

**From:** [Han, James](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: DA / CIMP / Zoning  
**Date:** Monday, April 26, 2021 11:28:15 AM  
**Attachments:** [DA Ordinance \(4-19-21\) CLEAN.docx](#)  
[CIMP Resolution \(4-19-21\) REDLINE.docx](#)  
[CIMP Resolution \(4-19-21\) CLEAN.docx](#)  
[DA Ordinance \(4-19-21\) REDLINE.pdf](#)  
[PD Zoning Ordinance \(4-19-21\) CLEAN.docx](#)  
[PD Zoning Ordinance \(4-19-21\) REDLINE.docx](#)

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For More Information Please Visit: <http://www.sanjoseca.gov/planning>

San José City Hall is closed in response to COVID-19.  
I am working remotely in accord with governor's and City's direction.  
I will monitor email during this time.

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**From:** Amanda Wolf <[amandawolf@google.com](mailto:amandawolf@google.com)>  
**Sent:** Monday, April 19, 2021 8:32 PM  
**To:** Tu, John <[john.tu@sanjoseca.gov](mailto:john.tu@sanjoseca.gov)>; Han, James <[James.Han@sanjoseca.gov](mailto:James.Han@sanjoseca.gov)>  
**Subject:** DA / CIMP / Zoning

[External Email]

John,

Attached are updated clean and redline versions of:

1. DA Ordinance
2. CIMP Resolution
3. PD Zoning Ordinance

Thank you,  
Amanda

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**Amanda Wolf** | Development Manager  
Working for Lendlease at Google



Sunnyvale, CA | 628-240-4111

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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 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 ("Project Sponsor" or "Google") 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 that are 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 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 amendment efforts; rezoning to a Planned Development Zoning District with a General Development Plan; and a Planned Development Permit; and

**WHEREAS**, on October 7, 2020, Google 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 (File Nos. GP19-009, PDC19-039, PD19-029, HL20-004, HL20-005, HP20-002, PT20-027); and

**WHEREAS**, since October 7, 2020 Google has submitted updated Project applications in response to public comments and discussions with City staff 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, Conceptual Infrastructure Plan Sheets, and Downtown West Conformance Review Implementation Guide; Infrastructure Plan; amendment to the Historic Preservation Permit; Vesting Tentative Map; and development agreement; 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 within 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 as an environmental leadership development project under Public Resources Code Section 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); 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 has included over 50 meetings with members of the Diridon Station Area Advisory Group (SAAG), as well as over 100 community outreach events that provided the public with the opportunity to review the Project through a combination 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 other large and small events reaching communities within and around the Project site; and

**WHEREAS**, the City and Google 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 and the City relating to the development of the Project, secures Google'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'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'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 ("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 Comprehensive Land Use Plan inconsistency determination (Resolution No. \_\_\_\_); amendments to the 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 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 of 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 to Resolution No. \_\_\_\_ approving the General Plan Amendment, which findings are incorporated herein by reference.

2. 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 limited-term corporate accommodations; up to 100,000 gsf of event and conference centers; 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 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 standards (Chapter 3) require 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 respond 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 Complete Streets Design Standards and Guidelines ("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 West Santa Clara Street to North Montgomery Street; Cahill Street south of West San Fernando Street to Park Avenue; West St. John Street to the Cahill Street extension; West Post Street between Cahill Street and Barack Obama Boulevard; North Montgomery Street north of Cinnabar Street to North Autumn Street; and North 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 West Santa Clara Street, West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, Auzerais Avenue and new street extensions such as West St. John Street and West 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 enhances 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 Project's affordable housing program, which assumes development of 4,000 residential units, supports the production of up to 1,000 affordable housing units, and furthers Google's and the City's shared goal that development within the DSAP results 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 Project will enhance and expand access to open space as the Project's 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 enhance 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 is 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 tens of thousands of permanent jobs across a range of skills and income levels, including high wage, highly skilled jobs, implementing the General Plan's goals of attracting and sustaining a growing concentration of companies to serve as the economic engine for San Jose. The Project is anticipated to generate up to an annual average of 5,700 construction jobs during construction and, upon completion, approximately

31,000 on-site permanent jobs (consisting of approximately 29,000 office employees and 2,000 non-office employees), and approximately nine million (\$9,000,000) in projected net new General Fund revenues to the City 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.

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 approximately 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 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, which includes the General Development Plan (Ordinance No. \_\_\_\_), Downtown West Planned Development Permit (Resolution No. \_\_\_\_), Vesting Tentative Map (Resolution No. \_\_) and approval of Major Encroachment Permits (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. The Conformance Review process, which is further detailed in the Conformance Review Implementation Guide (Implementation Guide) facilitates the phased development of the Project by identifying submittal application requirements for future phased*

*design applications and City review timelines to advance the City's and Google's shared goal of timely implementation of the Project.*

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 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 approximately 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 "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 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 provides that the DWIS supersedes other provisions of 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 \$9 million in General Fund revenues 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 real property that exceeds five acres. The site is located in the General Plan Downtown Growth Area Boundary and within the boundaries of the Diridon Station Area Plan (as amended by Resolution No. \_\_\_\_). The real property that 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, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east;*

*Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west.*

E. 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 Affordable Housing Program (Exhibit D), Parkland Agreement (Exhibit E), Community Stabilization and Opportunity Pathways Fund (Exhibit H), and Infrastructure Plan (Exhibit I), 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.

**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 D), the Parkland Agreement (Exhibit E), Infrastructure Plan (Exhibit I), and Community Stabilization and Opportunity Pathways Fund (Exhibit H ).
- 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 9.** 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.

**SECTION 10.** This Ordinance shall take effect thirty (30) days after adoption.

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

**EXHIBIT A**

**DOWNTOWN WEST MIXED USE PLAN  
DEVELOPMENT AGREEMENT**

DRAFT

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A CONSTRUCTION IMPACT MITIGATION PLAN PURSUANT TO CHAPTER 13.36 OF THE SAN JOSE MUNICIPAL CODE FOR DEVELOPMENT OF THE DOWNTOWN WEST MIXED-USE PLAN WITHIN THE DOWNTOWN WEST PLANNED DEVELOPMENT ZONING DISTRICT**

**FILE NO. PD \_\_\_\_\_**

**WHEREAS**, Google LLC (“Project Sponsor” or “Google”) has submitted a framework for the Construction Impact Mitigation Plan required pursuant to Chapter 13.36 of Title 13 of the San José Municipal Code (“CIMP”), dated \_\_\_\_\_ for the Downtown West Mixed-Use Plan (the “Project” or “Downtown West”) and attached hereto as Exhibit “A” and incorporated herein; and

**WHEREAS**, this Resolution is a companion to the following approvals relating to Downtown West: an override of the Santa Clara County Airport Land Use Commission’s Comprehensive Land Use Plan inconsistency determination (Resolution No. \_\_\_\_); amendments to General Plan (Resolution No. \_\_\_\_); amendments to the Diridon Station Area Plan (Resolution No. \_\_\_\_); the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. \_\_\_\_); Planned Development Rezoning, including a General Development Plan (Ordinance No. \_\_\_\_); a Planned Development Permit (Resolution No. \_\_\_\_); amendments to Title 20 of the San José Municipal Code (Ordinance No. \_\_\_\_); approval of a Vesting Tentative Map (Resolution No. \_\_\_\_); amendments to the landmark boundaries of the San José Water Company at 374 West Santa Clara Street and the Southern Pacific Depot Historic District (Resolutions No. \_\_\_\_ and \_\_\_\_); an amendment to Historic Preservation Permit (HP16-002) (Resolution No. \_\_\_\_); and approval authorizing Major Encroachment Permits (Resolution No. \_\_\_\_); and

**WHEREAS**, the Project is located within the Downtown West PD Zoning District, approved by Ordinance No. \_\_\_\_, which consists of approximately 80 acres of real property that 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, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west; and

**WHEREAS**, the public improvements required to be constructed in conjunction with the Project constitute a “major construction project” under Section 13.36.240 of Title 13 of the San José Municipal Code, and therefore, a Construction Impact Mitigation Plan that complies with Chapter 13.36 of the Municipal Code must be approved by the City prior to the issuance of any encroachment permits for each phase or individual horizontal, vertical or open space project within the Downtown West project area (“Subsequent CIMP”); and

**WHEREAS**, pursuant to Sections 13.36.220-230 of Title 13 of the San José Municipal Code, Construction Impact Mitigation Plans must contain a detailed project description including construction phasing, a detailed analysis of construction-related impacts as a result of the Project, a detailed description of mitigation measures that reasonably mitigate each of the identified impacts to the extent practicable, and a detailed Communications Plan; and

**WHEREAS**, the Project is intended to be developed in phases and the detailed information required to be submitted in Construction Impact Mitigation Plans pursuant to Chapter 13.36 will be provided by Subsequent CIMPs; and

**WHEREAS**, the Downtown West PD Zoning District (approved by Ordinance No. \_\_) establishes the Downtown West PD Zoning District Design / Conformance Review (“Conformance Review”) process, a subsequent review process for the design and development of vertical improvements, open space, and horizontal improvements within the Downtown West PD Zoning District which is further described in the Conformance

Review Implementation Guide ("Implementation Guide"), dated \_\_\_\_ and approved by Resolution No. \_\_\_\_ approving the Downtown West PD Permit;

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**SECTION 1.**

- A. The recitals above are incorporated herein.
- B. The Resolution is consistent with the Goals and Policies of the General Plan as set forth in Exhibit B to Resolution No. \_\_\_\_\_ (amendments to the General Plan).

