

From: [Tu, John](#)
To: [Amanda Wolf](#)
Cc: [Han, James](#); [Downtown West Project](#)
Subject: PC Ordinance
Date: Friday, April 16, 2021 10:03:18 AM
Attachments: [DTW DA Ordinance Draft.docx](#)

Amanda,

Find attached a draft of the DA Ordinance, please review and let us know if you have any comments or questions.

Best,

[Tong \(John\) Tu](#)

Planner IV (Supervising Planner) | Planning Division | PBCE
City of San José | 200 East Santa Clara Street
Email: john.tu@sanjoseca.gov | Phone: (408)-535-6818
For More Information Please Visit: <http://www.sanjoseca.gov/planning>

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN JOSE AND GOOGLE LLC RELATIVE TO THE DEVELOPMENT OF PROPERTY LOCATED IN THE DIRIDON STATION AREA PLAN FOR THE DOWNTOWN WEST MIXED-USE PLAN AND AUTHORIZING THE CITY CLERK TO EXECUTE THE DEVELOPMENT AGREEMENT AND CAUSE THE SAME TO BE RECORDED WITH THE SANTA CLARA COUNTY RECORDER'S OFFICE

File No. ____

WHEREAS, the City Council of the City of San José (“City”) adopted the Envision San José 2040 General Plan in 2011, which General Plan has been amended from time to time (“General Plan”); and

WHEREAS, the General Plan sets forth a vision and comprehensive road map to guide the City’s continued growth through the year 2040 and includes land use policies to focus new growth capacity in strategically identified “Growth Areas” to facilitate the development of higher-density, mixed-use, urban districts that can accommodate employment and housing growth while reducing environmental impacts of that growth by promoting transit use and walkability; and

WHEREAS, the General Plan identifies Downtown San José as a key “Growth Area” and the includes policies intended to support the development of Downtown consistent with the City’s economic, fiscal, environmental, and urban placemaking goals; and

WHEREAS, the City adopted the Diridon Station Area Plan (“DSAP”) in 2014, which is a component of the General Plan and implements the goals and policies of the General Plan within the DSAP area while also addressing issues that are unique to the development of the DSAP area; and

WHEREAS, since the City's adoption of the DSAP in 2014, the City engaged in a community outreach process regarding the community's vision for the DSAP, resulting in several key changes, prompting the City to propose certain amendments to the DSAP, which the City is processing separately from the Project-specific DSAP amendment; and

WHEREAS, the City and Google, LLC, entered into a non-binding Memorandum of Understanding ("MOU"), dated December 4, 2018, to collaborate on development in Downtown San José based on a shared vision "to create a vibrant, welcoming, and accessible urban destination consisting of a mix of land uses and that is well-integrated with the intermodal transit station, adjacent neighborhoods, and Downtown," and shared goals to guide the development of Downtown San José; and

WHEREAS, following an extensive public process involving the City, residents of San José, and other stakeholders, Google, LLC, submitted project applications for the Downtown West Mixed-Use Plan (the "Project" or "Downtown West"), on October 10, 2019, including proposed amendments to the General Plan ("General Plan Amendment"); a Project-specific amendment to the Diridon Station Area Plan ("DSAP Amendment") that is separate from the City's DSAP efforts; rezoning to a Planned Development Zoning District, including a General Development Plan; and a Planned Development Permit; and

WHEREAS, on October 7, 2020, Google, LLC, submitted additional project applications for a Vesting Tentative Map, Historic Landmark Nominations to adjust the boundaries of the San José Water Company and Southern Pacific Depot Historic District, amendment of an existing Historic Preservation Permit, a development agreement, and other permits and approvals required to implement the Project (GP19-009, PDC19-039, PD19-029, HL20-004, HL20-005, HP20-002, PT20-027); and

WHEREAS, since October 7, 2020 Google submitted updated Project applications for the General Plan Amendment; DSAP Amendment; rezoning to a Planned Development Zoning District, including a General Development Plan; a Planned Development Permit consisting of the Downtown West Design Standards and Guidelines, Downtown West

Improvement Standards, and Downtown West Conformance Review Implementation Guide; Infrastructure Plan; amendment to the Historic Preservation Permit; Vesting Tentative Map; and for a development agreement; in response to public comments and discussions with City staff; and

