

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Preliminary Draft - Google - DW - Development Agreement DRAFT thru Section 2
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Attachments: [Google - DW - Development Agreement DRAFT thru Section 2.docx](#)

From: Phan, Johnny
Sent: Wednesday, February 24, 2021 8:25 PM
To: Miller, J. Gregg <gmler@coblenzlaw.com>
Subject: Preliminary Draft - Google - DW - Development Agreement DRAFT thru Section 2

Hi Gregg – Attached are comments and redline changes to the draft Development Agreement up to Section 2. To keep things moving we are sending you preliminary comments and changes before we had the chance to comprehensively review the latest draft and provide full comments. Please call to discuss. Thanks. Johnny

Johnny V. Phan

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Johnny V. Phan
Chief Deputy City Attorney
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City of San José
200 East Santa Clara Street
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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND GOOGLE LLC**

**RELATIVE TO THE DEVELOPMENT OF PROPERTY LOCATED IN THE
DIRIDON STATION AREA PLAN**


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EXHIBITS

- A Project Site Legal Descriptions 
- B Project Boundaries
- C Public Benefits
 - C1 Public Benefits Matrix
 - C2 Community Benefits Schedule
- D Affordable Housing Program
 - [Include the schedules attached to the Affordable Housing Program (currently Schedules A through E; but relabel D1 through D5)]
- E Parkland Agreement
 - E1 Park Improvements Value
 - E2 Private Recreation Improvements Description
 - E3 Delivery of City-Dedicated Open Space
 - E3.1 City-Dedicated Open Space Dedication and Improvements Schedule
 - E3.2 Park Dedication/Delivery Triggers Figure
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- E7 List of Required Exceptions from Parkland Dedication Ordinance
- E8 Bond Forms
- F Privately-Owned Open Space
 - F1 Public Access Agreement
 - F2 Rules Regarding Public Access and Private Events/Temporary Closures
 - F3 Code of Conduct for Public Use
- G Workforce, Learning, and Education Commitments

- H Community Stabilization and Opportunity Pathways Fund
- I Infrastructure Plan 
- J Framework for City-Owned Electrical Microgrid at Google's Downtown West Project
- K Downtown West Parking Requirements
- L List of Approvals
- M List of Applicable Impact Fees
- N Form of Notice of Completion and Termination
- O Form of Assignment and Assumption Agreement

SCHEDULES

- A Form of Reimbursement Agreement

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND GOOGLE LLC**

THIS DEVELOPMENT AGREEMENT, dated for reference purposes only as of this ____ day of _____, 2021 (the "Reference Date"), is by and between GOOGLE LLC, a Delaware limited liability company (herein, "Google" or "Developer"), and the CITY OF SAN JOSE, a municipal corporation (herein, "City"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code (herein, "Development Agreement Statute") and pursuant to the City's powers as a charter city and Chapter 18.02 of the San José Municipal Code (herein, "Development Agreement Ordinance"). The City and Developer are also sometimes referred to individually as a "Party" and together as the "Parties". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. The City Council of the City adopted the *Envision San José 2040 General Plan* ("General Plan") in 2011 setting forth a vision and comprehensive road map to guide the City's continued growth through the year 2040.

B. The General Plan includes land use policies to shape the transformation of strategically identified "Growth Areas" into higher density, mixed-use, urban districts that can accommodate employment and housing growth and reduce environmental impacts of that growth by promoting transit use and walkability. The Diridon Station Area is located generally within the Downtown Growth Area in the General Plan.

C. The City Council of the City adopted the Diridon Station Area Plan (DSAP) in 2014 to establish a land use plan and policy framework that will guide future development and redevelopment toward land uses that support transit ridership and economic development, and create a world-class urban destination, among many other objectives.

D. In December 2018, Developer and City entered into a non-binding Memorandum of Understanding (herein, the "MOU") with the intention to "collaborate on development in and around the Diridon Station Area to aid implementation of the planned expansion of San José's Downtown, the Diridon Station Area Plan, and the General Plan." The MOU set forth a vision for new development and adaptive reuse of existing facilities to transform the current area into a vibrant, fully functional transit-oriented neighborhood that embodies a commitment to place-making, social equity, economic development, environmental sustainability, and financially viable private development.

E. The shared goals established in the MOU and advanced by the Project, as described in more detail below, include: balancing the objectives of the City, Developer, and the community; capitalizing on transit synergy; optimizing density and the mix of land uses; preserving existing housing and creating new housing; creating broad job opportunities; and pursuing equitable development. Goals also address high-quality, human-scaled design; improvements to the public realm; enhanced sustainability, environmental stewardship, and innovation; improvements to existing transit access and the minimization of parking; timely implementation; assurance that private developers will fund a fair share of amenities and other improvements and pay prevailing wages to construction workers in office/research and development buildings; and public involvement in discussions regarding public benefits.

F. The MOU states that, should a project be approved, the Developer would enter into a development agreement with the City to "memorialize community benefits and secure vested development rights aligned with any proposed development masterplan." The MOU contemplates a development agreement that provides, among other things, certainty with regard to the rules and regulations governing future development, time frames for delivery of development projects, and a schedule for delivery of payments and community benefits. The MOU also recognizes that development agreement negotiations will take into account the financial viability of Developer's proposed project and the development-related priorities of the City and community.