**SECTION 2.**

- A. The CIMP attached as Exhibit A is hereby approved.
- B. The Director of Public Works or their designee is delegated the authority to review Subsequent CIMP's for horizontal improvements submitted during the Project's Conformance Review process pursuant to the Implementation Guide and to approve Subsequent CIMP's that comply with the requirements in Chapter 13.36 of Title 13 of the San José Municipal Code and are consistent with the CIMP.
- C. The Director of Public Works or their designee is delegated the authority to review Subsequent CIMP's for vertical improvements and open space during the building permit process and to approve Subsequent CIMP's that comply with the requirements in Chapter 13.36 of Title 13 of the San José Municipal Code and are consistent with the CIMP.
- D. The Director of Public Works is authorized to make minor changes and amendments to the CIMP, including but not limited to attaching exhibits and

making corrections, as necessary or appropriate, to effectuate the intent of Chapter 13.36 of Title 13 of the San José Municipal Code.

**SECTION 3.** The City Council hereby makes the following 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 and the appendices thereto (“Draft EIR”), the comments and responses to comments, and the revisions to 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 found the environmental clearance for the Project, including the actions contemplated in this Resolution, was completed in compliance with CEQA.
- C. On May \_\_, 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, 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.** This Resolution shall take effect upon the effective date of the Downtown West PD Zoning District (Ordinance No. \_\_\_\_\_).

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A CONSTRUCTION IMPACT MITIGATION PLAN PURSUANT TO CHAPTER 13.36 OF THE SAN JOSE MUNICIPAL CODE FOR DEVELOPMENT OF THE DOWNTOWN WEST MIXED-USE PLAN WITHIN THE DOWNTOWN WEST PLANNED DEVELOPMENT ZONING DISTRICT**

**FILE NO. PD \_\_\_\_\_**

**WHEREAS**, Google LLC (“Project Sponsor” or “Google”) has submitted a framework for the Construction Impact Mitigation Plan required pursuant to Chapter 13.36 of Title 13 of the San José Municipal Code (“CIMP”), dated \_\_\_\_\_ for the Downtown West Mixed-Use Plan (the “Project” or “Downtown West”) and attached hereto as Exhibit “A” and incorporated herein; and

**WHEREAS**, this Resolution is a companion to the following approvals relating to Downtown West: an override of the Santa Clara County Airport Land Use Commission’s Comprehensive Land Use Plan inconsistency determination (Resolution No. \_\_\_\_); amendments to General Plan (Resolution No. \_\_\_\_); amendments to the Diridon Station Area Plan (Resolution No. \_\_\_\_); the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. \_\_\_\_); Planned Development Rezoning, including a General Development Plan (Ordinance No. \_\_\_\_); a Planned Development Permit (Resolution No. \_\_\_\_); amendments to Title 20 of the San José Municipal Code (Ordinance No. \_\_\_\_); approval of a Vesting Tentative Map (Resolution No. \_\_\_\_); amendments to the landmark boundaries of the San José Water Company at 374 West Santa Clara Street and the Southern Pacific Depot Historic District (Resolutions No. \_\_\_\_ and \_\_\_\_); an amendment to Historic Preservation Permit (HP16-002) (Resolution No. \_\_\_\_); and approval authorizing Major Encroachment Permits (Resolution No. \_\_\_\_); and

**WHEREAS**, the Project is located within the Downtown West PD Zoning District, approved by Ordinance No. \_\_\_\_, which consists of approximately 80 acres of real property that 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, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west; and

**WHEREAS**, the public improvements required to be constructed in conjunction with the Project constitute a “major construction project” under Section 13.36.240 of Title 13 of the San José Municipal Code, and therefore, a Construction Impact Mitigation Plan that complies with Chapter 13.36 of the Municipal Code must be approved by the City prior to the issuance of any encroachment permits for each phase or individual horizontal, vertical or open space project within the Downtown West project area (“Subsequent CIMP”); and

**WHEREAS**, pursuant to Sections 13.36.220-230 of Title 13 of the San José Municipal Code, Construction Impact Mitigation Plans must contain a detailed project description including construction phasing, a detailed analysis of construction-related impacts as a result of the Project, a detailed description of mitigation measures that reasonably mitigate each of the identified impacts to the extent practicable, and a detailed Communications Plan; and

**WHEREAS**, the Project is intended to be developed in phases and the detailed information required to be submitted in Construction Impact Mitigation Plans pursuant to Chapter 13.36 will be provided by Subsequent CIMPs; and

**WHEREAS**, the Downtown West PD Zoning District (approved by Ordinance No. \_\_) establishes the Downtown West PD Zoning District Design / Conformance Review (“Conformance Review”) process, a subsequent review process for the design and development of vertical improvements, open space, and horizontal improvements within the Downtown West PD Zoning District which is further described in the Conformance

Review Implementation Guide ("Implementation Guide"), dated \_\_\_\_ and approved by Resolution No. \_\_\_\_ approving the Downtown West PD Permit;

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**SECTION 1.**

- A. The recitals above are incorporated herein.
- B. The Resolution is consistent with the Goals and Policies of the General Plan as set forth in Exhibit B to Resolution No. \_\_\_\_\_ (amendments to the General Plan).

**SECTION 2.**

- A. The CIMP attached as Exhibit A is hereby approved.
- B. The Director of Public Works or their designee is delegated the authority to review Subsequent CIMP's for horizontal improvements submitted during the Project's Conformance Review process pursuant to the Implementation Guide and to approve Subsequent CIMP's that comply with the requirements in Chapter 13.36 of Title 13 of the San José Municipal Code and are consistent with the CIMP.
- C. The Director of Public Works or their designee is delegated the authority to review Subsequent CIMP's for vertical improvements and open space during the building permit process and to approve Subsequent CIMP's that comply with the requirements in Chapter 13.36 of Title 13 of the San José Municipal Code and are consistent with the CIMP.
- D. The Director of Public Works is authorized to make minor changes and amendments to the CIMP, including but not limited to attaching exhibits and

making corrections, as necessary or appropriate, to effectuate the intent of Chapter 13.36 of Title 13 of the San José Municipal Code.

**SECTION 3.** The City Council hereby makes the following 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 and the appendices thereto (“Draft EIR”), the comments and responses to comments, and the revisions to 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 found the environmental clearance for the Project, including the actions contemplated in this Resolution, was completed in compliance with CEQA.
- C. On May \_\_, 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, 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.** This Resolution shall take effect upon the effective date of the Downtown West PD Zoning District (Ordinance No. \_\_\_\_\_).

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~~, LLC ("Project Sponsor" or "Google") 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~~are well-integrated with the intermodal transit station, adjacent neighborhoods, and Downtown,"<sup>1</sup> 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 amendment efforts; rezoning to a Planned Development Zoning District, including with 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 (File Nos. GP19-009, PDC19-039, PD19-029, HL20-004, HL20-005, HP20-002, PT20-027); and

**WHEREAS**, since October 7, 2020 Google has submitted updated Project applications in response to public comments and discussions with City staff 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, [Conceptual Infrastructure Plan Sheets](#), 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~~[within](#) 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 as an environmental leadership development project under Public Resources Code §Section 21178 et seq., ~~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~~ has included over 50 meetings with members of the Diridon Station Area Advisory Group (SAAG), as well as over 100 community outreach events ~~in connection~~ that provided the public with the ~~Project, consisting~~ opportunity to review the Project through a combination 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~~ Google'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~~ Google'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~~ Google'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 [Comprehensive Land Use Plan](#) inconsistency determination (Resolution No. \_\_\_\_); amendments to [the](#) General Plan (Resolution No. \_\_\_\_); amendments to the DSAP (Resolution No. \_\_\_\_); Planned Development Rezoning ~~including~~ [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~~ [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 [of](#) 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 ~~to~~ Resolution No. \_\_\_\_ approving the General Plan Amendment ~~(Resolution No.)~~, which findings are incorporated herein by reference.

~~1.~~ 2. 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:

~~The Project is consistent with the following key DSAP goals:~~

- a. ~~Create an~~ 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~~ 100,000 gsf of 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 standards (Chapter 3) ~~requires~~ require 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](#)[respond](#) 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: Complete Streets Design Standards and Guidelines \("CSDSG"\)](#). 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-West](#) Santa Clara Street to [N-North](#) Montgomery Street; Cahill Street south of [W-West](#) San Fernando Street to Park Avenue; [W-est](#) St. John Street to the Cahill Street extension; [W-est](#) Post Street between Cahill Street and Barack Obama Boulevard; [N-North](#) Montgomery Street north of Cinnabar Street to [N-North](#) Autumn Street; and [N-North](#) 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-West](#) Santa Clara Street, [W-West](#) San Fernando Street, Park Avenue, [W-West](#) San Carlos Street, [W-West](#) Julian Street, Auzerais Avenue and new street extensions such as [W-West](#) St. John Street and [W-West](#) 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~~enhances 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—anProject's affordable housing program, which ~~includes~~assumes development of 4,000 residential units, supports the production of up to 1,000 affordable housing units, and furthers Google's and the City's shared goal that development within the DSAP ~~result~~results 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 Project will enhance and expand access to open space as the Project's 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~~enhance 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.

[B.](#) 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 tens of thousands of permanent jobs across a range of skills and income levels, including high wage, highly skilled jobs, implementing the General Plan's goals of attracting and sustaining a growing concentration of companies to serve as the economic engine for San Jose. The Project is anticipated to generate up to an annual average of 5,700 construction jobs during construction and, upon completion, ~~over 25~~approximately 31,000 on-site permanent jobs, and approximately twenty four (consisting of approximately 29,000 office employees and 2,000 non-office employees), and approximately nine million (\$~~249~~,000,000) in projected net new General Fund revenues to the City 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.
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~~approximately 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~~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, which includes the General Development Plan (Ordinance No. \_\_\_\_), Downtown West Planned Development Permit (Resolution No. \_\_\_\_), Vesting Tentative Map (Resolution No. \_\_) and approval of Major Encroachment Permits (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. The Conformance Review process, which is further detailed in the Conformance Review Implementation Guide (Implementation Guide) facilitates the phased development of the Project by identifying submittal application requirements for future phased design applications and City review timelines to advance the City's and Google's shared goal of timely implementation of the Project.