WHEREAS, the Project advances a plan that re-envision a significant portion of the Diridon Station Area Plan as a mixed-use area that includes development of: up to 7.3 million gross square feet (gsf) of commercial office space; up to 5,900 residential units; up to 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); up to 300 hotel rooms; up to 800 limited-term corporate accommodations ;up to 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 "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two (2) 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, and trails; and various other 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; and

WHEREAS, the Project, which is located in the Downtown Growth Area Boundary and within the boundaries of the DSAP (as such boundaries are amended by Resolution No.), advances the shared vision and the shared goals identified in the MOU by optimizing density and a mix of land uses, preserving existing housing and creating new housing, creating broad job opportunities, pursuing equitable development, enhancing and connecting the public realm, pursuing excellence in design, enhancing sustainability and

innovation, prioritizing community engagement regarding community benefits, and proceeding with timely implementation; and

WHEREAS, on December 30, 2019, Governor Gavin Newsom certified the Project under Public Resources Code § 21178 et. Seq. the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (Assembly Bill [AB] 900, as amended by Senate Bill 734 [2013], AB 246 [2017], and Senate Bill 7 [2021], which is currently pending approval in the California State Legislature) as an environmental leadership development project; and

[**WHEREAS**, the Project has complied with requirements related to AB 900 as of the date of adoption of this Ordinance and would comply with post-adoption AB 900 requirements if AB 7 is adopted by the California State Legislature; and]

WHEREAS, community outreach and public review for the Project has been ongoing since 2018 and the Project Sponsor participated in over 50 meetings with members of the Diridon Station Area Advisory Group (SAAG) as well as over 100 community outreach events in connection with the Project, consisting of in-person and digital engagement with residents, neighbors, business owners and employees, construction trades, and other stakeholders that included: public design workshops; booths at local and regional community events; presentations to and discussions with local neighborhood, business, and community/special interest associations and organizations; focus group discussions; engagement with faculty and students at local universities and schools; and hosting other large and small events reaching communities within and around the Project site; and

WHEREAS, the City and Google, LLC, negotiated a development agreement for the Project (the “Development Agreement”), a copy of which is on file with the City Clerk and is by this reference adopted and incorporated into this Ordinance the same as if it were fully set forth herein; and

WHEREAS, the Development Agreement establishes the rights and obligations of Google, LLC, and the City relating to the development of the Project, secures Google, LLC’s vested right to develop the Project in accordance with the requirements of the

Development Agreement, and establishes community benefits and public benefits that the Project will provide, including Google, LLC's obligations pursuant to the Parkland Agreement, as required under the City's Parkland Dedication Ordinance (San José Municipal Code Ch.19.38), to satisfy Google, LLC's Parkland Dedication Obligation for the Project; and

WHEREAS, on April 28, 2021, the Planning Commission of the City of San José held a duly noticed and advertised public hearing to receive oral and written testimony regarding the Development Agreement and to make a recommendation to the City Council regarding the approval or disapproval of the Development Agreement; and

WHEREAS, on ____ 2021, the City Council of the City of San José held a duly noticed and advertised public hearing to receive oral and written testimony regarding the Development Agreement and to consider the Planning Commission's recommendation; and

WHEREAS, the Project and the approvals described herein, including the actions contemplated under this Ordinance, were the subject of that certain Final Environmental Impact Report for the Downtown West Mixed-Use Plan (Resolution No. ____) ("FEIR"); and

WHEREAS, this City Council of the City of San José has considered, approved, and certified said FEIR and adopted related findings, a Mitigation Monitoring and Reporting Program, and a Statement of Overriding Considerations under separate Resolution No. ____ on ____, 2021, prior to taking any approval actions on the Project; and

WHEREAS, in conjunction with this Ordinance, City Council has taken or intends to take a number of actions in furtherance of the Project, including approval of: an override of the Santa Clara County Airport Land Use Commission's inconsistency determination (Resolution No. ____); amendments to General Plan (Resolution No. ____); amendments to the DSAP (Resolution No. ____); Planned Development Rezoning. Including a General

Development Plan (Ordinance No. ____); a Planned Development Permit (Resolution No. ____); amendments to Title 20 of the San Jose Municipal Code (Ordinance No. ____); approval of a Vesting Tentative Map (Resolution No. ____); approval of amendments to the boundaries of Historic Landmarks (San Jose Water Company at 374 West Santa Clara Street and Southern Pacific Depot Historic District) (Resolutions No. ____ and ____); an amendment to Historic Preservation Permit (HP16-002) (Resolution No. ____); approval of a Major Encroachment Permits (Resolution No. ____); and approval of a Construction Impact Mitigation Plan (Resolution No. ____); and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed Development Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

SECTION 1. This Ordinance is adopted under the authority of California Government Code Section 65868 et seq. (“Development Agreement Statute”) and pursuant to the provisions Chapter 18.02 of the San José Municipal Code (“Development Agreement Ordinance”), both of which provide for the ability of the City to adopt development agreements and set forth procedures and requirements for the consideration of those agreements.