G. In October 2019, Google submitted an application to the City for the Downtown West Mixed-Use Plan (herein, the "Project"). The Project site is located in the General Plan Downtown Growth Area and mostly within the boundaries of the DSAP, an area of the City that is anchored by public transportation. Additionally, the Project re-envisioned a significant portion of the DSAP as a mixed-use area that integrates housing and increases open space, rather than solely maximizing office development.

H. The Project site is described in Exhibit A and depicted in Exhibit B, and is generally bounded by Lenzen Avenue and the Union Pacific Railroad (UPRR) tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, South Autumn Street, and Royal Avenue to the east; Auzerai Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west (herein the "Project Site" or "site"). The site is approximately 78 acres in size, approximately one mile long from north to south and generally less than 800 feet wide from east to west, although the site reaches nearly 1,500 feet from east to west at its widest, just south of West Santa Clara Street. The site excludes seven parcels owned by Caltrain, located north of West San Fernando Street and immediately across Cahill Street from Diridon Station. Developer and

Valley Transportation Authority (VTA) have also entered into a Public-Private Partnership Agreement ("P3 Agreement"), dated October 2, 2020, in which VTA agreed to transfer its fee interest in approximately 6,871 square feet of land identified as APN 259-38-014 and 259-38-133 pursuant to the terms of the P3 Agreement. These VTA parcels are included within the Project Site for purposes of this Development Agreement. Certain other parcels owned by VTA (APNs 261-34-002, -003, -004, -005, -006, -011, and -023) are within the project site analyzed in the environmental impact report (EIR) for the project, and are included in the Project's Planned Development Zoning and General Development Plan, but are not within the Project Site for purposes of this Development Agreement. As reflected in Exhibit B, the Project Site for purposes of this Agreement also does not include certain property owned by the Pacific Gas and Electric Company (a portion of APN 261-35-002), certain property owned by the Peninsula Corridor Joint Powers Board (APN 261-34-020), or certain other property owned by VTA (APNs 259-38-139, 259-38-114, 259-38-134 [*NOTE-working with VTA to include*]), which properties are included in the Downtown West Planned Development Zoning and General Development Plan, the Downtown West Design Standards and Guidelines, and the Vesting Tentative Map for the Project.

I. The Project consists of the phased demolition of most of the existing buildings and phased development of new buildings in the Project Site. The Project includes development of the following land uses: a maximum of 7.3 million gross square feet (gsf) of commercial office space; a maximum of 5,900 residential units; a maximum of 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); a maximum of 300 hotel rooms; a maximum of 800 rooms of limited-term corporate accommodations (a non-residential use, akin to corporate suites, that would accommodate Google employees for up to 60 days); a

maximum of 100,000 gsf of event and conference space; up to 4,800 publicly accessible commercial parking spaces and up to 2,360 unbundled parking spaces for residential use; a potential "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two on-site centralized utility plants totaling up to 130,000 gsf; one or more on-site logistics centers to serve the commercial on-site **uses** that would occupy a total of about 100,000 gsf; a total of approximately 15 acres of parks, plazas and open space, including areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, riparian corridors and trails; and various improvements to the public realm to improve transit access and pedestrian and bicycle circulation and facilitate connectivity, both within the site and to and from surrounding neighborhoods.

J. The Project includes significant infrastructure investments that include new and improved streets, utilities, open spaces, local transportation improvements, site development, and more. In addition, Developer has included various enhanced public realm finishes and innovative District Systems.

K. On December 30, 2019, Governor Gavin Newsom certified the Project under the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (Assembly Bill [AB] 900, as amended by Senate Bill 734, Senate Bill 7 **[note: include upon adoption]**, and AB 246). As an environmental leadership development project, the Project must: (1) result in a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction; (2) create high-wage, highly skilled jobs that provide construction jobs and permanent jobs for Californians, and help reduce unemployment; (3) not result in any net additional greenhouse gas (GHG) emissions; (4) comply with state requirements for commercial

and organic waste recycling; and (5) have a binding commitment with the City, as set forth in the conditions of approval for the Downtown West Planned Development Permit and other Approvals, committing to implement and monitor mitigation measures required to comply with AB 900, as amended.

L. The Project requires an amendment to the General Plan and DSAP; Planned Development Rezoning, including a General Development Plan; a Planned Development Permit, including adoption of the Downtown West Design Standards and Guidelines, Downtown West Improvement Standards, and Conceptual Infrastructure Plan Sheets; Vesting Tentative Map(s)/Tentative Map(s)/Final Map(s); a Major Encroachment Agreement, vacations of portions of existing City streets; and related entitlements from the City, including, but not limited, to this Development Agreement, and permits related to tree removal, demolition, grading, building, and historic preservation (collectively, the "Approvals"). The full list of Approvals is provided in Exhibit L hereto.

M. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute, which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted the Development Agreement Ordinance establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Development Agreement Ordinance.