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~~ approximately 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 provides that the DWIS supersedes other provisions of 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~~\$9 million ~~(\$9,000,000)~~in General Fund revenues 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. f

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

*The Project Site is located on ~~an approximately 79-acre~~ real property that exceeds five acres. The site is located in the General Plan Downtown Growth Area Boundary and within the boundaries of the Diridon Station Area Plan (as amended by Resolution No. ~~—~~). The real property that 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, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west.*

5E. 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 Affordable Housing Program (Exhibit D), Parkland Agreement (Exhibit E), Community Stabilization and Opportunity Pathways Fund (Exhibit H), and Infrastructure Plan, (Exhibit I), 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~~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.

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

~~B.~~

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.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.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 —,D,), the Parkland Agreement (Exhibit —,E,), Infrastructure Plan (Exhibit —,I,) and Community Stabilization and Opportunity Pathways Fund (Exhibit —,H ).
- 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 79.** 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.

**SECTION 10.** This Ordinance shall take effect thirty (30) days after adoption.

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

**EXHIBIT A**

**DOWNTOWN WEST MIXED USE PLAN  
DEVELOPMENT AGREEMENT**

DRAFT

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE REZONING APPROXIMATELY 80 ACRES OF REAL PROPERTY SITUATED IN DOWNTOWN SAN JOSE FROM THE LIGHT INDUSTRIAL, HEAVY INDUSTRIAL, INDUSTRIAL PARK, COMMERCIAL NEIGHBORHOOD, COMMERCIAL GENERAL, DOWNTOWN PRIMARY COMMERCIAL, PUBLIC, COMBINED INDUSTRIAL/COMMERCIAL, AND A(PD) PLANNED DEVELOPMENT ZONING DISTRICTS TO THE DC (PD) PLANNED DEVELOPMENT ZONING DISTRICT, AND ADOPTING A CODIFIED AMENDMENT TO TITLE 11, SECTIONS 11.24.070 AND 11.24.250, AND ADOPTING VARIOUS UNCODIFIED AMENDMENTS TO THE MUNICIPAL CODE ASSOCIATED WITH THE PLANNED DEVELOPMENT ZONING DISTRICT**

**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 which 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 includes policies intended to support the City’s economic, fiscal, environmental, and urban placemaking goals; and

**WHEREAS**, the City and Google LLC (“Project Sponsor” or “Google”) 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 that are 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 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 amendment effort; rezoning to a Planned Development Zoning District with a General Development Plan; and a Planned Development Permit; and

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

**WHEREAS**, since October 7, 2020 Google has submitted updated Project applications in response to public comments and discussions with City staff 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 (“DWDSG”), Downtown West Improvement Standards (“DWIS”), Conceptual Infrastructure Plan Sheets, and Downtown West Conformance Review Implementation Guide (“Implementation Guide” (collectively, the “Downtown West PD Permit”); Infrastructure Plan; amendment to the Historic Preservation Permit; Vesting Tentative Map; and development agreement; and

**WHEREAS**, the Project, which is located within the Downtown Growth Area Boundary and within the boundaries of the Diridon Station Area Plan (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**, 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 center 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**, On December 30, 2019, Governor Gavin Newsom certified the Project as an environmental leadership development 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); 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 for the Project has been ongoing since 2018 and has included over 50 meetings with members of the Diridon Station Area Advisory Group (SAAG), as well as over 100 community outreach events that provided the public with the opportunity to review the Project through a combination 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 other large and small events reaching communities within and around the Project site; and

**WHEREAS**, pursuant to Section 20.10.070 of the City of San José's Municipal Code, a Planned Development Zoning District is intended to be individually designed to meet the needs of the subject property, with the uses and requirements of the Planned Development Zoning District reflected in a General Development Plan adopted as part of the Planned Development Zoning District ordinance; and

**WHEREAS**, the requirements for a General Development Plan are set forth in Section 20.120.510 of the City of San José's Municipal Code; and

**WHEREAS**, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; 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 planned rezoning and recommended to the City Council of the City of San José that the subject property be zoned Downtown West PD Zoning District; and

**WHEREAS**, 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 planned rezoning based on the recommendations from the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, the Project's potential environmental impacts, including the proposed rezoning of the Project site, were analyzed in that certain Final Environmental Impact Report for the Downtown West Mixed-Use Plan ("FEIR"); and

**WHEREAS**, the 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 pursuant to the California Environmental Quality Act (CEQA) under separate Resolution No. \_\_\_\_ on May \_\_\_, 2021 prior to making its determination on this rezoning ordinance or any other Project approvals; and

**WHEREAS**, this Ordinance approving the Downtown West PD Zoning District is a companion to the following approvals relating to Downtown West: override of the Santa Clara County Airport Land Use Commission's Comprehensive Land Use Plan inconsistency determination (Resolution No. \_\_); amendments to the General Plan including land use designations applicable to Downtown West (Resolution No. \_\_); amendments to the Diridon Station Area Plan (Resolution No. \_\_); the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. \_\_); a Planned Development Permit (Resolution No. \_\_); amendments to Title 20 of the San José Municipal Code (Ordinance No. \_\_); approval of a Vesting Tentative Map (Resolution No.\_\_); amendment to the boundaries of two Historic Landmarks, the San José Water Company at 374 West Santa Clara Street and the Southern Pacific Depot Historic District (Resolutions No. \_\_ and \_\_); an amendment to Historic Preservation Permit (HP16-

002) (Resolution No. \_\_\_\_); approval of Major Encroachment Permits (Resolution No. \_\_\_\_); and approval of the 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 rezoning of the Project site to the Downtown West PD Zoning District; and

**WHEREAS**, the proposed rezoning is consistent with the designation of the site in the General Plan (as amended by Resolution No. \_\_\_\_), and is consistent with the goals, objectives, and policies of the General Plan and the Diridon Station Area Plan (as amended by Resolution No. \_\_\_\_); and

**WHEREAS**, the Project Sponsor proposes the possible development of a privately-owned, integrated electrical system capable of being disconnected from, and operated independently of, the primary electrical grid serving the City of San Jose ("Microgrid") which would reduce burdens on the Pacific Gas & Electric Company's (PG&E's) electrical network, improving the City's long-term capacity to grow as described in the General Plan; and

**WHEREAS**, the Microgrid would provide resilient infrastructure that together with the District Systems helps reduce carbon emissions by 22%, or the equivalent of taking approximately 4,100 cars off the road, and includes 7.8 megawatts of on-site solar generation, equivalent to the energy needed to power approximately 1,500 homes; and

**WHEREAS**, the Microgrid contributes to achievement of zero net new greenhouse gas emissions for the Project's construction and operations; and

**WHEREAS**, all the Project's infrastructure will be privately funded with no public subsidy; and

**WHEREAS**, the above-described environmental criteria are necessary to help achieve the City's policy of reducing San Jose's per capita energy use by 50% (Envision San Jose

2040 General Plan) and to pursue a Paris Accord-compliant pathway for the City (Climate Smart San Jose); and

**WHEREAS**, the Microgrid would not service projects outside of Downtown West and would implement rigorous service and performance criteria, including but not limited to fixing rates for residential and retail tenants, including safety standards for operations, and ensuring continuity of supply all as described in Resolution No. \_\_\_\_\_;

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

**SECTION 1.** The City Council finds that all the facts set forth in the foregoing recitals are true and correct and are incorporated herein by this reference.

**SECTION 2.** General Plan and DSAP Consistency.

1. **General Plan Consistency.** The subject site consists of the Downtown and Commercial Downtown land use designations on the General Plan Land Use/Transportation Diagram (as amended by Ordinance No. \_\_\_\_). 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 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 FAR up to 15.0.

The Project conforms to the General Plan goals and policies for the reasons set forth in Exhibit "B" to Resolution No. [\_\_\_\_] approving the General Plan Amendment, which findings are incorporated herein by reference.

2. **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 limited-term corporate accommodations; up to 100,000 gsf of event and conference centers; 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 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 standards (Chapter 3) require 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 respond 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 Complete Streets Design Standards and Guidelines ("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 West Santa Clara Street to North Montgomery Street; Cahill Street south of West San Fernando Street to Park Avenue; West St. John Street to the Cahill Street extension; West Post Street between Cahill Street and Barack Obama Boulevard; North Montgomery Street north of Cinnabar Street to North Autumn Street; and North 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 West Santa Clara Street, West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, Auzerais Avenue and new street extensions such as West St. John Street and West 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 enhances 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 Project's affordable housing program, which assumes development of 4,000 residential units, supports the production of up to 1,000 affordable housing

units, and furthers Google's and the City's shared goal that development within the DSAP results 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 Project will enhance and expand access to open space as the Project's 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 enhance 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 a Required Parking Ratio for commercial/public parking as further described in Exhibit K of the Development Agreement. 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 is accessible to the various mixed uses within Downtown West, nearby transit and the SAP Center.

**SECTION 3.** Development Regulations Applicable to the Downtown West PD Zoning District.

- A. The Downtown West PD Zoning District consists of approximately 80 acres 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, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain railroad tracks to the west ("Downtown West PD Zoning District").

- B. The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.
- C. Development and use of property within the Downtown West PD Zoning District shall be subject to the land use regulations and development standards reflected in the Downtown West General Development Plan ("GDP"), dated \_\_\_\_\_, as it may be amended from time to time. The Downtown West PD Zoning District consists of three (3) sub-areas, identified as Sub-Area 1, Sub-Area 2, and Sub-Area 3 in the GDP. The locations of the sub-areas are generally depicted in the GDP and consist of the real property described in Exhibit A.
- D. The permitted uses, development standards, and use regulations applicable to the Downtown West PD Zoning District shall be those established in the GDP, which authorizes transfers of square footage and conversion of land uses between Sub-Areas subject to the conditions and criteria established in the GDP, including but not limited to compliance with CEQA.
- E. The regulations and standards established in the Downtown West PD Zoning District and GDP, adopted by this Ordinance, shall control and govern development of the Project within the Downtown West PD Zoning District notwithstanding any contrary provision in Title 20, including but not limited to any greater restrictions on the use of buildings or premises, height of buildings, or open space requirements in Title 20.
- F. The Downtown West Planned Development Permit dated \_\_\_\_\_, as it may be amended from time to time ("Downtown West PD Permit"), approved by Resolution No. \_\_\_\_\_, effectuates the Downtown West PD Zoning District pursuant to Section 20.60.020 of the Municipal Code. The Downtown West PD 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”), as they may be amended from time to time (collectively, these documents are referred to as the “Downtown West PD Permit”).