SECTION 2. This Ordinance incorporates by reference as though fully set forth herein that certain Development Agreement by and between the City of San José and Google LLC, the substantive form of which is attached hereto as Exhibit A.

SECTION 3. Environmental Findings.

- A. The City is the lead agency for the Project and has prepared the Final Environmental Impact Report for the Project pursuant to and in accordance with the California Environmental Quality Act (“CEQA”), which Final Environmental

Impact Report is comprised of the Draft Environmental Impact Report for the Project (“Draft EIR”) and all appendices thereto, comments and responses to comments on the Draft EIR (collectively, all of said documents are referred to herein as the “FEIR”).

- B. On April 28, 2021, the Planning Commission of the City of San José reviewed the FEIR and recommended to the City Council that it find the environmental review for the Project, including the actions contemplated in this Ordinance, was completed in compliance with CEQA.
- C. On _____, 2021, the City Council independently reviewed and analyzed the FEIR and other information in the record, and adopted Resolution No. ____, certifying the FEIR and adopting findings under CEQA, including the adoption of the Mitigation Monitoring and Reporting Program, and a Statement of Overriding Considerations in connection with the Project, which resolution is on file with the Director of Planning, Building and Code Enforcement at the Director’s office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113.

SECTION 4. Consistency Findings.

Based upon the foregoing facts, findings, and conclusions, and as required by the Development Agreement Ordinance, the City Council hereby adopts the following as its findings:

- A. The proposed development is consistent with the General Plan, as amended, and all applicable specific or area plans of the City including amendments thereto.
 - 1. General Plan Consistency.

The General Plan land use designations for the area subject to the Development Agreement are Downtown and Commercial Downtown, pursuant

to the General Plan Amendment approved by Resolution No. ____ for the Project. The Downtown land use designation allows office, retail, service, residential and entertainment uses at very high intensities, unless incompatible with other major policies within the General Plan. The Downtown land use designation allows a density of up to 800 dwelling units per acre and a floor-area ratio (FAR) up to 30.0. The Commercial Downtown land use designation allows office, hotel, retail, service, and entertainment uses. Residential uses are not allowed in the Commercial Downtown designation. The Commercial Downtown land use designation allows a FAR up to 15.0. The Project is consistent with the designation of the site in the applicable General Plan, as amended by Resolution No. ____.

The City Council further finds that the Project is consistent with the General Plan for the reasons set forth in Exhibit B of the General Plan Amendment (Resolution No.) , which findings are incorporated herein by reference.

1. **Diridon Station Area Plan Consistency.** The subject site is within the boundaries of the Diridon Station Area Plan (“DSAP”) as amended by Resolution No. ____.

The Project is consistent with the following key DSAP goals:

- a. Create an urban district in the Station Area that maximizes height potential. The Station Area should accommodate a mix of uses including commercial and office, residential and active uses.

The Project consists of a complementary mix of uses that create a vibrant, transit-oriented urban neighborhood and destination. The development program optimizes development density, which consists of up to 7.3 million gsf of commercial office space; up to 5,900 residential units; up to 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); up to 300 hotel rooms; up to 800 ~~rooms~~

of limited-term corporate accommodations; up to two event and conference centers totaling up to 100,000 gsf; a potential "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two (2) 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 and open spaces. The DWDSG includes standards and guidelines that distribute land uses throughout the Project site in a manner that is compatible with adjacent uses, surrounding neighborhoods, and adjacent open spaces (DWDSG Chapter 3). Residential uses are generally located near existing residential neighborhoods and office uses are generally located along the existing rail track. DWDSG (Chapter 3) requires certain land uses on certain development blocks, while allowing for flexibility on other blocks to promote the development of Downtown West into a mixed-use, transit-oriented site. The DWDSG also includes standards and guidelines that distribute active uses throughout Downtown West to create a vibrant public realm. Active use shall be required, at a minimum, along 30 percent of the ground floor frontage of certain blocks to activate streets and open spaces within Downtown West.