N. In addition to the significant housing, jobs, urban revitalization, and economic benefits to the City from the Project, the City has determined that, as a result of the development of the Project in accordance with this Agreement, additional benefits to the public will accrue that could not be otherwise obtained through application of existing City ordinances, regulations, and policies. Major additional benefits to the City from the Project are set forth in Exhibits D, F, G, and H, and I hereto, and include: a combination of mechanisms, such as land dedication, moderate income inclusionary housing units, development fees, and other funding sources for affordable housing production and preservation, all of which will contribute significantly to the goal of achieving twenty-five percent (25%) affordable housing overall within the boundaries of the DSAP; development of approximately fifteen (15) acres of new open space, including: publicly accessible parks, plazas, and trails, including approximately four and eight tenths (4.8) acres to be improved and dedicated to the City, and approximately ten and two tenths (10.2) acres of privately-owned, publicly accessible parks, roughly seven (7) acres of which will be subject to a recorded restrictive covenant or easement; new bike and pedestrian infrastructure and enhanced access to public transit; workforce commitments, including payment of prevailing wage and local hire goals; seed funding for a Community Stabilization and Opportunity Pathways Fund to invest in education and workforce development, small business capacity building and incubation, affordable housing preservation, anti-displacement, homeless prevention, and homeless services, each as further described in this Agreement.

O. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "CEQA"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*; "CEQA Guidelines"), the Development

Agreement Statute, the Development Agreement Ordinance, the San José Municipal Code, and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project.

P. The Final Environmental Impact Report ("FEIR") prepared for the Project and certified by the City Council on _____, 2021, together with the CEQA findings (the "CEQA Findings") and the Mitigation Monitoring and Reporting Program ("MMRP") adopted concurrently therewith, comply with CEQA, the CEQA Guidelines, and Title 21 of the City's Municipal Code. The FEIR thoroughly analyzes the Project and Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. The information in the FEIR and the CEQA Findings were considered by the City Council in connection with approval of this Agreement.

Q. On _____, 2021, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Development Agreement Ordinance. Following the public hearing, the Planning Commission determined among other things that the FEIR thoroughly analyzes the Project, and the Mitigation Measures are designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation, and further determined that the Project and this Agreement will, as a whole, be consistent with the objectives, policies, and general land uses and programs specified in the General Plan (together the "General Plan Consistency Findings"). The Planning Commission adopted Resolution No. XXX, recommending that the City Council adopt the CEQA findings, approve this Agreement, and approve the Project.

R. On _____, 2021, the City Council, having received the Planning Commission's recommendations, held a public hearing on the FEIR, the Project, and this Agreement pursuant to the Development Agreement Statute and the Development Agreement Ordinance. Following the public hearing, the City Council adopted Resolution No. XXX, certifying the FEIR, making the CEQA Findings required by CEQA, adopting a Mitigation Monitoring and Reporting Program, and adopting a Statement of Overriding Considerations; adopted Resolution No. XXX approving an override of the Santa Clara County Airport Land Use Commission inconsistency determination; [Note: *Separate or single GP and SAP resolutions under discussion*] adopted Resolution No. XXX, approving amendments to the General Plan; adopted Resolution No. XXX approving amendments to the Diridon Station Area Plan; introduced Ordinance No. XXX, approving a Planned Development Rezoning, including a General Development Plan; adopted Resolution No. XXX, conditionally approving a Vesting Tentative Map(s); adopted Resolution No. XXX, conditionally approving a Planned Development Permit and adopting the Downtown West Design Standards and Guidelines and the Downtown West Improvement Standards; [Note: *pending discussions with City*] introduced Ordinance No. XXX approving an amendment to Title 20 of the City's Municipal Code; adopted Resolutions No. XXX and No. XXX, conditionally amending the boundaries for Historic Landmarks (San José Water Company Building at 374 West Santa Clara Street, and Southern Pacific Historic District); adopted Resolution No. XXX, conditionally approving an amendment to Historic Preservation Permit (HP16-002); adopted Resolution No. XXX, conditionally approving Major Encroachment Permits for the District Systems and approving the form of a Major Encroachment Agreement for the District Systems infrastructure; adopted Resolution No. XXX, conditionally vacating certain streets within the Project Site; and introduced Ordinance No. XXX, approving this Agreement.

S. On _____, 2021, the City Council adopted Ordinance Nos. _____, approving a Planned Development Rezoning, adopted Ordinance No. ____ approving an amendment to Title 20 of the City's Municipal Code, adopted Resolution No. _____ conditionally approving the vacation of certain streets within the Project Site, and adopted Ordinance No. _____, approving this Agreement, including the Parkland Agreement included herewith as Exhibit E, and authorizing the City Manager to execute this Agreement on behalf of the City (the "Enacting Ordinance"). The Enacting Ordinance took effect on _____, 2021.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals, and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 "Affiliate" or "Affiliates" means any entity that directly or indirectly owns, Controls (as defined in 1.28 below) through one or more intermediaries, is Controlled by, or is under common Control with, another entity.

1.2 "Affordable Housing Program" shall mean the Affordable Housing Program attached hereto as Exhibit D.

1.3 "Affordable Housing Unit" shall have the meaning set forth in the Affordable Housing Program.

1.4 "Agreement" shall mean this Development Agreement, the Exhibits which have been expressly incorporated herein, and any amendments thereto.

1.5 "Applicable Laws" shall have the meaning set forth in Section 5.2 (where "applicable" is not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.6 "Approvals" shall mean the City approvals, entitlements, and permits for the Project listed on Exhibit L.

1.7 "Assembly Bill (AB) 900" shall mean the Jobs and Economic Improvement through Environmental Leadership Act of 2011, as amended effective January 1, 2018, and codified in Public Resources Code Section 21178 *et. seq.*

1.8 "Assignment and Assumption Agreement" shall have the meaning set forth in Section 12.2.