- G. Sub-Area 2, as generally depicted in the GDP, is included within the boundaries of the Downtown West PD Zoning District but is not included within the Downtown West PD Permit. Development within Sub-Area 2 shall be subject to the requirements of the DC Downtown Commercial zoning district, which shall continue to apply to Sub-Area 2 until the issuance of a Planned Development Permit for Sub-Area 2. Any subsequent Planned Development Permit for Sub-Area 2 shall conform to the requirements in the GDP, including the specific development standards applicable to Sub-Area 2 set forth on Sheet 3.02a of the GDP, as those may be amended from time to time. Development of Sub-Area 2 shall also be subject to the Conditions of Approval to the Downtown West PD Permit.
- H. The GDP establishes the commercial and residential parking requirements for development within the Downtown West PD Zoning District. The project sponsor shall provide publicly accessible off-street parking spaces serving new office development in compliance with the Required Parking Ratio as set forth in the GDP and the Development Agreement, approved by Ordinance No. \_\_\_\_\_. Residential parking requirements shall be provided in accordance with the standards in the GDP. The GDP also establishes the standards and requirements for bicycle parking in the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.
- I. The development of the Project is intended to occur in phases and this Ordinance authorizes and establishes the Downtown West PD Zoning District Design / Conformance Review (“Conformance Review”) process, a subsequent review process for the design and development of vertical improvements, open space, and horizontal improvements within the Downtown West PD Zoning District.

- J. The Conformance Review process, which is further described in the GDP and Implementation Guide, dated \_\_\_\_\_, and is a component of the Downtown West PD Permit, both as may be amended from time to time, authorizes the Director of Planning, Building, and Code Enforcement (“Director of PBCE”) to review and approve Conformance Review applications for vertical improvements and open space for consistency with the General Plan, GDP, and applicable Planned Development Permit, and authorizes the Director of Public Works (“PW Director”) to review 35%, 65%, and 95% improvement plan sets for consistency with the GDP, applicable Planned Development Permit, Infrastructure Plan, and other applicable Project approvals and documents. The submittal of 35%, 65% and 95% improvement plans during the Conformance Review process for horizontal improvements are interim plan checks prior to the project sponsor’s formal submittal of its applications for a phased final map and 100% improvement plans for the City’s review and approval pursuant to the procedures described in Title 19 of the San José Municipal Code and any ordinances governing the design and permitting of subdivisions and improvements applicable to the Downtown West PD Zoning District.
- K. Development within the Downtown West PD Zoning District shall be allowed pursuant to the standards and requirements set forth in this Ordinance and the GDP, and shall not be subject to provisions of Title 20 that conflict with, or would interfere with development and occupancy of the real property subject to the Downtown West PD Zoning District, including but not limited to the following:
1. The Director of PBCE’s determination on a Conformance Review application shall occur at a Conformance Review Hearing (as set forth in the Implementation Guide), which may be held on dates when Director of PBCE Hearings is also scheduled to occur for other matters. A Conformance Review Hearing shall not constitute a “Director’s hearing” under Section 20.100.220 and Table 20-260) Appeal Hearing Body) of Title 20 of the Municipal Code. The Director of PBCE’s decision on a

Conformance Review application shall not be subject to appeal to the Planning Commission or City Council. The decision of the Director of PBCE is final and shall not be appealable to any other approval body within the City.

2. The GDP for the Downtown West PD Zoning District establishes the maximum allowable building heights for development within the Downtown West PD Zoning District. The GDP further establishes a process where the maximum building heights for individual buildings in the Downtown West PD Zoning District may be increased without amendment to the GDP, provided that (a) such increase correlates to an increase in maximum allowable height authorized by the FAA and approved by City Council following review by the Santa Clara County Airport Land Use Commission, if applicable, and (b) Director of PBCE conducts environmental review of the building's proposed height increase to determine compliance under CEQA. The provisions of Chapter 20.85 of Title 20 shall not apply to the Downtown West PD Zoning District.
3. The GDP establishes the land uses authorized within the Downtown West PD Zoning District. The GDP identifies whether land uses are: Permitted; a Conditional Use that requires the approval of a subsequent planned development permit; a Special Use that requires the approval of a subsequent planned development permit; and authorized upon the issuance of an Administrative Permit. Certain uses require compliance with conditions of approval that are set forth in the GDP. The land use regulations in the GDP shall control and apply within the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.
4. The term of an Administrative Permit issued within the Downtown West PD Zoning District shall be a minimum of five (5) years, subject to a five (5) year extension. A permittee may request the renewal of an Administrative Permit

pursuant to the terms of the GDP. This shall supersede Section 20.100.1250 of Title 20 for development within the Downtown West PD Zoning District.

5. The GDP authorizes special events and limited-term uses (as defined in the GDP) on private property within the Downtown West PD Zoning District, without any further authorization, permits, or approvals from the Director of PBCE or any other City department, except to the extent a permit is required under the San Jose Municipal Fire Code or the event includes amplified noise that exceed 60 decibels (dBA) based on an hourly average noise level (hourly  $L_{eq}$ ). The GDP establishes a process for obtaining a Fire Permit for Special Events and Limited-Term uses on private property, which shall apply to the Downtown West PD Zoning District. The GDP establishes a process for obtaining an Amplified Sound Permit for Special Events and Limited-Term Uses that include amplified noise that exceeds 60 dBA based on an hourly  $L_{eq}$ , which shall apply to the Downtown West PD Zoning District. The GDP also establishes a process for coordinating review of certain Special Events with other City departments (Police Department and Department of Transportation).
6. The GDP establishes specific residential parking standards applicable within the Downtown West PD Zoning District. The Development Agreement and the GDP also establishes specific commercial/public parking requirements applicable to the Downtown West PD Zoning District (the "Required Parking Ratio" as defined and described in the GDP and Development Agreement, approved by Ordinance No. \_\_\_\_). The specific parking standards set forth in the GDP and Development Agreement shall apply and govern development within the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20. The GDP also establishes the standards and requirements for bicycle parking in the

Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.

- L. Concurrent with the approval of this Ordinance, the City Council adopted codified Ordinance No. \_\_\_\_, which amends Title 20 to include a new Section 20.70.700. It is the Council's intent that Section 20.70.700, this Ordinance, the San Jose Municipal Code, and all Project approvals and documents should be construed in a manner that fully implements development of the Project consistent with the standards, requirements and procedures set forth in the Downtown West PD Zoning District and the GDP.
- M. The GDP is on file in the office of the Director of PBCE and is available for inspection by anyone interested therein and said GDP is by this reference adopted and incorporated herein the same as if it were fully set forth herein.
- N. The San José Downtown Design Guidelines and Standards ("DDG") and the Complete Streets Design Standards and Guidelines ("CSDSG") shall continue to apply to the development within the Downtown West PD Zoning District unless a DDG or CSDSG standard or guideline has been expressly superseded by the DWDSG. This Ordinance hereby expressly authorizes the DWDSG to supersede DDG and CSDSG standards and guidelines as specified in the DWDSG.

**SECTION 4. Codified Amendment of Title 11 and Uncodified Amendments to Titles 15, and Title 21 of the City of San José Municipal Code.**

The following provisions of the San José Municipal Code shall be amended as set forth in this section.

- A. Codified Amendments to Title 11.** Sections 11.24.070 and Section 11.24.250 of Title 11 of the San José Municipal Code require Barack Obama Blvd. (formerly Autumn Street) between Park Avenue and Santa Clara Street and Montgomery

Street between Santa Clara Street and Park Avenue to be one-way streets. The Project includes improvements to Barack Obama Blvd. and Montgomery Street to allow for vehicles to travel south and north.

1. Section 11.24.070 shall be amended, as set forth below, upon the Project Sponsor's completion and offer of dedication of improvements of Barack Obama Blvd. between Park Avenue and Santa Clara Street to allow for vehicles to travel south and north.
2. Section 11.24.250 shall be amended, as set forth below, upon the Project Sponsor's completion and offer of dedication of improvements in that portion or component of Montgomery Street to allow for vehicles to travel south and north.
3. Upon the satisfaction of the conditions above, Sections 11.24.070 and 11.24.250 of Title 11 of the San José Municipal Code shall be deemed amended by this Ordinance in the City of San José Municipal Code as follows:

§ 11.24.070 Barack Obama Blvd. Autumn Street: "Vehicles shall be permitted to travel driven from south and to north only on Autumn Street Barack Obama Blvd. between Park Avenue and Santa Clara Street.

§ 11.24.250 - Montgomery Street: Vehicles shall be permitted to travel driven from north and to south only on Montgomery Street between Santa Clara Street and Park Avenue.

4. After receiving written confirmation from the Director of Public Works and the Office of the City Attorney that the conditions above have been satisfied, the City Clerk is hereby directed to codify, or cause to be codified, the amendments to Sections 11.24.070 and Section 11.24.250 of Title 11 of the San José Municipal Code as set forth above.