The Project also maximizes height potential within the Project Site. The City Council approved a policy to allow for greater height limits in Downtown, including within the DSAP in March 2019. The Project proposes allowable building heights that range from 160 feet to 290 feet above ground level (AGL), contingent on required Federal Aviation Administration (FAA) review clearance. The DWDSG (Section 5.6) establishes standards and guidelines that establish maximum building heights throughout the Project site. The Project maximizes allowable building heights, while in certain blocks setting heights lower than the maximum height only as needed to establish variation in the skyline and to better respond to contextual adjacencies, including historic resources, existing single-family residential neighborhoods, and Los Gatos Creek and the open space program. For instance, the DWDSG establishes standards that limit

building heights at Creekside Walk and on certain blocks to response to contextual adjacencies.

- b. Establish and strengthen connections to surrounding districts and within the planning area for pedestrians, bicyclists, and motorists, with emphasis on east-west connectivity across SR-87 and the rail corridor.

The Project, located adjacent to Diridon Station, enhances connections to nature, surrounding neighborhoods, and the greater Bay Area region, by strengthening links to Downtown and surrounding neighborhoods. The Project includes improvements to the public realm, including maximizing space for active streetscape - which includes sidewalk, bike lanes and planting areas - to optimize connections to nearby regional transit services. Streets designed in Downtown West prioritize pedestrians and bicyclists with generous sidewalks, protected bike lanes, and traffic calming measures in alignment with the City's CSDSG. The Project's proposed street network extends the existing street network to enhance connections to the surrounding neighborhood and proposes mid-block passages to optimize walkability. The Project also proposes improvements to east-west connectors, including West Santa Clara Street, West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, West St. John Street (new street), West Post Street (new street), and Auzerais Avenue, to provide pedestrian and bicycle priority streets to link neighborhoods east and west of the rail corridor.

The DWDSG (Chapter 6) includes standards and guidelines for the design and development of Downtown West streets that prioritize pedestrians and cyclists and support walking, biking, and public access and ridership. The DWDSG standards include requirements to extend the street network, including Cahill Street north of W. Santa Clara Street to N. Montgomery Street; Cahill Street south of W. San Fernando Street to Park Avenue; W. St. John Street to the Cahill Street extension; W. Post Street between Cahill Street and Barack

Obama Boulevard; N. Montgomery Street north of Cinnabar Street to N. Autumn Street; and N. Autumn Street from the Union Pacific Railroad to Lenzen Avenue. The DWDSG also establishes standards and guidelines for the sidewalk, including minimum overall active streetscape widths and other requirements related to the various sidewalk zones (e.g. frontage zone, through zone, furnishing zones), that enhance pedestrian safety and support safe crossing. The DWDSG establishes standards and guidelines for east-west connectors that link Downtown West to adjacent neighborhoods. East-west connectors within Downtown West include W. Santa Clara Street, W. San Fernando Street, Park Avenue, W. San Carlos Street, W. Julian Street, Auzerais Avenue and new street extensions such as W. St. John Street and W. Post Street.

c. Prioritize pedestrian circulation and transit.

The Project prioritizes pedestrian space within streets to promote walkability. The street network supports walking, biking, and public transit access and ridership to and from Downtown West. The pedestrian network is enhanced with active street elements, protected bike lanes, and dynamic lanes. The DWDSG includes standards and guidelines for the various sidewalk zones to improve pedestrian experience and increase safety for people walking and biking within Downtown West and to adjacent neighborhoods. The DWDSG further enhance transit access and ridership by leveraging the Project's proximity to Diridon Station, a regional transit hub. The DWDSG includes standards for anticipated transit access streets, shuttle routes, and shuttle stops to provide safe and convenient connections to and from the Project site.

d. Provide a range of commercial and residential uses.

The Project provides a balanced mix of commercial and residential uses that create a vibrant, mixed-use transit-oriented neighborhood. Commercial uses

include up to 7.3 million gsf of commercial office space; up to 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); up to 300 hotel rooms; and up to 100,000 gsf of event and conference space. Other commercial land uses are distributed throughout the Project to be compatible with adjacent uses and the surrounding neighborhood.