1.9 "Building" or "Buildings" shall mean each of the existing, modified, and new buildings on the Project Site, and as described in the Project Description attached as Exhibit B.

1.10 "CEQA" shall have the meaning set forth in Recital N.

1.11 "CEQA Findings" shall have the meaning set forth in Recital O.

1.12 "CEQA Guidelines" shall have the meaning set forth in Recital N.

1.13 "Certificate of Occupancy" shall mean the permit issued by the City Building Division authorizing the initial occupancy of one or more buildings and includes final inspections and temporary certificate of occupancy permits.

1.14 "City" shall mean the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Director of PBCE or, as necessary, the Planning Commission, or the City Council.

1.15 "City Agency" or "City Agencies" shall mean the City departments, agencies, boards, commissions, and bureaus that have subdivision or other permit, entitlement, or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Manager, PBCE Department, Director of PBCE, Department of Parks, Recreation, and Neighborhood Services, Environmental Services Department, Housing Department, and Department of Public Works, together with any successors to the foregoing City agencies, departments, boards, or commissions.

1.16 "City Attorney's Office" shall mean the Office of the City Attorney of the City San José.

1.17 "City Costs" shall mean the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement, or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default.

1.18 "City Council" or "Council" shall mean the City Council of the City of San José.

1.19 "City-Dedicated Open Space(s)" shall mean the parks and trail to be dedicated to the City and improved by Developer in conformance with the Parkland Agreement, and as set forth in Exhibit E hereto.

1.20 "City Parties" shall have the meaning set forth in Section 4.7.

1.21 "City-Wide" shall mean all real property within the territorial limits of the City of San José, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.22 "Commence Construction", "Commencement of Construction" and similar variations thereof shall mean commencement of vertical physical site work pursuant to a building permit excluding demolition, grading, excavation or foundation.

1.23 "Community Benefits" shall mean those Public Benefits provided by the Project that are aligned with stated Council Priorities established by the City Council on December 4, 2018 as part of approving the MOU, exceed the Base Requirements, and are not Project Features.

1.24 "Complete" and any variation thereof shall mean, as applicable, that: (i) with respect to Privately-Owned Open Space and Privately-Owned Improvements, the City Agencies or the Non-City Agencies with jurisdiction over any required permits for such Privately-Owned Open Space or Privately-Owned Improvements have issued any approvals required for use of the contemplated use or improvement with construction having been complete to such an extent that safe use of the space is viable; (ii) with respect to any Public Improvement, the Public Improvement, or portion thereof, has been completed in accordance with related subdivision map conditions of approval and any applicable Public Improvement Agreement and, if applicable, Exhibit E of this agreement, ; and (iii) with respect to any Building, a Certificate of Occupancy has been issued.

1.25 "Conformance Review" shall mean the Downtown West Planned Development Zoning/Design Conformance Review process established by the General Development Plan, pursuant to which the Director of PBCE or Director of PW, as specified in the General Development Plan, reviews Conformance Review Applications for Vertical

Improvements, open space and Park Improvements, and Horizontal Improvements for conformance with the General Development Plan and Downtown West Planned Development Permit as a prerequisite to the issuance of permits to construct open space, Vertical Improvements, or Horizontal Improvements, as applicable.

1.26 "Conformance Review Application" shall mean a written request on a form approved by the Director of PBCE, with full application fee paid, for a Conformance Review determination by the Director of PBCE that Vertical Improvements, open space and Park Improvements, or Horizontal Improvements for a particular area of the Project Site satisfies the applicable standards of the General Development Plan and Downtown West Planned Development Permit.

1.27 "Connection Charges" means all water and sewer connection fees and charges payable to the City, as and when due in accordance with City requirements that are applicable on a City-Wide basis or within the DSAP's Boundaries, to the same or similarly situated uses and applied in an equitable and non-discriminatory manner.

1.28 "Control" means (i) the direct or indirect ownership of more than fifty percent (50%) of the profits or capital of another entity; or (ii) the right to dictate the controlled entity's decisions, subject to the rights of other owners; or (iii) the power to direct the day-to-day management or control of the entity, directly or indirectly and whether through ownership of voting securities, membership or partnership interests, or other interests, or by contract, or otherwise, including the right to appoint fifty percent (50%) or more of the controlled entity's managers or directors.

1.29 "Default" shall have the meaning set forth in Section 9.3.

1.30 "Developer" shall have the meaning set forth in the opening paragraph of this Agreement, and shall also include any and all authorized successor Transferees of all or any part of the Project Site during the Term.

1.31 "Development Agreement Ordinance" shall mean Chapter 18.02 of the Municipal Code, as in effect as of the Effective Date.

1.32 "Development Agreement Statute" shall have the meaning set forth in the Preamble to this Agreement, as in effect as of the Effective Date.

1.33 "Director of PBCE" shall mean the Director of Planning, Building and Code Enforcement of the City of San José.

1.34 "Diridon Station Area Plan" or "DSAP" shall mean the Diridon Station Area Plan approved by Resolution No. 77096, as may be amended from time to time.

1.35 "Diridon Integrated Station Concept Plan" or "DISC" shall mean the plan by California High-Speed Rail Authority (CHSRA), Caltrain, Santa Clara Valley Transportation Authority (VTA), Metropolitan Transportation Commission (MTC), and the City (and any successor agency(ies)) to expand and redevelop the San José Diridon Station, which Plan is under development, as of the Effective Date.