**B. Uncodified Amendment of Title 15.** Notwithstanding anything to the contrary in Section 15.32.020 and elsewhere in Title 15 of the Municipal Code, the following shall apply to development of the Project:

1. The City Council is hereby empowered to grant a franchise to any person whether operating under any existing franchise or not, to construct or use poles, wires, conduits or appurtenances for transmitting and distributing electricity for any purpose, or to lay or use pipes or appurtenances for transmitting and distributing gas for any purpose across the public streets, as the same now or may hereafter exist within said city, upon terms as are provided in the applicable provisions of the Charter, and may in such franchise impose other additional terms not in conflict with said Charter or this chapter, whether governmental or contractual in character, as in the judgement of the council are to the public interest.
2. Notwithstanding any other provision of the City of San José Municipal Code, no franchise shall be required for any person to use wires, conduits or other appurtenances for transmitting and distributing electricity to the extent that such transmission and distribution: (i) is not deemed to be subject to regulation as a public utility by the California Public Utilities Commission; (ii) occurs pursuant to an integrated electrical system capable of being disconnected from, and operated independently of, the primary electrical grid serving the City of San José; and (iii) is limited to the Downtown West PD Zoning District as described in this Ordinance. As such, the Council approves these specific requirements for the Project based on the following:
  - a. Downtown West will be a highly sustainable and environmentally responsible project. District Systems will help underpin the environmental performance of the Project, reducing the burden on existing networks and increasing resilience. This increased performance will be achieved by consolidating plant systems and connecting resources within the Project's

boundary. By connecting resources, the Project maximizes sustainability outcomes, as the Centralized Utility Plant (CUP) and accompanying microgrid run at higher efficiencies, reducing carbon emissions and potable water needs and also help achieve broader objectives including advancing the City's sustainability goals on GHG emissions, climate adaptation and resilience. Further, they also establish a system that is innovative and replicable.

- b. To Project will use utilidors, which are private service structures, to connect the private networks to the buildings. The utilidors will cross streets at a subterranean level in designated zones as depicted on the Conceptual Encroachment Plan Sheets (Resolution No. \_\_\_\_\_) in order to minimize impacts and disruptions on the City's streets. The networks and services will not be publicly dedicated and will serve the Downtown West area only.

**C. Uncodified Amendment of Title 21.** Notwithstanding anything to the contrary in Title 21 of the San José Municipal Code, the CEQA procedures set forth in the GDP shall apply to all subsequent approvals associated with development of the Project, including the following:

1. The Project Sponsor shall provide information to support a determination whether the City's approval of development under the Conformance Review would be consistent with any applicable requirements of CEQA. If necessary, to support that determination, the Project Sponsor shall provide any required technical studies, either associated with any subsequent CEQA review or otherwise required as part of mitigation to reduce identified impacts.
2. The Director of PBCE shall be responsible for making a determination, reflecting the City's independent judgment, regarding the appropriate environmental clearance for a Conformance Review application. The Director of PBCE shall determine whether a Conformance Review application shall be

approved in reliance on the Downtown West Final Environmental Impact Report (Final EIR), or in reliance on an Addendum to the Final EIR, or if a Supplemental or Subsequent EIR is required to support any approval. The Director of Public Works shall be responsible for making a determination that discretionary approvals in connection with the Horizontal Conformance Review process (DWIS Modification and amendments to Infrastructure Plan) comply with the requirements of CEQA. The CEQA procedures applicable to subsequent approvals set forth in this Ordinance shall similarly apply to the Director of Public Works.

3. The Director of PBCE shall have jurisdiction over a Conformance Review application if the Director of PBCE determines that a Conformance Review application can be approved in reliance on the Final EIR (without or with an Addendum), or that a Supplemental or Subsequent EIR, if required, does not identify any new or substantially more severe significant environmental effects, following mitigation, than those identified in the Final EIR.
4. Pursuant to this Ordinance, the Director of PBCE's determination regarding the appropriate form of environmental clearance for a Conformance Review application shall not be appealable to the Planning Commission, the City Council, or any other City decision-making body. Pursuant to this Ordinance, the Director of PBCE's reliance on an Addendum to, a Supplemental or Subsequent EIR to, or a Determination of Consistency with the Final EIR in support of a Conformance Review application also shall not be appealable to the City Council, or any other City decision-making body.
5. If the Director of PBCE determines that a Supplemental or Subsequent EIR is required pursuant to CEQA and identifies one or more new or substantially more severe significant environmental effects, following mitigation, than those identified in the Final EIR, the Planning Commission shall hold a public hearing on the Conformance Review application and make a recommendation to the

City Council regarding certification of the Supplemental or Subsequent EIR. The City Council shall thereafter hold a public hearing to consider certification of the Supplemental or Subsequent EIR for the subject Conformance Review application.

6. The table below summarizes the decision-making authority for each of the potential CEQA determinations in connection with a Conformance Review approval or any other subsequent approval for Downtown West (Subsequent Approval), and whether each determination is appealable.

Decision / Approval	Decision Maker	Appealability
Determination regarding scope of CEQA compliance (whether Subsequent Approval may be approved in reliance on the Downtown West Final EIR, Addendum to the Final EIR, or Subsequent or Supplemental EIR)	Director of PBCE	No, pursuant to this Ordinance.
Determination that project proposed in Conformance Review or other Subsequent Approval application are within the scope of the Downtown West Final EIR	Director of PBCE	No, pursuant to this Ordinance.
Determination that project may be approved in reliance on an Addendum to the Downtown West Final EIR	Director of PBCE	No, pursuant to this Ordinance.
Certification of Subsequent or Supplemental EIR for project that does not identify any new or substantially more severe significant environmental effects, following mitigation, that those	Director of PBCE  Sources: Pub. Res. Code § 21151(c);  Muni Code § 21.07.040.	Yes. Under CEQA, if a nonelected decision-making body of a local lead agency certifies an EIR, that certification may be appealed to the agency's elected decision-making body (i.e., City Council).

identified in the Downtown West Final EIR		
Certification of Subsequent or Supplemental EIR for project that identifies one or more new or substantially more severe significant environmental effects, following mitigation, that those identified in the Downtown West Final EIR.	Planning Commission Recommendation; City Council Certification  Source: Muni Code § 20.100.220, footnote 1	N/A because City Council becomes the initial decision maker under these circumstances.

**SECTION 4: Exceptions to Section 13.05.050 of the City of San José’s Municipal Code and the Complete Streets Design Standards and Guidelines (CSDSG)**

1. Chapter 13.05 of the City of San José’s Municipal Code generally requires the implementation of the Complete Streets Design Standards and Guidelines (“CSDSG”). Section 13.05.050 establishes right-of-way widths for streets listed in Table 1 of Section 13.05.070. Section 13.05.040 provides for exceptions to compliance with the CSDSG in certain circumstances and the CSDSG itself authorizes deviations from CSDSG guidelines.
2. The GDP establishes the total right-of-way width for public streets within Downtown West notwithstanding anything to the contrary under Title 13 of the Municipal Code. Final street design for public streets will be described in improvement plans and approved as part of the final map and improvement plan process. The Downtown West PD Permit, including the DWDSG, provides that the development of streets within Downtown West is subject to the standards and guidelines in the CSDSG unless expressly superseded by the DWDSG. Superseded CSDSG standards and guidelines are identified in Appendix E (CSDSG Standards and Guidelines That Do Not Apply to Downtown West) of the DWDSG. As such, the City approves an exception to compliance with those CSDSG standards identified in Appendix E of the DWDSG including standards

related to right-of-way widths, minimum widths of travel lanes, and sidewalk zones, pursuant to its authority under Section 13.05.040 and the CSDSG, for the reasons set forth in Appendix E of the DWDSG, which are herein incorporated by reference.

## **SECTION 5. CEQA Determination**

1. The City, acting in its capacity as lead agency for the Project, has prepared a Final Environmental Impact Report ("FEIR") pursuant to and in accordance with the California Environmental Quality Act ("CEQA"). The FEIR 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, and the revisions to the Draft EIR. The FEIR analyzed the potential environmental impacts from all changes proposed as part of the Project, including the proposed rezoning of the subject area to the Downtown West Planned Development Zoning District.
2. On April 28, the Planning Commission of the City of San José reviewed the FEIR and recommended that the City Council certify the FEIR for the Project.
3. On \_\_\_\_, 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, 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, and available on the Planning Department's website.

## **SECTION 6. PG&E Property and Subsequent Actions**

- A. The Downtown West PD Zoning District, as further described in Exhibit "A", currently includes an approximately 0.18 acre-parcel, described as "Parcel #1" in the deed recorded November 25, 1926, in Book 797, page 336 of Santa Clara County Records, generally located at the intersection of Cahill Street and West San Fernando ("PG&E Property"), which is owned by Pacific Gas & Electric Company ("PG&E") and is subject to the jurisdiction of the California Public Utilities Commission ("CPUC") under California Public Utilities Code Section 851. PG&E authorized the inclusion of the PG&E Property within the boundary of the Downtown West PD Zoning District provided that CPUC subsequently confirms that the PG&E Property may be included within the proposed Downtown West PD Zoning District. This Ordinance shall not become effective as to the PG&E Property and the City shall not grant any Subsequent Approvals (as defined in the Development Agreement) over the PG&E Property until Google provides documentation to the Director of PBCE demonstrating that CPUC has provided the requested authorization.

The zoning for the PG&E Property shall remain Light Industrial until Google provides documentation to the Director of PBCE demonstrating that CPUC has provided the requested authorization. If Google fails to provide documentation of CPUC's consent within twenty-four (24) months of the effective date of this Ordinance, PG&E's authorization to include the PG&E Property within the Downtown West PD Zoning District shall be deemed withdrawn. Upon a request from Google, and subject to the written consent of PG&E, the Director of PBCE may extend the twenty-four month period described in the preceding sentence for an additional period not to exceed twelve months. In the event Google does not provide timely documentation of CPUC's consent, Google shall update the boundaries of the Downtown West PD Zoning District shown in the GDP to exclude the PG&E Property. Notwithstanding anything to the contrary in Section 20.120.510 of the San Jose Municipal Code, such an update to the GDP may be administratively approved by the Director of PBCE.

- B. All that real property described in Exhibit "A" as Parcels 1-3 is hereby rezoned to the Downtown West PD Zoning District. The base district zoning of the Downtown West PD Zoning District shall be DC Downtown Commercial. The Planned Development zoning of the subject property shall be the GDP, which City Council finds is consistent with all requirements set forth in Section 20.120.510.
- C. The zoning district map of the City is hereby amended accordingly.
- D. The City Council authorizes the Director of PBCE to make minor changes to this Ordinance and its attachments, in consultation with the City Attorney, such as the making of corrections including grammatical and typographical changes, minor additions or edits to ensure consistency across Project approvals and documents (e.g. correcting cross-references to other Project approvals or documents), or other non-substantive changes, as necessary or appropriate, to implement this Ordinance and to effectuate the City's performance thereunder.