The Project proposes up to 5,900 residential units.— Residential uses are generally located near existing residential neighborhoods within areas with the Downtown land use designation as further set forth in the DWDSG. The Project also provides for a robust affordable housing program, as further set forth in the Development Agreement for the Downtown West Mixed-Use Plan. The PD Permit authorizes an affordable housing program, which includes development of 4,000 residential units, furthers Google's and the City's shared goal that development within the DSAP result in twenty-five percent (25%) of all residential units as affordable housing. The DWDSG (Chapter 3 Land Use) includes standards that intentionally distribute a mix of land uses throughout the site to relate to context and to create an active public realm. The DWDSG requires certain land uses on certain development blocks, while allowing for flexibility on other blocks to promote the development of Downtown West into a mixed-use, transit-oriented site. The DWDSG also includes standards and guidelines that distribute active uses - which include commercial, retail/restaurant, arts, cultural, live entertainment, community center, institutional, childcare and education, maker spaces, non-profit, and small-format office spaces - throughout Downtown West to create a vibrant public realm. Active uses are required, at a minimum, along 30 percent of the ground floor frontage of certain blocks to activate streets and open spaces within Downtown West.

- e. Enhance and expand access to open space and recreational opportunities in the Station area and establish an open space system integrated with Los Gatos Creek and Guadalupe River Park.

The Project will provide a total of approximately 15 acres of parks and open space, consisting of both City-Dedicated Open Space (Los Gatos Creek Multi-Use Trail and City-Dedicated Park) and Project Sponsor-Owned Open Space (Privately-Owned Public Park, semi-public open space, Los Gatos Creek Riparian Setback, Los Gatos Creek Riparian Corridor, Mid-Block Passages).

The open space program includes a park or plaza at nearly every major intersection, near each neighborhood, and no more than one block away from any location in the Project. The open space program integrates with the surrounding communities and provides areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, and trails. The open space network also improves access and connectivity along the riparian corridors and supports biodiversity within a high-density urban context through ecologically beneficial landscape design. As set forth in the DWDSG, the design character of open spaces ranges from natural to more urban, with each open space relating to its adjacent surroundings.

- f. Activate the streets, parks, and Station with art that engages visitors and residents alike. Integrate art into infrastructure to humanize and enliven standard features.

Art is encouraged throughout Downtown West to engage visitors and residents, help share gathering places, and to be used as a tool for learning about culture and history and the regional nature and creek ecology. The DWDSG includes standards, guidelines, and contextual considerations that promote the use of art as appropriate within the Project site. For instance, the Project includes mid-

block passages to provide more pedestrian connectivity and optimize walking between neighborhoods. The DWDSG includes guidelines that encourage art in mid-block passages and contextual considerations to incorporate different forms of art into certain mid-block passages to further activate the space. The DWDSG also includes guidelines that encourage the use of art to add a sense of destination, inspire thought and dialogue, commemorate important individuals and events, and connect to the natural environment. Within Downtown West, art is intended to be used as a tool not only for activating streets, parks, and the Diridon Station area, but to engage visitors and residents by conveying information about the culture and history of the City. While art within Downtown West is encouraged, the DWDSG includes standards regarding art within the riparian setback to protect against environmental disruption within the riparian setback along Los Gatos Creek and Guadalupe River.

- g. Disperse parking in different locations in the planning area and beyond to ensure easy walking access to destinations.

The Project provides safe, convenient, and strategically located parking throughout Downtown West. Off-street parking is intended to support a walkable environment and Downtown West includes public, district-serving garages near entries to the site that service office, active use, and SAP Center events. Additional parking is located within individual residential buildings or clustered buildings. The Project allows up to 4,800 publicly accessible commercial parking spaces and up to 2,360 unbundled parking spaces for residential use. The GDP establishes residential parking standards and the Development Agreement establishes a Required Parking Ratio for commercial/public parking. The DWDSG includes standards and guidelines for parking facilities within Downtown West to provide for vehicular access from adjacent streets, and to design parking garages as an integrated component of a building's overall design. The DWDSG also includes off-street parking

standards that promote shared district parking that are accessible to the various mixed uses within Downtown West, nearby transit and the SAP Center.