1.36 "DISC Partner Agencies" or "DISC Partner Agency" in connection with DISC, shall mean any one or more of the following agencies: California High-Speed Rail Authority (CHSRA), Caltrain, Metropolitan Transportation Commission (MTC), Santa Clara Valley Transportation Authority (VTA), and the City (and any successor agency(ies)).

1.37 "District Systems" shall mean the "district system(s)" described in Exhibit I.

1.38 "Downtown West Design Standards and Guidelines" shall mean that certain Downtown West Design Standards and Guidelines, which are a component of the Downtown West

Planned Development Permit, approved by the City Council by Resolution No. _____ on _____, 2021, as same may be amended from time to time.

1.39 "Downtown West Planned Development Permit" shall mean that certain planned development permit effectuating the Downtown West Planned Development Zoning District, which includes the Downtown West Design Standards and Guidelines, the Downtown West Improvement Standards and Conceptual Infrastructure Plan Sheets, and the Downtown West Conformance Review Implementation Guide, approved by City Council Resolution No. _____ on _____, 2021, as same may be amended from time to time.

1.40 "Downtown West Planned Development Zoning District" shall mean the planned development zoning district established pursuant to Zoning Code Sections 20.60 et seq. and 20.120.500 et seq. by City Council Ordinance No. _____, including its accompanying General Development Plan.

1.41 "DSAP's Boundaries" means the geographic boundaries of the Diridon Station Area Plan, as in effect on the Effective Date of this Agreement.

1.42 "Effective Date" shall have the meaning set forth in Section 2.1.

1.43 "Enacting Ordinance" shall have the meaning set forth in Recital R.

1.44 "Existing Standards" shall have the meaning set forth in Section 5.2.

1.45 "Existing Uses," shall mean all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the Zoning Code) on the Project Site as of the Effective Date, as the same may be modified by the Approvals and any Subsequent Approvals.

1.46 "Extended Term" shall have the meaning set forth in Section 2.2.

1.47 "Federal or State Law Exception" shall have the meaning set forth in Section 5.10.

1.48 "FEIR" shall have the meaning set forth in Recital P.

1.49 "Final Approval" shall mean that (i) all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, the Development Agreement or the FEIR shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, the Development Agreement or the FEIR, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, the Development Agreement or the FEIR and the entry of a final judgment, order or ruling upholding the applicable Approval, the Development Agreement or the FEIR and (ii) if a referendum petition relating to any Approval or the Development Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the City Council in the manner provided by applicable City laws reflecting the approval by voters of the referended Approval or Development Agreement.

1.50 "Final Map" shall mean a "Final Map" as defined in Section 19.08.160 of the Subdivision Code.

1.51 "Force Majeure" or "Force Majeure Event" shall mean, for purposes of this Agreement, any event or condition that: (i) is beyond a Party's control; (ii) prevents the Party's performance of this Agreement; (iii) that the Party could not have reasonably foreseen; and (iv) that arises from one or more of the following: (1) naturally occurring events constituting an act of God; (2) unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Subject Property); (3) strikes,

stoppages or boycotts that affect a specific trade on a national or regional level, to the extent not caused by the acts or omissions of the Party; (4) acts of terrorism; (5) riots or other civil unrest; (6) a local, state or federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, directives, regulations, laws or other requirements implemented in response to such epidemic or pandemic; or (7) orders issued by any other governmental body having jurisdiction over the Project. Neither the inability of Developer to obtain construction financing for the Project nor the condition of, or changes in, the real estate market shall constitute a Force Majeure Event.

1.52 "Funding Mechanism" shall have the meaning set forth in Section 7.6.1.

1.53 "Future Changes to Existing Standards" shall have the meaning set forth in Section 5.6.

1.54 "General Plan" has the meaning set forth in Recital A.

1.55 "General Plan Consistency Findings" has the meaning set forth in Recital P.

1.56 "Good Faith Efforts" and any variation thereof shall mean the efforts that a reasonable person would determine is a diligent and honest effort under the same or similar set of facts or circumstances.

1.57 "Google Affiliate" mean any entity that directly or indirectly Controls, is Controlled by, or is under common Control by Google LLC, including (i) Alphabet, Inc.; (ii) Google LLC, (iii) companies spun-off from Google LLC or Alphabet, Inc. and any of their Affiliates; and (iv) any entities related to Google LLC or Alphabet, Inc. as a result of merger, acquisition or by operation of law.

1.58 "Horizontal Improvement" shall mean (a) the initial construction of any one or more Public Improvements and (b) the initial construction of any one or more Privately-Owned Improvements.

1.59 "Impact Fees" shall mean any fees, contributions, special taxes, exactions, impositions and dedications charged by the City in connection with the development of the Project, including but not limited to transportation and transit fees, housing requirements (whether imposed as a fee, as a zoning requirement or otherwise, including affordable housing, such as on-site inclusionary units, in-lieu fees and land transfers), dedication or reservation requirements, and obligations for on-or off-site improvements that are in effect on the date on which the ordinance approving this Agreement is effective. Impact Fees shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

1.60 "Infrastructure" shall mean the facilities, both on- and off-site and in District Systems, described in the Infrastructure Plan included herewith as Exhibit I, and including the electrical microgrid ("Microgrid") described in Exhibit J.