**SECTION 7. Effective Date.**

This Ordinance shall take effect thirty (30) calendar days after adoption.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE REZONING APPROXIMATELY 80 ACRES OF REAL PROPERTY SITUATED IN DOWNTOWN SAN JOSE FROM THE LIGHT INDUSTRIAL, HEAVY INDUSTRIAL, INDUSTRIAL PARK, COMMERCIAL NEIGHBORHOOD, COMMERCIAL GENERAL, DOWNTOWN PRIMARY COMMERCIAL, PUBLIC, COMBINED INDUSTRIAL/COMMERCIAL, AND A(PD) PLANNED DEVELOPMENT ZONING DISTRICTS TO THE DC (PD) PLANNED DEVELOPMENT ZONING DISTRICT, AND ADOPTING A CODIFIED AMENDMENT TO TITLE 11, SECTIONS 11.24.070 AND 11.24.250, AND ADOPTING VARIOUS UNCODIFIED AMENDMENTS TO THE MUNICIPAL CODE ASSOCIATED WITH THE PLANNED DEVELOPMENT ZONING DISTRICT**

**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 which 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 includes policies intended to support the City’s economic, fiscal, environmental, and urban placemaking goals; and

**WHEREAS**, the City and Google LLC (“Project Sponsor” or “Google”) 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 that are 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 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 amendment effort; rezoning to a Planned Development Zoning District with a General Development Plan; and a Planned Development Permit; and

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

**WHEREAS**, since October 7, 2020 Google has submitted updated Project applications in response to public comments and discussions with City staff 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 (“DWDSG”), Downtown West Improvement Standards (“DWIS”), Conceptual Infrastructure Plan Sheets, and Downtown West Conformance Review Implementation Guide (“Implementation Guide” (collectively, the “Downtown West PD Permit”); Infrastructure Plan; amendment to the Historic Preservation Permit; Vesting Tentative Map; and development agreement; and

**WHEREAS**, the Project, which is located within the Downtown Growth Area Boundary and within the boundaries of the Diridon Station Area Plan (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**, 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 center 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**, On December 30, 2019, Governor Gavin Newsom certified the Project as an environmental leadership development 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); 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 for the Project has been ongoing since 2018 and has included over 50 meetings with members of the Diridon Station Area Advisory Group (SAAG), as well as over 100 community outreach events that provided the public with the opportunity to review the Project through a combination 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 other large and small events reaching communities within and around the Project site; and

**WHEREAS**, pursuant to Section 20.10.070 of the City of San José's Municipal Code, a Planned Development Zoning District is intended to be individually designed to meet the needs of the subject property, with the uses and requirements of the Planned Development Zoning District reflected in a General Development Plan adopted as part of the Planned Development Zoning District ordinance; and

**WHEREAS**, the requirements for a General Development Plan are set forth in Section 20.120.510 of the City of San José's Municipal Code; and

**WHEREAS**, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; 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 planned rezoning and recommended to the City Council of the City of San José that the subject property be zoned Downtown West PD Zoning District; and

**WHEREAS**, 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 planned rezoning based on the recommendations from the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, the Project's potential environmental impacts, including the proposed rezoning of the Project site, were analyzed in that certain Final Environmental Impact Report for the Downtown West Mixed-Use Plan ("FEIR"); and

**WHEREAS**, the 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 pursuant to the California Environmental Quality Act (CEQA) under separate Resolution No. \_\_\_\_ on May \_\_\_, 2021 prior to making its determination on this rezoning ordinance or any other Project approvals; and

**WHEREAS**, this Ordinance approving the Downtown West PD Zoning District is a companion to the following approvals relating to Downtown West: override of the Santa Clara County Airport Land Use Commission's Comprehensive Land Use Plan inconsistency determination (Resolution No. \_\_); amendments to the General Plan including land use designations applicable to Downtown West (Resolution No. \_\_); amendments to the Diridon Station Area Plan (Resolution No. \_\_); the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. \_\_); a Planned Development Permit (Resolution No. \_\_); amendments to Title 20 of the San José Municipal Code (Ordinance No. \_\_); approval of a Vesting Tentative Map (Resolution No.\_\_); amendment to the boundaries of two Historic Landmarks, the San José Water Company at 374 West Santa Clara Street and the Southern Pacific Depot Historic District (Resolutions No. \_\_ and \_\_); an amendment to Historic Preservation Permit (HP16-

002) (Resolution No. \_\_\_\_); approval of Major Encroachment Permits (Resolution No. \_\_\_\_); and approval of the 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 rezoning of the Project site to the Downtown West PD Zoning District; and

**WHEREAS**, the proposed rezoning is consistent with the designation of the site in the General Plan (as amended by Resolution No. \_\_\_\_), and is consistent with the goals, objectives, and policies of the General Plan and the Diridon Station Area Plan (as amended by Resolution No. \_\_\_\_); and

**WHEREAS**, the Project Sponsor proposes the possible development of a privately-owned, integrated electrical system capable of being disconnected from, and operated independently of, the primary electrical grid serving the City of San Jose ("Microgrid") which would reduce burdens on the Pacific Gas & Electric Company's (PG&E's) electrical network, improving the City's long-term capacity to grow as described in the General Plan; and

**WHEREAS**, the Microgrid would provide resilient infrastructure that together with the District Systems helps reduce carbon emissions by 22%, or the equivalent of taking approximately 4,100 cars off the road, and includes 7.8 megawatts of on-site solar generation, equivalent to the energy needed to power approximately 1,500 homes; and

**WHEREAS**, the Microgrid contributes to achievement of zero net new greenhouse gas emissions for the Project's construction and operations; and

**WHEREAS**, all the Project's infrastructure will be privately funded with no public subsidy; and

**WHEREAS**, the above-described environmental criteria are necessary to help achieve the City's policy of reducing San Jose's per capita energy use by 50% (Envision San Jose

2040 General Plan) and to pursue a Paris Accord-compliant pathway for the City (Climate Smart San Jose); and

**WHEREAS**, the Microgrid would not service projects outside of Downtown West and would implement rigorous service and performance criteria, including but not limited to fixing rates for residential and retail tenants, including safety standards for operations, and ensuring continuity of supply all as described in Resolution No. \_\_\_\_\_;

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

**SECTION 1.** The City Council finds that all the facts set forth in the foregoing recitals are true and correct and are incorporated herein by this reference.

**SECTION 2.** General Plan and DSAP Consistency.

1. **General Plan Consistency.** The subject site consists of the Downtown and Commercial Downtown land use designations on the General Plan Land Use/Transportation Diagram (as amended by Ordinance No. \_\_\_\_). 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 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 FAR up to 15.0.

The Project conforms to the General Plan goals and policies for the reasons set forth in Exhibit "B" to Resolution No. [\_\_\_\_] approving the General Plan Amendment, which findings are incorporated herein by reference.

2. **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 limited-term corporate accommodations; up to 100,000 gsf of event and conference centers; 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 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 standards (Chapter 3) require 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 respond 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 Complete Streets Design Standards and Guidelines ("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 West Santa Clara Street to North Montgomery Street; Cahill Street south of West San Fernando Street to Park Avenue; West St. John Street to the Cahill Street extension; West Post Street between Cahill Street and Barack Obama Boulevard; North Montgomery Street north of Cinnabar Street to North Autumn Street; and North 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 West Santa Clara Street, West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, Auzerais Avenue and new street extensions such as West St. John Street and West 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 enhances 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 Project's affordable housing program, which assumes development of 4,000 residential units, supports the production of up to 1,000 affordable housing

units, and furthers Google's and the City's shared goal that development within the DSAP results 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 Project will enhance and expand access to open space as the Project's 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 enhance 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 a Required Parking Ratio for commercial/public parking as further described in Exhibit K of the Development Agreement. 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 is accessible to the various mixed uses within Downtown West, nearby transit and the SAP Center.

**SECTION 3.** Development Regulations Applicable to the Downtown West PD Zoning District.

- A. The Downtown West PD Zoning District consists of approximately 80 acres 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, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain railroad tracks to the west ("Downtown West PD Zoning District").

- B. The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.
- C. Development and use of property within the Downtown West PD Zoning District shall be subject to the land use regulations and development standards reflected in the Downtown West General Development Plan ("GDP"), dated \_\_\_\_\_, as it may be amended from time to time. The Downtown West PD Zoning District consists of three (3) sub-areas, identified as Sub-Area 1, Sub-Area 2, and Sub-Area 3 in the GDP. The locations of the sub-areas are generally depicted in the GDP and consist of the real property described in Exhibit A.
- D. The permitted uses, development standards, and use regulations applicable to the Downtown West PD Zoning District shall be those established in the GDP, which authorizes transfers of square footage and conversion of land uses between Sub-Areas subject to the conditions and criteria established in the GDP, including but not limited to compliance with CEQA.
- E. The regulations and standards established in the Downtown West PD Zoning District and GDP, adopted by this Ordinance, shall control and govern development of the Project within the Downtown West PD Zoning District notwithstanding any contrary provision in Title 20, including but not limited to any greater restrictions on the use of buildings or premises, height of buildings, or open space requirements in Title 20.
- F. The Downtown West Planned Development Permit dated \_\_\_\_\_, as it may be amended from time to time ("Downtown West PD Permit"), approved by Resolution No. \_\_\_\_\_, effectuates the Downtown West PD Zoning District pursuant to Section 20.60.020 of the Municipal Code. The Downtown West PD 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”), as they may be amended from time to time (collectively, these documents are referred to as the “Downtown West PD Permit”).

