) to generally keep them apprised of the status of the to generally keep them apprised of the status of the to generally keep them apprised of the status of the Project, and to coordinate with other Director/Head of City departments as needed to resolve issues between the Project Sponsor and City departments. This will include regular Director-level attendance at Project meetings among the City, Project Sponsor, and Dedicated Staff.
- 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

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	reasonably seek to Meet and Confer within seven (7) calendar days of such request.
<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; (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 use best efforts 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

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	<p>shall not be less than ten (10) calendar days following the date of such notice.</p> <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 pursuant to the Conformance Review process authorized by the GDP and further set forth in the Implementation Guide (excluding expedited timeframes).
<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-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

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	<p>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 in its sole and reasonable discretion may determine whether to approve this Agreement be assigned or partially assigned to the Assignee. Alternatively, the Assignee may negotiate a separate reimbursement agreement with the City, subject to City approval, to address the Assignee’s reimbursement of the City for “City Costs” in connection with the City’s Reimbursable Work for Assignee to advance the objective of timely implementation of the Downtown West project.
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