1.61 "Infrastructure Plan" shall mean collectively the Infrastructure Plan, the Infrastructure Costs Reimbursement Sheet, and the Infrastructure Maintenance Matrix, all of which are included herewith as Exhibit I.

1.62 "Initial Term" shall have the meaning set forth in section 2.2 of this Agreement.

1.63 "Law(s)" shall mean the Constitution and laws of the United States of America, the Constitution and laws of the State of California, the charter and laws of the City of San José, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction, or writ) thereunder. The term "Laws" shall refer to any or all Laws as the context may require.

1.64 "Lendlease Affiliate" shall mean any Affiliate of Lendlease Americas Holdings Inc., a Delaware corporation.

1.65 "Litigation Extension" shall have the meaning set forth in Section 11.5.1.

1.66 "Losses" shall have the meaning set forth in Section 4.7.

1.67 "Material Change" shall mean any modification that would materially alter the rights, benefits, or obligations of the City or Developer under this Agreement that (i) extends or reduces the Term, (ii) changes the permitted uses of the Project Site, except as permitted by, and approved in the manner set forth in the Downtown West Planned Development Zoning District and/or the Downtown West Design Standards and Guidelines, (iii) decreases or increases the Community Benefits, except as permitted as a Public Benefits Adjustment [SUBJECT TO NEGOTIATION OF PUBLIC BENEFITS ADJUSTMENT TERM], (iv) increases the maximum density, or overall square footage of the Project by more than 10%, (v) decreases the parking ratios, except as permitted by the Approvals and this Agreement, or (vi) reduces or changes the Impact Fees. Notwithstanding the foregoing, and for clarity, deviations or modifications authorized to be approved pursuant to procedures established by the General Development Plan, without requiring amendment to the General Development Plan, shall not constitute a Material Change. By way of example and without limitation, approval of allowable transfers and allowable conversions described on Sheet 3.03 of the General Development Plan and of minor modifications, exceptions, deferrals, amendments to the Planned Development Permit, including DWDSG, DISC process, each as described on Sheet 8.02 of the General Development Plan would not constitute Material Changes. Additionally, adjustments, deviations or modifications authorized to be approved pursuant to procedures established by the Planned Development Permit, and Non-Material

Amendments authorized by the Downtown West Improvement Standards and Infrastructure Plan [CONFIRM FINAL LANGUAGE] shall not constitute a Material Change.

1.68 "Mitigation Measures" shall mean the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Subsequent Approval.

1.69 "MMRP" shall mean that certain mitigation monitoring and reporting program attached to the FEIR.

1.70 "Mortgage" shall mean a mortgage or deed of trust on all or part of the Project Site to secure an obligation made by the applicable property owner.

1.71 "Mortgagee" shall mean a person or entity that is the beneficiary under a mortgage.

1.72 "Municipal Code" shall mean the San José Municipal Code.

1.73 "Non-City Agency" shall have the meaning set forth in Section 7.3.

1.74 "Non-City Approval" shall have the meaning set forth in Section 7.3.

1.75 "Official Records" shall mean the official real estate records of the City of San José, as maintained by the Santa Clara County Assessor-Recorder's Office.

1.76 "Parcel Map" shall mean a Parcel Map as defined in Section 19.08.320 of the Subdivision Code.

1.77 "Park Construction TCE" shall mean a temporary Right of Entry Agreement within a City-Dedicated Open Space entered into by the Parties following Acceptance of the Open Space by the City, for the purpose of allowing Developer to complete construction of an adjacent Building(s).

1.78 "Park Improvements" shall have the meaning set forth in the Parkland Agreement included herewith as Exhibit E.

1.79 "Parkland Fee" shall mean the fee established by the City Council pursuant to Chapters 14.25 or 19.38 of the San José Municipal Code.

1.80 "Party" and "Parties" shall have the meaning set forth in the opening paragraph of this Agreement.

1.81 "PBCE Department" shall mean the Planning, Building, and Code Enforcement Department of the City of San José.

1.82 "Planned Development Permit" means the Planned Development Permit approved by Resolution No. XXX.

1.83 "Planning Commission" means the Planning Commission of the City of San José.

1.84 "Privately-Owned Publicly Accessible Open Space" shall mean those parks and open spaces described in Exhibits F and E5.2, and in Section 4.1 hereto, and in the Downtown West Design Standards and Guidelines, that are not City-Dedicated Open Spaces.

1.85 "Privately-Owned Improvements" shall mean those facilities and services that are privately-owned and privately-maintained, at no cost to the City (other than any public financing), for the public benefit and not dedicated to the City, including any Infrastructure that is not a Public Improvement. The Privately-Owned Improvements do not include City-Dedicated Open Space or any Public Improvements.

1.86 "Processing Fees" shall mean, as applicable, the (i) standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee, in accordance with the City practice on a City-Wide basis or within the DSAP's Boundaries,

for the same or similar permits or approvals and applied in an equitable and non-discriminatory manner; or (ii) the City's standard hourly rate and standard charges for review of an application for a permit approval, in accordance with the City practice on a City-Wide basis or within the DSAP's Boundaries, to the same or similar work and applied in an equitable and non-discriminatory manner, for City staff who are processing the application.

1.87 "Project" shall mean the mixed use development project as described in Recital D, Exhibit B, and the Approvals, together with Developer's rights and obligations under this Agreement.