- G. Sub-Area 2, as generally depicted in the GDP, is included within the boundaries of the Downtown West PD Zoning District but is not included within the Downtown West PD Permit. Development within Sub-Area 2 shall be subject to the requirements of the DC Downtown Commercial zoning district, which shall continue to apply to Sub-Area 2 until the issuance of a Planned Development Permit for Sub-Area 2. Any subsequent Planned Development Permit for Sub-Area 2 shall conform to the requirements in the GDP, including the specific development standards applicable to Sub-Area 2 set forth on Sheet 3.02a of the GDP, as those may be amended from time to time. Development of Sub-Area 2 shall also be subject to the Conditions of Approval to the Downtown West PD Permit.
- H. The GDP establishes the commercial and residential parking requirements for development within the Downtown West PD Zoning District. The project sponsor shall provide publicly accessible off-street parking spaces serving new office development in compliance with the Required Parking Ratio as set forth in the GDP and the Development Agreement, approved by Ordinance No. \_\_\_\_\_. Residential parking requirements shall be provided in accordance with the standards in the GDP. The GDP also establishes the standards and requirements for bicycle parking in the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.
- I. The development of the Project is intended to occur in phases and this Ordinance authorizes and establishes the Downtown West PD Zoning District Design / Conformance Review (“Conformance Review”) process, a subsequent review process for the design and development of vertical improvements, open space, and horizontal improvements within the Downtown West PD Zoning District.

- J. The Conformance Review process, which is further described in the GDP and Implementation Guide, dated \_\_\_\_\_, and is a component of the Downtown West PD Permit, both as may be amended from time to time, authorizes the Director of Planning, Building, and Code Enforcement (“Director of PBCE”) to review and approve Conformance Review applications for vertical improvements and open space for consistency with the General Plan, GDP, and applicable Planned Development Permit, and authorizes the Director of Public Works (“PW Director”) to review 35%, 65%, and 95% improvement plan sets for consistency with the GDP, applicable Planned Development Permit, Infrastructure Plan, and other applicable Project approvals and documents. The submittal of 35%, 65% and 95% improvement plans during the Conformance Review process for horizontal improvements are interim plan checks prior to the project sponsor’s formal submittal of its applications for a phased final map and 100% improvement plans for the City’s review and approval pursuant to the procedures described in Title 19 of the San José Municipal Code and any ordinances governing the design and permitting of subdivisions and improvements applicable to the Downtown West PD Zoning District.
- K. Development within the Downtown West PD Zoning District shall be allowed pursuant to the standards and requirements set forth in this Ordinance and the GDP, and shall not be subject to provisions of Title 20 that conflict with, or would interfere with development and occupancy of the real property subject to the Downtown West PD Zoning District, including but not limited to the following:
1. The Director of PBCE’s determination on a Conformance Review application shall occur at a Conformance Review Hearing (as set forth in the Implementation Guide), which may be held on dates when Director of PBCE Hearings is also scheduled to occur for other matters. A Conformance Review Hearing shall not constitute a “Director’s hearing” under Section 20.100.220 and Table 20-260) Appeal Hearing Body) of Title 20 of the Municipal Code. The Director of PBCE’s decision on a

Conformance Review application shall not be subject to appeal to the Planning Commission or City Council. The decision of the Director of PBCE is final and shall not be appealable to any other approval body within the City.

2. The GDP for the Downtown West PD Zoning District establishes the maximum allowable building heights for development within the Downtown West PD Zoning District. The GDP further establishes a process where the maximum building heights for individual buildings in the Downtown West PD Zoning District may be increased without amendment to the GDP, provided that (a) such increase correlates to an increase in maximum allowable height authorized by the FAA and approved by City Council following review by the Santa Clara County Airport Land Use Commission, if applicable, and (b) Director of PBCE conducts environmental review of the building's proposed height increase to determine compliance under CEQA. The provisions of Chapter 20.85 of Title 20 shall not apply to the Downtown West PD Zoning District.
3. The GDP establishes the land uses authorized within the Downtown West PD Zoning District. The GDP identifies whether land uses are: Permitted; a Conditional Use that requires the approval of a subsequent planned development permit; a Special Use that requires the approval of a subsequent planned development permit; and authorized upon the issuance of an Administrative Permit. Certain uses require compliance with conditions of approval that are set forth in the GDP. The land use regulations in the GDP shall control and apply within the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.
4. The term of an Administrative Permit issued within the Downtown West PD Zoning District shall be a minimum of five (5) years, subject to a five (5) year extension. A permittee may request the renewal of an Administrative Permit

pursuant to the terms of the GDP. This shall supersede Section 20.100.1250 of Title 20 for development within the Downtown West PD Zoning District.

5. The GDP authorizes special events and limited-term uses (as defined in the GDP) on private property within the Downtown West PD Zoning District, without any further authorization, permits, or approvals from the Director of PBCE or any other City department, except to the extent a permit is required under the San Jose Municipal Fire Code or the event includes amplified noise that exceed 60 decibels (dBA) based on an hourly average noise level (hourly  $L_{eq}$ ). The GDP establishes a process for obtaining a Fire Permit for Special Events and Limited-Term uses on private property, which shall apply to the Downtown West PD Zoning District. The GDP establishes a process for obtaining an Amplified Sound Permit for Special Events and Limited-Term Uses that include amplified noise that exceeds 60 dBA based on an hourly  $L_{eq}$ , which shall apply to the Downtown West PD Zoning District. The GDP also establishes a process for coordinating review of certain Special Events with other City departments (Police Department and Department of Transportation).
6. The GDP establishes specific residential parking standards applicable within the Downtown West PD Zoning District. The Development Agreement and the GDP also establishes specific commercial/public parking requirements applicable to the Downtown West PD Zoning District (the "Required Parking Ratio" as defined and described in the GDP and Development Agreement, approved by Ordinance No. \_\_\_\_). The specific parking standards set forth in the GDP and Development Agreement shall apply and govern development within the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20. The GDP also establishes the standards and requirements for bicycle parking in the

Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.

- L. Concurrent with the approval of this Ordinance, the City Council adopted codified Ordinance No. \_\_\_\_, which amends Title 20 to include a new Section 20.70.700. It is the Council's intent that Section 20.70.700, this Ordinance, the San Jose Municipal Code, and all Project approvals and documents should be construed in a manner that fully implements development of the Project consistent with the standards, requirements and procedures set forth in the Downtown West PD Zoning District and the GDP.
- M. The GDP is on file in the office of the Director of PBCE and is available for inspection by anyone interested therein and said GDP is by this reference adopted and incorporated herein the same as if it were fully set forth herein.
- N. The San José Downtown Design Guidelines and Standards ("DDG") and the Complete Streets Design Standards and Guidelines ("CSDSG") shall continue to apply to the development within the Downtown West PD Zoning District unless a DDG or CSDSG standard or guideline has been expressly superseded by the DWDSG. This Ordinance hereby expressly authorizes the DWDSG to supersede DDG and CSDSG standards and guidelines as specified in the DWDSG.

**SECTION 4. Codified Amendment of Title 11 and Uncodified Amendments to Titles 15, and Title 21 of the City of San José Municipal Code.**

The following provisions of the San José Municipal Code shall be amended as set forth in this section.

- A. Codified Amendments to Title 11.** Sections 11.24.070 and Section 11.24.250 of Title 11 of the San José Municipal Code require Barack Obama Blvd. (formerly Autumn Street) between Park Avenue and Santa Clara Street and Montgomery

Street between Santa Clara Street and Park Avenue to be one-way streets. The Project includes improvements to Barack Obama Blvd. and Montgomery Street to allow for vehicles to travel south and north.

1. Section 11.24.070 shall be amended, as set forth below, upon the Project Sponsor's completion and offer of dedication of improvements of Barack Obama Blvd. between Park Avenue and Santa Clara Street to allow for vehicles to travel south and north.
2. Section 11.24.250 shall be amended, as set forth below, upon the Project Sponsor's completion and offer of dedication of improvements in that portion or component of Montgomery Street to allow for vehicles to travel south and north.
3. Upon the satisfaction of the conditions above, Sections 11.24.070 and 11.24.250 of Title 11 of the San José Municipal Code shall be deemed amended by this Ordinance in the City of San José Municipal Code as follows:

§ 11.24.070 Barack Obama Blvd. Autumn Street: "Vehicles shall be permitted to travel driven from south and to north only on Autumn Street Barack Obama Blvd. between Park Avenue and Santa Clara Street.

§ 11.24.250 - Montgomery Street: Vehicles shall be permitted to travel driven from north and to south only on Montgomery Street between Santa Clara Street and Park Avenue.

4. After receiving written confirmation from the Director of Public Works and the Office of the City Attorney that the conditions above have been satisfied, the City Clerk is hereby directed to codify, or cause to be codified, the amendments to Sections 11.24.070 and Section 11.24.250 of Title 11 of the San José Municipal Code as set forth above.

**B. Uncodified Amendment of Title 15.** Notwithstanding anything to the contrary in Section 15.32.020 and elsewhere in Title 15 of the Municipal Code, the following shall apply to development of the Project:

1. The City Council is hereby empowered to grant a franchise to any person whether operating under any existing franchise or not, to construct or use poles, wires, conduits or appurtenances for transmitting and distributing electricity for any purpose, or to lay or use pipes or appurtenances for transmitting and distributing gas for any purpose across the public streets, as the same now or may hereafter exist within said city, upon terms as are provided in the applicable provisions of the Charter, and may in such franchise impose other additional terms not in conflict with said Charter or this chapter, whether governmental or contractual in character, as in the judgement of the council are to the public interest.
2. Notwithstanding any other provision of the City of San José Municipal Code, no franchise shall be required for any person to use wires, conduits or other appurtenances for transmitting and distributing electricity to the extent that such transmission and distribution: (i) is not deemed to be subject to regulation as a public utility by the California Public Utilities Commission; (ii) occurs pursuant to an integrated electrical system capable of being disconnected from, and operated independently of, the primary electrical grid serving the City of San José; and (iii) is limited to the Downtown West PD Zoning District as described in this Ordinance. As such, the Council approves these specific requirements for the Project based on the following:
  - a. Downtown West will be a highly sustainable and environmentally responsible project. District Systems will help underpin the environmental performance of the Project, reducing the burden on existing networks and increasing resilience. This increased performance will be achieved by consolidating plant systems and connecting resources within the Project's

boundary. By connecting resources, the Project maximizes sustainability outcomes, as the Centralized Utility Plant (CUP) and accompanying microgrid run at higher efficiencies, reducing carbon emissions and potable water needs and also help achieve broader objectives including advancing the City's sustainability goals on GHG emissions, climate adaptation and resilience. Further, they also establish a system that is innovative and replicable.