B. The proposed development should be encouraged in order to meet important economic, social, environmental or planning goals of the City. The development of the Project site in accordance with the Development Agreement and other Project approvals will further Major Strategy #9 of the General Plan to support continued growth in Downtown San José as a unique and important employment and residential neighborhood, and will help realize the City's goals to provide housing, jobs, urban revitalization, and economic benefits to the City. The Project will provide significant housing, jobs, urban revitalization, environmental, and economic benefits to the City, including but not limited to the following:

1. The Project provides a complementary mix of uses that create a vibrant, transit-oriented urban neighborhood and destination that enhances connections to nature, surrounding neighborhoods, and the greater Bay Area region, by strengthening links to Downtown and surrounding neighborhoods.
2. The Project is anticipated to generate up to an annual average of 5,700 construction jobs during construction and, upon completion, over 25,000 on-site permanent jobs, and approximately twenty four million (\$24,000,000) in projected new General Fund revenues to the City.
3. The Project will increase the amount of housing contemplated on-site by over six times the amount currently permitted, supporting the City's goal of becoming more "jobs rich" while simultaneously increasing housing production.
4. The Project will provide a robust affordable housing program through 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 DSAP boundary.

5. The Project will include development of approximately 15 acres of new publicly accessible parks, open space, and trails, including approximately 4.8 acres to be improved and dedicated to the City, and approximately 10.2 acres of Privately-Owned Publicly Accessible Open Space.
6. The Project will improve access to nature in the heart of San José's urban center, with the creation of over 4.25 acres of enhanced riparian habitat.
7. The Project will provide new bike and pedestrian infrastructure and enhanced access to public transit, which includes new pedestrian passageways and trail extensions, new and improved bikeways, and new street extensions, as part of the Project's up to eight hundred ninety million dollar (\$890,000,000) investment in infrastructure improvements.
8. The Project supports and exemplifies the City's ambitious climate targets through a commitment to carbon-free energy and net zero greenhouse gas emissions for construction and thirty years of operation, 65 percent (65%) non-single-occupancy vehicle trips by the time adjacent transportation infrastructure is fully delivered, 7.8 megawatts of on-site solar energy generation, and a shared district utilities system that reduces the physical footprint of infrastructure while significantly improving efficiency.
9. The Project provides a Limited Term Corporate Accommodations Affordable Housing Contribution and a Limited Term Corporate Accommodations Parks Contribution for the limited term corporate accommodations use proposed by the Project, a use akin to corporate suites that would accommodate Google employees for up to 60 days as further defined in the General Development Plan approved by Ordinance No. __, and as further set forth in the Development Agreement. Notwithstanding anything to the contrary in the Municipal Code, the Limited Term Corporate Accommodations Affordable

Housing Contribution and a Limited Term Corporate Accommodations Parks Contribution shall constitute the full extent of fee liability owed by the Project Sponsor to the City in connection with the development, use, and operation of the limited term corporate accommodations.

10. The Project will provide workforce commitments, including payment of prevailing wage, local hire goals, and volunteer, career and development opportunities with community-based organizations.

11. The Project will provide funding for a Community Stabilization and Opportunity Pathways Fund spanning the interdependence between housing, education and job access, with a focus on social equity and serving underserved and historically underrepresented students, families, and adults. The fund will support programs like affordable housing preservation, homeless prevention, and homeless services, as well as education, workforce development, small business resilience and entrepreneurship, and is structured to involve community participation in the grantmaking process, as further described in Exhibit H of the Development Agreement.

The City has therefore determined that, Google LLC shall constitute a qualified “applicant/developer” for purposes of Chapter 18.02, Section 18.02.050 and as a result of the development of the Project in accordance with this Agreement, additional clear benefits to the public will accrue that could not be otherwise obtained through application of existing City ordinances, regulations, and policies.

C. The development agreement would facilitate the development of the subject property in the manner proposed.

The Development Agreement will facilitate the development of the Project Site in the manner proposed. The Development Agreement, which provides Google, LLC, with the vested right to develop the Project as set forth in the Development Agreement and as authorized by the Project approvals and documents, including

but not limited to the Downtown West Planned Development Rezoning (Ordinance No. ____), Downtown West Planned Development Permit (Resolution No. ____), Vesting Tentative Map (Resolution No. ____), will eliminate or significantly diminish uncertainty in the orderly development, and planning of the Project site. Development of the Project is intended to occur in phases, and the General Development Plan authorizes and establishes the Downtown West Planned Development Zoning District Design / Conformance Review ("Conformance Review") process, a subsequent review process for the design and development of Vertical Improvements, Open Space Improvements, and Horizontal Improvements (as defined in the Development Agreement) within the Downtown West Planned Development Zoning District.