1.88 "Project Description" shall refer to the Project described in Recital H. In the event that the Director of PBCE approves a request by Developer to convert land uses pursuant to the General Development Plan, then Recital H and any other references to the Project Description herein shall be deemed to automatically incorporate such changes without requiring amendment of this Agreement.



1.89 "Project Documents" shall mean, individually or collectively as the context requires, the Project Boundaries, Public Benefits Program and Community Benefits Schedule, Infrastructure Plan, Parkland Agreement, Affordable Housing Program, Downtown West Design Standards and Guidelines, Downtown West Improvement Standards, Conceptual Infrastructure Plan Sheets, Downtown West Conformance Review Implementation Guide, Major Encroachment Agreement, Transportation Demand Management Plan, and this Agreement.

1.90 "Project Feature" shall mean features or elements of the Project that Developer has voluntarily agreed to construct or include beyond elements of the Project required to satisfy state and/or City statutory or regulatory requirements, including, but not limited to, payment of fees, CEQA mitigation measures set forth in the MMRP, City-Dedicated Open Space,

and the portion of the Affordable Housing Program that satisfies the requirements of the City's Inclusionary Housing Ordinance (San José Municipal Code Ch. 5.08), and that provide a benefit to the public..

1.91 "Project Site" shall have the meaning set forth in Recital D, and as more particularly described in Exhibit A and depicted in Exhibit B.

1.92 "Public Health and Safety Exception" shall have the meaning set forth in Section 5.10.1.

1.93 "Public Benefit" shall mean, collectively, the (i) Community Benefits, and, (ii) Project Features that benefit the public..

1.94 "Public Benefits Adjustment" [PENDING NEGOTIATION] shall mean an adjustment or modification to the total acreage, units, amount, configuration, or Completion or delivery schedule, or other elements of a Public Benefit, as permitted by the Downtown West Planned Development Zoning District, General Development Plan, Downtown West Design Standards and Guidelines, or Downtown West Improvement Standards and Conceptual Infrastructure Plan Sheets, that is necessitated by (i) any subsequent proceedings initiated by any of the DISC Partner Agencies to acquire any portion of the Project Site in connection with DISC, if such acquisition results in a reduction in the development program as established by the Project Approvals; and/or (ii) reconfiguration and/or redesign necessitated by the Developer being prohibited from building to the maximum heights reflected in the DWDSG as a result of City's adoption of a construction tower crane policy that prohibits or impacts Developer's ability to construct to such maximum heights, if such reconfiguration and/or redesign results in a reduction in the development program as established by the Project Approvals.

1.95 "Public Improvement" shall mean the facilities, both on- and off-site, to be improved, constructed, and dedicated by Developer and, upon completion in accordance with the Public Improvement Agreement, accepted by the City. Public Improvements include the public streets within the Project Site shown on Exhibit I and/or within the Local Transportation Analysis Report prepared by Fehr & Peers, dated September 2020, all Infrastructure and public utilities within such streets (such as electricity, water and sewer lines, but excluding any non-municipal utilities or Privately-Owned Infrastructure), including sidewalks, landscaping, bicycle lanes, street furniture, and paths and intersection improvements (such as curbs, medians, signaling, traffic controls devices, signage, and striping), and all improvements that Developer is required to complete within City-Dedicated Open Spaces. The Public Improvements do not include Privately-Owned Open Space or any Privately-Owned Improvements, including Privately-Owned Improvements within the public right-of-way, if any.

1.96 "Public Improvement Agreement" shall mean the City's standard form of agreement between the City and Developer for the completion of improvements required as a condition of subdivision map approval pursuant to Government Code Section 66462.

1.97 "Public Works" shall mean the San José Department of Public Works.

1.98 "Public Works Director" shall mean the Director of Public Works.

1.99 "Qualified Developer" means any entity, or such entity's project team, with significant experience developing projects of a similar scale in a similar urban environment and have completed a minimum of two (2) similar scale projects in an urban environment within the seven (7) year period preceding the effective date of the Transfer, as shown by reasonable evidence delivered to City.

1.100 "Subdivision Code" shall mean Title 19 of the San José Municipal Code.

1.101 "Subdivision Map Act" shall mean the California Subdivision Map Act, California Government Code § 66410 *et seq.*

1.102 "Subsequent Approval" [PENDING DISCUSSIONS] shall mean any other land use approvals, entitlements, or permits from the City other than the Approvals that are necessary or advisable for the implementation of the Project, including without limitation, demolition permits, grading permits, site permits, building permits, right-of-way work permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Subsequent Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

1.103 "Substantial Completion" shall mean that construction of the base building is sufficiently complete and have obtained temporary Certificate of Occupancy.

1.104 "Ten Year Development Obligation" shall mean (i) the Substantial Completion of the base building(s) and associated ancillary improvements for not less than two million (2,000,000) gross square feet of office development within the Project Site, (ii) completion of the transfers of the H1, H5 and H6 Properties to City, (iii) execution and recordation of irrevocable offers to dedicate, in the a form approved by City, 4.8 acres of parks and open space land to City, (iv) completion of all payments or contributions due pursuant to this Agreement at or prior to the end of the Initial Term; and Developer's satisfaction, whether by payment or



performance as applicable, of the Community Benefits associated with such 2,000,000 gross square feet of office development, as set forth on Exhibit C and Section 4.1 to this Agreement.