- b. To Project will use utilidors, which are private service structures, to connect the private networks to the buildings. The utilidors will cross streets at a subterranean level in designated zones as depicted on the Conceptual Encroachment Plan Sheets (Resolution No. \_\_\_\_\_) in order to minimize impacts and disruptions on the City's streets. The networks and services will not be publicly dedicated and will serve the Downtown West area only.

**C. Uncodified Amendment of Title 21.** Notwithstanding anything to the contrary in Title 21 of the San José Municipal Code, the CEQA procedures set forth in the GDP shall apply to all subsequent approvals associated with development of the Project, including the following:

1. The Project Sponsor shall provide information to support a determination whether the City's approval of development under the Conformance Review would be consistent with any applicable requirements of CEQA. If necessary, to support that determination, the Project Sponsor shall provide any required technical studies, either associated with any subsequent CEQA review or otherwise required as part of mitigation to reduce identified impacts.
2. The Director of PBCE shall be responsible for making a determination, reflecting the City's independent judgment, regarding the appropriate environmental clearance for a Conformance Review application. The Director of PBCE shall determine whether a Conformance Review application shall be

approved in reliance on the Downtown West Final Environmental Impact Report (Final EIR), or in reliance on an Addendum to the Final EIR, or if a Supplemental or Subsequent EIR is required to support any approval. The Director of Public Works shall be responsible for making a determination that discretionary approvals in connection with the Horizontal Conformance Review process (DWIS Modification and amendments to Infrastructure Plan) comply with the requirements of CEQA. The CEQA procedures applicable to subsequent approvals set forth in this Ordinance shall similarly apply to the Director of Public Works.

3. The Director of PBCE shall have jurisdiction over a Conformance Review application if the Director of PBCE determines that a Conformance Review application can be approved in reliance on the Final EIR (without or with an Addendum), or that a Supplemental or Subsequent EIR, if required, does not identify any new or substantially more severe significant environmental effects, following mitigation, than those identified in the Final EIR.
4. Pursuant to this Ordinance, the Director of PBCE's determination regarding the appropriate form of environmental clearance for a Conformance Review application shall not be appealable to the Planning Commission, the City Council, or any other City decision-making body. Pursuant to this Ordinance, the Director of PBCE's reliance on an Addendum to, a Supplemental or Subsequent EIR to, or a Determination of Consistency with the Final EIR in support of a Conformance Review application also shall not be appealable to the City Council, or any other City decision-making body.
5. If the Director of PBCE determines that a Supplemental or Subsequent EIR is required pursuant to CEQA and identifies one or more new or substantially more severe significant environmental effects, following mitigation, than those identified in the Final EIR, the Planning Commission shall hold a public hearing on the Conformance Review application and make a recommendation to the

City Council regarding certification of the Supplemental or Subsequent EIR. The City Council shall thereafter hold a public hearing to consider certification of the Supplemental or Subsequent EIR for the subject Conformance Review application.

6. The table below summarizes the decision-making authority for each of the potential CEQA determinations in connection with a Conformance Review approval or any other subsequent approval for Downtown West (Subsequent Approval), and whether each determination is appealable.

<b>Decision / Approval</b>	<b>Decision Maker</b>	<b>Appealability</b>
Determination regarding scope of CEQA compliance (whether Subsequent Approval may be approved in reliance on the Downtown West Final EIR, Addendum to the Final EIR, or Subsequent or Supplemental EIR)	Director of PBCE	No, pursuant to this Ordinance.
Determination that project proposed in Conformance Review or other Subsequent Approval application are within the scope of the Downtown West Final EIR	Director of PBCE	No, pursuant to this Ordinance.
Determination that project may be approved in reliance on an Addendum to the Downtown West Final EIR	Director of PBCE	No, pursuant to this Ordinance.
Certification of Subsequent or Supplemental EIR for project that does not identify any new or substantially more severe significant environmental effects, following mitigation, that those	Director of PBCE  Sources: Pub. Res. Code § 21151(c);  Muni Code § 21.07.040.	Yes. Under CEQA, if a nonelected decision-making body of a local lead agency certifies an EIR, that certification may be appealed to the agency's elected decision-making body (i.e., City Council).

identified in the Downtown West Final EIR		
Certification of Subsequent or Supplemental EIR for project that identifies one or more new or substantially more severe significant environmental effects, following mitigation, that those identified in the Downtown West Final EIR.	Planning Commission Recommendation; City Council Certification  Source: Muni Code § 20.100.220, footnote 1	N/A because City Council becomes the initial decision maker under these circumstances.

**SECTION 4: Exceptions to Section 13.05.050 of the City of San José’s Municipal Code and the Complete Streets Design Standards and Guidelines (CSDSG)**

1. Chapter 13.05 of the City of San José’s Municipal Code generally requires the implementation of the Complete Streets Design Standards and Guidelines (“CSDSG”). Section 13.05.050 establishes right-of-way widths for streets listed in Table 1 of Section 13.05.070. Section 13.05.040 provides for exceptions to compliance with the CSDSG in certain circumstances and the CSDSG itself authorizes deviations from CSDSG guidelines.
2. The GDP establishes the total right-of-way width for public streets within Downtown West notwithstanding anything to the contrary under Title 13 of the Municipal Code. Final street design for public streets will be described in improvement plans and approved as part of the final map and improvement plan process. The Downtown West PD Permit, including the DWDSG, provides that the development of streets within Downtown West is subject to the standards and guidelines in the CSDSG unless expressly superseded by the DWDSG. Superseded CSDSG standards and guidelines are identified in Appendix E (CSDSG Standards and Guidelines That Do Not Apply to Downtown West) of the DWDSG. As such, the City approves an exception to compliance with those CSDSG standards identified in Appendix E of the DWDSG including standards

related to right-of-way widths, minimum widths of travel lanes, and sidewalk zones, pursuant to its authority under Section 13.05.040 and the CSDSG, for the reasons set forth in Appendix E of the DWDSG, which are herein incorporated by reference.

## **SECTION 5. CEQA Determination**

1. The City, acting in its capacity as lead agency for the Project, has prepared a Final Environmental Impact Report ("FEIR") pursuant to and in accordance with the California Environmental Quality Act ("CEQA"). The FEIR 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, and the revisions to the Draft EIR. The FEIR analyzed the potential environmental impacts from all changes proposed as part of the Project, including the proposed rezoning of the subject area to the Downtown West Planned Development Zoning District.
2. On April 28, the Planning Commission of the City of San José reviewed the FEIR and recommended that the City Council certify the FEIR for the Project.
3. On \_\_\_\_, 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, 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, and available on the Planning Department's website.

## **SECTION 6. PG&E Property and Subsequent Actions**

- A. The Downtown West PD Zoning District, as further described in Exhibit “A”, currently includes an approximately 0.18 acre-parcel, described as “Parcel #1” in the deed recorded November 25, 1926, in Book 797, page 336 of Santa Clara County Records, generally located at the intersection of Cahill Street and West San Fernando (“PG&E Property”), which is owned by Pacific Gas & Electric Company (“PG&E”) and is subject to the jurisdiction of the California Public Utilities Commission (“CPUC”) under California Public Utilities Code Section 851. PG&E authorized the inclusion of the PG&E Property within the boundary of the Downtown West PD Zoning District provided that CPUC subsequently confirms that the PG&E Property may be included within the proposed Downtown West PD Zoning District. This Ordinance shall not become effective as to the PG&E Property and the City shall not grant any Subsequent Approvals (as defined in the Development Agreement) over the PG&E Property until Google provides documentation to the Director of PBCE demonstrating that CPUC has provided the requested authorization.

The zoning for the PG&E Property shall remain Light Industrial until Google provides documentation to the Director of PBCE demonstrating that CPUC has provided the requested authorization. If Google fails to provide documentation of CPUC’s consent within twenty-four (24) months of the effective date of this Ordinance, PG&E’s authorization to include the PG&E Property within the Downtown West PD Zoning District shall be deemed withdrawn. Upon a request from Google, and subject to the written consent of PG&E, the Director of PBCE may extend the twenty-four month period described in the preceding sentence for an additional period not to exceed twelve months. In the event Google does not provide timely documentation of CPUC’s consent, Google shall update the boundaries of the Downtown West PD Zoning District shown in the GDP to exclude the PG&E Property. Notwithstanding anything to the contrary in Section 20.120.510 of the San Jose Municipal Code, such an update to the GDP may be administratively approved by the Director of PBCE.

- B. All that real property described in Exhibit "A" as Parcels 1-3 is hereby rezoned to the Downtown West PD Zoning District. The base district zoning of the Downtown West PD Zoning District shall be DC Downtown Commercial. The Planned Development zoning of the subject property shall be the GDP, which City Council finds is consistent with all requirements set forth in Section 20.120.510.
- C. The zoning district map of the City is hereby amended accordingly.
- D. The City Council authorizes the Director of PBCE to make minor changes to this Ordinance and its attachments, in consultation with the City Attorney, such as the making of corrections including grammatical and typographical changes, minor additions or edits to ensure consistency across Project approvals and documents (e.g. correcting cross-references to other Project approvals or documents), or other non-substantive changes, as necessary or appropriate, to implement this Ordinance and to effectuate the City's performance thereunder.

**SECTION 7. Effective Date.**

This Ordinance shall take effect thirty (30) calendar days after adoption.