D. The proposed development meets all of the findings listed for criteria a. or b. or c. below.

a) i. The developer will incur unusually substantial costs in order to provide public improvements, facilities or services from which the public will benefit; and

Google, LLC will incur unusually substantial costs in order to provide public improvements, facilities, or services from which the public will benefit, such as new bike and pedestrian infrastructure and enhanced access to public transit and improvements to aging public infrastructure (e.g., utilities, bridges), pedestrian bridges, rehabilitation of natural waterways as part of the Project's up to eight hundred ninety million dollar (\$890,000,000) investment in infrastructure improvements. The amount does not include discretionary infrastructure related costs for other Project features, including 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. The Project will provide a robust affordable housing program through a combination of mechanisms, such as land dedication, moderate income inclusionary housing units, development fees, and other funding

sources for affordable housing production, all of which will contribute significantly to the goal of achieving twenty-five percent (25%) affordable housing overall within the DSAP boundary. At full buildout, the project will also provide for the development of approximately 15 acres of new publicly accessible parks, open space, and trails, including approximately 4.8 acres to be fully improved and dedicated to the City and approximately 10.2 acres of Privately-Owned Publicly Accessible Open Space.

ii. The developer has made commitments to a very high standard of quality and agreed to development limitations beyond that required by existing city zoning code

Google, LLC has made commitments to a very high standard of quality, and has agreed to development obligations and requirements beyond those required by the existing San José Zoning Code. The specific land use regulations and development standards for development within the Downtown West Planned Development Zoning District are reflected in the Downtown West General Development Plan ("GDP"), which establishes the permitted uses, development standards, and use regulations applicable to development within the Downtown West Planned Development Zoning District and guides the content of the Downtown West Planned Development Permit. The Downtown West Planned Development Permit consists of the following components: Downtown West Design Standards and Guidelines ("DWDSG"), Downtown West Improvement Standards ("DWIS"), Conceptual Infrastructure Plan Sheets, and the Conformance Review Implementation Guide ("Implementation Guide") (collectively, these documents are referred to as the "Downtown West PD Permit"). The DWDSG establishes objective and performance based standards and qualitative and subjective guidelines that implement the vision for Downtown West. Development of Downtown West is also subject to the DDG and CSDSG standards and guidelines unless a DDG or CSDSG standard or guideline is superseded by the DWDSG. The DWIS describes the standards

and specifications used to evaluate horizontal improvements within the Downtown West Planned Development Zoning District, including certain provisions of the Standard Details and Standard Specifications adopted by the City's Public Works Department (July 1992) ("1992 Standards"), and otherwise supersedes the 1992 Standards. The Downtown West Planned Development Zoning District is individually designed to meet the needs of the subject property. The use regulations and design standards facilitate the development of the Project and optimize density and a complementary mix of land uses, preserve existing housing and create new housing, create broad job opportunities, enhance and connect the public realm, while pursuing excellence in design, enhancing sustainability and innovation.

b) The development will make a substantial contribution to the economic development of the city in that it:

i. Will create new, net permanent jobs located within the City, will create substantial new, net revenues for the city, or will retain a substantial number of existing permanent jobs within the city; and

The Project will create new, net permanent jobs within the City and will create substantial new net revenues for the City. The Project is anticipated to generate up to an annual average of 5,700 construction jobs during construction and, upon completion, approximately 29,000 office employees and 2,000 non-office employees. At full build out, it is anticipated the Project will also create substantial new net revenue to the City in the amount of approximately nine million (\$9,000,000) annually and \$79 million in projected annual property tax revenue. In addition, the Project will provide \$58 million in one-time local construction taxes and \$16 million in one-time school fees, in addition to ongoing school contributions through property taxes. [

ii. Is located on a legal parcel of at least five acres; or

The Project Site is located on an approximately 79-acre site located in the General Plan Downtown Growth Area Boundary and within the boundaries of the Diridon Station Area Plan (as amended by Resolution No. ____).

5. The subject development agreement is consistent with this chapter.

For the reasons set forth above, the City finds that the Development Agreement and all attached exhibits, including but not limited to the Parkland Agreement (Exhibit E), and Infrastructure Plan, are consistent with the Development Agreement Ordinance.