1.105 "Tentative Map" shall mean both a "Tentative Map" as defined in Section 19.08.460 of the Subdivision Code and a "Vesting Tentative Map" as defined in Section 19.13.020(A) of the Subdivision Code.

1.106 "Term" shall have the meaning set forth in Section 2.2, and shall include the Initial Term and any Extended Term.

1.107 "Third-Party Challenge" shall have the meaning set forth in Section 7.4.

1.108 "Third Party Transferee" shall mean any entity that is not Google LLC, a Google Affiliate or a Lendlease Affiliate.

1.109 "Transfer" shall have the meaning set forth in Section 12.

1.110 "Transferee" shall mean any party that is the transferee in a Transfer.

1.111 "Transportation Demand Management Plan" shall mean the transportation demand management plan attached to the FEIR, as the same may be modified from time to time at the sole discretion of and with approval of the City of San Jose Director of PBCE.

1.112 "Twenty Year Development Obligation" shall mean (i) the Substantial Completion of the base building(s) and associated ancillary improvements, for not less than two million (2,000,000) additional gross square feet of office development within the Project Site (four million (4,000,000) square feet total including the Ten Year Development Obligation), and (ii) completion of all payments or contributions due pursuant to this Agreement at or prior to the end of the Extended Term; and (ii) Developer's satisfaction, whether by payment or performance as applicable, of the Community Benefits associated with such 4,000,000 gross square feet of office development, as set forth on Exhibit C and Section 4.1 of this Agreement. For clarity, the amount

of office development or Community Benefits under this Twenty Year Development Obligation shall be in addition to the amount of office development or Community Benefits required to satisfy the Ten Year Development Obligation.

1.113 "Vertical Improvement" shall mean a Building or other improvement to be developed under this Agreement that is not parks and open space or infrastructure, or any portion thereof that is a Horizontal Improvement.

1.114 "Vested Elements" shall have the meaning set forth in Section 5.1.

1.115 "Zoning Code" shall mean Title 20 of the San José Municipal Code.

2. EFFECTIVE DATE; TERM

2.1 Effective Date This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties, and (ii) the date the Enacting Ordinance is effective ("Effective Date").

2.2 Term The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for an initial period of ten (10) years thereafter unless extended or earlier terminated as provided herein ("Initial Term"); provided, however, that (i) the Initial Term shall be extended for each day of a Litigation Extension, Force Majeure, or any other extension provided under this Agreement, and (ii) Developer shall have the right to terminate this Agreement with respect to a Development Parcel upon Completion of the Building within that Development Parcel and the Community Benefits required for that Building, as set forth in Section 7.1, including any associated park and open space delivery obligations, provided that any and all ongoing Developer or Owner obligations, including but not limited to Community Benefit obligations, shall survive such termination and remain in full force and effect as required by the Approvals, this Agreement, or combination thereof. Th Initial Term shall be extended

automatically by ten (10) years if, on or before end of the Initial Term the Ten Year Development Obligation has been satisfied (the “Extended Term”), provided that if there is any Developer Default, the Agreement shall not be automatically extended unless the Default is cured to the satisfaction of City or Developer has commenced and is diligently prosecuting such cure to the satisfaction of City, prior to the end of the Initial Term. The Extended Term shall be automatically extended by an additional ten (10) years if, on or before the date that is the last day of the twentieth (20th) year after the Effective Date (as such 20-year period may be extended by a Litigation Extension, Force Majeure, or any other extension provided under this Agreement) the Twenty Year Development Obligation has been satisfied, provided that if there is any Developer Default, the Agreement shall not be automatically extended further unless the Default is cured to the satisfaction of City or Developer has commenced and is diligently prosecuting such cure to the satisfaction of City, prior to the end of the previously Extended Term. . As a material element of this Agreement, the Parties agree that the term of any Approvals, including any Planned Development Permit, subdivision map approval, or Subsequent Approval shall coincide with and in no event extend beyond the Term of this Agreement notwithstanding any other statute, rule, or authority that purports to set a different term for such Approvals.

3. GENERAL RIGHTS AND OBLIGATIONS; DEVELOPMENT PROCESS

3.1 Development of the Project Developer shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement and the Approvals, and the City shall consider and process all Subsequent Approvals for development of the Project in accordance with and subject to the provisions of this Agreement and the Approvals. The Parties acknowledge that Developer has obtained all Approvals from the City required to commence construction of the Project, other than any required Subsequent Approvals, and that Developer

may proceed in accordance with this Agreement with the construction and, upon Completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Subsequent Approvals and any Non-City Approvals.

3.2 Timing of Public Benefits, and Infrastructure Because the Project will be built out over a number of years, the amount and timing of the Public Benefits, including the Public Improvements, Affordable Housing Program, and City-Dedicated Open Space are to be provided as set forth in Exhibit C, the Affordable Housing Program included herewith as Exhibit D, the City-Dedicated Open Space Dedication and Improvements Schedule included herewith as Exhibit E5.1, the Infrastructure Plan included herewith as Exhibit I, and as more particularly described in Section 4.1. For certain Project Features, such as the District Systems, timing requirements have been intentionally omitted, and these Features are otherwise subject to receipt of necessary permits or other conditions precedent, as noted or described in the applicable Exhibit. The scope and timing of Infrastructure that is associated with specific parcels or Buildings, as described in Exhibit I, shall be reviewed and approved by the City through the subdivision mapping process consistent with applicable Laws.