SECTION 5. Development Impact Fees, Housing Requirements and Municipal Code Conformity

- A. For the Project, the Council approves the development impact fees and other methods of satisfying the code's requirements with respect to development impact fees or housing requirements as set forth in the Development Agreement and waives any inconsistent provision in the [Municipal Code] Chapters 5.08 (inclusionary Housing), 5.11 (Commercial Linkage Fee), 14.35 (Diridon Station Area Basic Infrastructure Fee Requirements), and 19.38 (Parkland Dedication).
- B. For the Project, the Council approves the Project Inclusionary Housing Ordinance Implementation Guidelines and the Form of Affordability Restrictions attached to the Development Agreement at Exhibit D, Schedules D2 and D3 respectively, and such Schedules shall constitute the guidelines and restrictions applicable to the Project's inclusionary housing described in Exhibit D to the Development Agreement.

SECTION 6. Exceptions from Parkland Dedication Ordinance.

- A. Pursuant to San Jose Municipal Code Sections 19.38.300 and 19.38.410, the developer is entering into a parkland agreement with the City that describes the manner in which the developer will satisfy the requirements of the City's Parkland Dedication Ordinance (San José Municipal Code Ch. 19.38) and otherwise meet

the intent of its provisions. As described in the Parkland Agreement set forth in Exhibit E of the Development Agreement and the List of Required Exceptions from Parkland Dedication Ordinance set forth in Exhibit E9, certain exceptions from the Parkland Dedication Ordinance (San José Municipal Code Ch. 19.38) are necessary in order to provide the City-Dedicated Open Spaces, Park Improvements, and private recreation improvements in the manner set forth in the Development Agreement and Parkland Agreement. The exceptions are an exception from Municipal Code Section 19.38.300(A) to allow Completion of the City-Dedicated Open Spaces in accordance with the schedule set forth in Exhibits E3.1 and E3.2 to the Development Agreement; and from the Section 19.38.330(B) requirement that real property conveyed to the City be dedicated free and clear of encumbrances, in order to allow for utilities and emergency vehicle access through and under the City-Dedicated Open Spaces to serve adjacent buildings, for emergency vehicle access easements to serve Project buildings and/or DISC Agency facilities, and for easements to allow for development of the Social Heart City-Dedicated Open Space above a subterranean parking garage. The Development Agreement is approved with the exceptions set forth in Exhibit E9.

B. **SECTION 7.** Section []. Municipal Code Conformity.

The Development Agreement shall prevail if there is any conflict between the Development Agreement and Chapter 18.02 (Regulations for Development Agreements), and without limiting the generality of the foregoing clause:

- a. The provisions of the Development Agreement regarding any amendment, including those relating to “Material Change,” shall control in the event of any conflict with the provisions of Chapter 18.02, Sections 18.02.250, 18.02.410, 18.02.420, and 18.02.430.
- b. The provisions of the Development Agreement regarding any default, termination or compliance review shall control in the event of any conflict with the provisions of Chapter 18.02, Sections 18.02.260, 18.02.300, and 18.02.420.

SECTION 8. Approval and Authorization

- A. The City Council hereby approves the proposed Development Agreement in substantially the form attached hereto as Exhibit A, and authorizes and directs the City Clerk to execute the Development Agreement, substantially in the form attached hereto as Exhibit A, on behalf of the City as soon as this Ordinance becomes effective.
- B. The City Council finds that the Development Agreement substantially complies with the requirements of the Development Agreement Ordinance and the Development Agreement Statute.
- C. The City Council hereby approves all exhibits attached to the Development Agreement, including but not limited to the Affordable Housing Program (Exhibit __), the Parkland Agreement (Exhibit __), Infrastructure Plan (Exhibit __), and Community Stabilization and Opportunity Pathways Fund (Exhibit __).
- D. The City Council hereby authorizes the City Clerk, in consultation with the City Attorney, to execute the Parkland Agreement (Exhibit E to Development Agreement) and a Reimbursement Agreement (Schedule A to Development Agreement) in substantially the forms attached to the Development Agreement.
- E. Final versions of the Development Agreement shall be provided to the City Clerk for inclusion in File No. ____ within thirty (30) days after execution by all parties.
- F. The City Council hereby authorizes all subsequent action to be taken by City officials consistent with this Ordinance.

SECTION 7. The City Clerk is hereby directed to record this Ordinance including the fully executed form of the Development Agreement attached hereto as Exhibit A with the Santa Clara County Recorder no later than ten (10) days following the effective date of this Ordinance.

PASSED FOR PUBLICATION of title this ___ day of May ___ 2021, by the following vote:

DRAFT

EXHIBIT A

**DOWNTOWN WEST MIXED USE PLAN
DEVELOPMENT AGREEMENT**

DRAFT